



ICRC

**ICRC Statement at the Eighth Session of the
Assembly of States Parties to the International Criminal Court
The Hague, November 2009**

Mr. Chair,

We would like to thank you, Mr. Chair, for giving the International Committee of the Red Cross (ICRC) the opportunity to participate and speak before the eighth session of the Assembly of States Parties to the International Criminal Court Statute (ICC). It is with great interest that the ICRC has followed over the years the work of the Assembly of States Parties and would like today to submit to its esteemed members its observations on the first Review Conference to be held in Kampala, in the first semester of 2010.

Because of its mandate to promote international humanitarian law (IHL), the observations of the ICRC will focus firstly on the amendments that have been proposed by certain States and that concern the provisions on war crimes and the role of States in enforcement of sentences of imprisonment. Secondly, the ICRC would like to address the process of stocktaking wished by this Assembly.

As regards the amendments to Article 8, the ICRC wishes to recall that, in 1998, it commended the adoption of the Statute, grounded on the principle of complementarity, which puts domestic courts at the centre of the system. The ICRC was satisfied to see that a large number of serious violations of IHL were included in the war crimes provision. It also welcomed the feature that the Court could try war crimes committed during non-international armed conflicts. What was important - and still is - is that the most serious and heinous war crimes - irrespective of the nature of the conflict - fall under the jurisdiction of the Court, which is a key factor in combating impunity.

Nevertheless, in 1998 and on many occasions afterwards, the ICRC regretted that not all serious violations were included in the Statute and that the provisions relating to the use of certain weapons were reduced to a minimum for international armed conflict and were not included at all with respect to non-international armed conflict. At that time, the ICRC hoped that the use of weapons of mass destruction, anti-personnel mines and blinding weapons would be added to the list of war crimes at a future review conference.

In the light of that hope expressed a decade ago, the ICRC commends all efforts of States to bring Article 8 of the Statute more in line with the exigencies of IHL. More particularly, the ICRC urges States to bring particular attention to those proposals aiming at extending the protection currently granted to victims in international armed conflict to those suffering in non-international armed conflict, since what is inhumane, and consequently proscribed in international armed conflict, cannot but be inhumane and inadmissible in a non-international armed conflict. The first amendment proposed by Belgium should be read under this light. The prohibitions of poison or poisoned weapons, asphyxiating, poisonous or other gases as well as bullets which expand or flatten easily in the human body, are well-established under customary international law applicable in all armed conflicts and are an expression of the prohibition of weapons that are of a nature to cause superfluous injury or unnecessary suffering or are by nature indiscriminate. Conduct in violation of these prohibitions should therefore be criminalized in all armed conflicts, irrespective of their nature. The adoption of such an amendment by States Parties would initiate a sound movement towards a greater protection for victims of all armed conflicts by the ICC Statute and, by the same token, a better compliance with IHL. It would be a significant achievement and a very positive message to come out of the first Review Conference.

The ICRC is aware that the building of the necessary consensus around any proposed amendments takes time. Also, the ICRC agrees that any amendment should aim at strengthening the universal character of the Statute and protect its integrity. For these reasons, the ICRC believes that the first Review Conference should not be seen as the final opportunity for amendment of the Statute. Rather, the first Review Conference should be seen as an occasion for States to initiate the necessary discussions and put into place follow-up initiatives for the next years, in order to bring the Statute more in line with IHL. This is important because of the continuing evolution of substantive international criminal law and the role that the ICC Statute plays today in the domestic implementation of IHL obligations. The more the Statute adequately reflects IHL norms and includes all serious violations of IHL, the more likely that the law and practice which result from its implementation and application will be in conformity with IHL.

The ICRC takes note with interest of the amendment to paragraph 1 (a) of Article 103, proposed by Norway. The amendment aims at permitting arrangements to increase the number of States capable and willing to accept sentenced persons by the ICC. The ICRC supports the purpose and object behind such proposal. It is of the opinion that by qualifying a greater number of States for the enforcement of sentences pronounced by the ICC this might contribute to a smoother running of the system in this very important phase of international criminal justice. It would also help in the maintaining of family links, a fundamental component of human dignity. Furthermore, the ICRC believes that the question of execution of sentences should be an element of the stocktaking exercise, which it wishes now to address.

As regards the stocktaking recommended by the Assembly of States Parties, the ICRC is of the opinion that it should consist of both a high-level political element and a technical segment. The high-level political element should be the occasion to reaffirm the commitment of States and other important actors in their combat against impunity. The technical segment should be an occasion to deepen into issues raised in the high-level political element. It should address, *inter alia*, questions of universalisation and the national aspects of complementarity, including the bases of

jurisdiction. The stocktaking should include a review of national implementation of the Rome Statute to date, identify ways to improve implementation through exchanges on best practices, and propose various forms of support for national implementation.

The ICRC believes that this review should be put in the broader perspective of obligations incumbent on States under IHL, in particular, in terms of repressing its serious violations in all conflicts. Such an integrated approach which is recommended for both practical and legal reasons would help States to address in a coherent and more effective way their obligations under IHL and avoid discrepancies between their international treaty obligations and their domestic legal order. Finally, the review should discuss and recognise the leading and central role of national bodies, such as national inter-ministerial committees on the implementation of IHL, in identifying the measures to be taken and ensuring both in law and practice States' compliance with their international obligations.

Thank you Mr. Chair.

