



ICRC

ICRC Statement at the First Review Conference of the
Statute of the International Criminal Court (ICC)
Kampala, 31 May – 11 June 2010

Mr Chair,

I would first of all like to thank you for giving the International Committee of the Red Cross (ICRC) the opportunity to participate in and speak before this First Review Conference.

In 1998, almost 12 years ago to the day, the ICRC was in Rome to witness the adoption of the ICC Statute. It was – and still is – a great achievement. Establishment of the ICC represented an important step towards the end of impunity. More than 120 States, supported by a plethora of international organizations and dedicated NGOs, affirmed that the crimes found in the ICC Statute were “of concern to the international community as a whole”, and “must not go unpunished”. On that occasion, States also reiterated that repression of ICC crimes was their primary responsibility and that it was “the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.” According to the principle of complementarity enshrined in the ICC Statute, the Court was to act only when States' unwillingness or incapacity were shown.

In July 2002, the ICRC welcomed the entry into force of the ICC Statute and the start of the Court's activities. From that moment on, application of the complementarity principle has had a noticeable influence over States' domestication of international crimes, including war crimes. In the last eight years, the ICRC – through its Advisory Service – has witnessed a number of positive developments. Here, I will mention just few of them. First, the regular meetings of the Assembly of States Parties have proved to be very productive. The Assembly provides States, the ICC itself and other stakeholders with a forum in which to discuss the Court's functioning as well as practices in order to make cooperation and complementarity a reality. Both the Resolution on the Strengthening of the ICC adopted year after year since 2003 by the Assembly of States Parties and the Plan of Action for achieving universality and full implementation of the Rome Statute adopted in 2006 should be highlighted and their reinforcement sought. The follow-up of pledges that States and international organizations have been invited to commit to during this Review Conference might also be worth exploring in this regard. Second, the ICRC welcomes the fact that ratification of the ICC Statute has led to an increased number of discussions at national level amongst governments, parliaments and civil society on the unacceptable character of acts amounting to international crimes and the best ways of preventing and repressing them. Third, the ICRC notes with satisfaction that some States are taking advantage when implementing the ICC Statute and its complementarity principle, to carry out a comprehensive review of their obligations under international humanitarian law, with a view to incorporating the necessary provisions for repressing the serious violations of this branch of law, even beyond what is covered in the Statute. This integrated and inclusive approach is to be encouraged.

Mr Chair,

The ICRC believes that the spirit which guided us during the Rome negotiations should continue to inspire our common efforts to combat impunity. Positive messages should come out of the First Review Conference. We should not miss the opportunity to recognize the Statute's influence on domestication of the complementarity principle. The First Review Conference should therefore initiate a sound movement towards bringing the Statute more in line with the requirements of international humanitarian law. On a number of occasions, the ICRC has stressed that the ICC Statute is far from perfect. In particular, the ICRC regrets that not all serious violations of international humanitarian law were included in the Statute, and that provisions relating to certain weapons were reduced to a minimum for international armed conflict and not included at all for non-international armed conflict. This First Review Conference is an opportunity to send a strong message in this regard. For this reason, the ICRC urges States to adopt the proposed amendment to Article 8 of the ICC Statute on a consensus basis. This amendment aims to add three crimes (already included for international armed conflict) to the list of war crimes applicable to non-international armed conflict. They are the use of poison or poisoned weapons; the use of asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices; and the use of expanding bullets. These prohibitions are well established under customary international law applicable to all armed conflicts, and they reflect 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. States should also be encouraged to incorporate such crimes into their domestic legislation without delay.

Beyond any changes to the Statute - that we expect will be positive - a beneficial outcome of this Review Conference can be the reaffirmation of the commitment of the international community, States and civil society alike, to international law in a world currently riven by multiple conflicts that tragically see the continued violation of international humanitarian law.

Thank you for your attention.

28 May 2010