



ICRC

CHECK AGAINST DELIVERY

Geneva, November 2012

ICRC Statement at the Eleventh Session of the Assembly of States Parties to the International Criminal Court The Hague, November 2012

Madam Chairperson,

We would like, first, to thank you for giving the International Committee of the Red Cross (ICRC) the opportunity to participate and address the Eleventh Session of the Assembly of States Parties to the International Criminal Court (ICC).

The ICRC wishes to join other speakers in stressing the importance of this occasion, the tenth anniversary of the entry into force of the Statute of the Court. It has been the ICRC's view, from the very beginning, that the ICC Statute offered States an extraordinary opportunity to unite in defense of fundamental values and to strive to ensure that crimes of the utmost brutality – war crimes, crimes against humanity and genocide – no longer go unpunished. The ICRC welcomed the establishment of the Court, which it regarded as a significant step towards promoting greater respect for international humanitarian law (IHL) and limiting the cycle of violence in armed conflict.

Acting on its principles, the ICRC has encouraged States to become party to the ICC Statute in order for the Court not to remain an empty shell. But we must not forget that the Court is designed to be a last resort, rather than a first resort for justice. Its limited mandate is to complement rather than replace national criminal jurisdictions. The relationship between the Court and national jurisdictions can be effectively realized only if States ensure that their domestic legal systems include the crimes within the jurisdiction of the Court, and enforce these prohibitions when necessary.

The ICRC has consistently offered the support of its Advisory Service on IHL to make the principle of complementarity meaningful at the domestic level. The technical assistance that the ICRC is offering is certainly not the only sort available; in fact, the quality of the other resources available to States for facilitating domestic implementation of the ICC Statute is remarkably high. During the last 10 years, the complementarity principle has had a marked influence on States' willingness to incorporate in domestic legislation international crimes, including war crimes. Many States have taken their primary responsibility seriously: constitutions have been modified, laws adopted, criminal codes amended and the necessary resources provided. As a result, legal and institutional frameworks were shaped, and local capacity enhanced, to address the serious crimes under the ICC Statute which sent a strong message against impunity for such crimes.

A 10th anniversary deserves to be celebrated and commemorated. But we shall refrain from being triumphant. A lot remains to be done.

Universal acceptance of the Statute should not be underestimated and should be pursued even more zealously. What could be a more powerful check than a strong and united

message from the entire community of States to deter those who might feel tempted to commit the crimes included in the Statute? Tools that have been developed to support the universalization of the Statute, such as the Plan of Action of the Assembly of States Parties, the Kampala pledges and peer-to-peer assistance, have not yet been used to their full extent and are still sleeping beauties.

When it comes to implementing the Statute at national level, States should be aware that adopting legislation to criminalize offences under the ICC Statute may not be sufficient for discharging their obligations arising from other relevant treaties. The ICRC therefore strongly encourages States not to implement the Statute in isolation. Instead, they should seize the opportunity provided by the implementation of the Statute to carry out a comprehensive review of their obligations under IHL, in connection with the suppression of its serious violations in all armed conflicts. This is advisable for both practical and legal reasons. This approach takes into account the constant struggle that national authorities face with their limited financial and human resources. It also prevents the replication of efforts. It helps States to address in a coherent and more effective way their obligations under IHL and to avoid discrepancies between their various international treaty obligations and their domestic legal order. In carrying out this work, the leading and central role of national bodies, in particular inter-ministerial committees on the implementation of IHL, should be recognized. When equipped with the necessary resources and with political support, national IHL committees can be very effective and instrumental for facilitating the process and achieving significant results.

Madam Chairperson,

Let us turn for a moment to the Court and its Statute. In Kampala, the ICRC was pleased to witness a movement to supplement the substantial rules of the Statute, by adding to the list of war crimes in non-international armed conflicts the use of expanding bullets, asphyxiating or poisonous gases and poisons. This amendment enhances protection for all victims of non-international armed conflict. States should accept the amendment and take it into consideration when implementing the ICC Statute at national level. However, Kampala was only a first step: this positive trend should not stop there. The ICRC is ready to have further exchange with the Assembly of States Parties Working Group on Amendments to find ways to bring the Statute more in line with the requirements of IHL, and thus offer greater protection for victims of all armed conflicts.

As regards the Court itself, States must give it the resources to be effective and ensure that it has adequate funding, including for matters related to detention. Furthermore, the Court must continue to reaffirm and consolidate its legitimacy by applying the highest standards during all phases of its trials, including when sentences are being served in third countries. The enforcement of the sentence is a crucial stage, in which the ICC has an obvious role to play. Indeed, the variety of domestic systems under which sentences are served should contribute to enhancing the quality of the enforcement of ICC sentences, by providing a wealth of good practices; it should not lead to unjustifiable discrepancies in the situations of ICC convicts depending on the country where they are transferred. It might be advisable for the Court to examine the experience developed over the last decades by ad hoc international criminal tribunals in executing their sentences in a number of countries in Africa and Europe.

The ICRC will continue to participate actively in the work of the Assembly of States Parties to the ICC and remains ready and available to support the Court, the Assembly and the States in their efforts to build an effective system against impunity.

Thank you.