Section C
The Implementation of International Humanitarian Law

The Role of the International Criminal Court in Enforcing International Humanitarian Law

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The Creation of the International Criminal Court

On July 1, 2002, when the Rome Statute creating the International Criminal Court (ICC) came into force, humankind witnessed a significant advancement in the development of international law. This early entry into force of the Rome Statute was quite encouraging, for it had taken only four years since the world community adopted it with overwhelming support in 1998.[2] Following the adoption of the basic preparatory documents at the first meeting of the Assembly of States Parties in September 2002, the Court finished its initial preparations for its operation by electing judges, the prosecutor and deputy-prosecutor, and the registrar in 2003. The creation of the ICC can be seen as one of the remarkable achievements in humankind' s continuing quest to institutionalize peace through justice in the twentieth century. Hence Kofi Annan, Secretary-General of the United Nations, hailed the adoption of the Rome Statute as "a gift of hope to future generation, and a giant step forward in the march towards universal human rights and the rule of law."[3]

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[2]At the Rome Diplomatic Conference in July 1998, the Statute was adopted with remarkable support with 120 in favor, 7 against and 21 abstentions.

[3]See the statement of 18 July 1998 by the UN Secretary-General Kofi Annan at the ceremony held at Campodoglio celebrating the adoption of the Statute of the International Criminal Court. http:// www.un.org/icc/index.htm.

Despite several attempts in the early twentieth century to create an international criminal court to try individuals,[4] the Nuremberg and Tokyo military tribunals set up by the Allied Powers to try the war criminals of the Axis Power were the first serious attempt of such kind. However, the onset of the Cold War in late 1940s blocked efforts at the United Nations (UN) to further develop the spirit of these two tribunals. With the end of the Cold War, the outbreak of non-international armed conflicts, coupled with their growing cruelty, compelled the international community to revive its long-cherished dream of creating an international criminal court to bring an end to such a flagrant state of impunity. In the 1990s, the experience of the two ad hoc tribunals for the former Yugoslavia and Rwanda, as subsidiary bodies of the UN Security Council, drew the attention of the international community to the need to establish a permanent court. Starting with the draft articles drawn up by the International Law Commission in 1994, the Preparatory Committee under the UN General Assembly successfully completed its formidable task of adopting a comprehensive statute on a permanent international criminal court within four years.

The ICC was set up as a treaty-based independent judicial body to prosecute and punish individuals who committed heinous crimes in grave violation of international humanitarian law. This newly created Court is much advanced than its precursors in several respects. Primarily, unlike the International Court of Justice, the ICC is an independent judicial body, even though it was created by, and has a relationship agreement with, the United Nations. The ICC is not a subsidiary organ of the UN Security Council as is the case for the tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR). Secondly, as a permanent court, the ICC will serve as a stronger deterrent than the two ad hoc tribunals, ICTY and ICTR, by addressing horrific situations more quickly and with preparedness and continuity. Thirdly, the ICC is even-handed in its approach to all parties to an armed conflict, regardless of whether they won or not. Anyone accused of committing crimes under the Statute is required to be

[4]After the end of the First World War, the Allied Powers decided to create an international criminal court to punish principal war criminals, including the German King Wilhelm II, pursuant to the Versailles Treaty, but failed to carry it out due to the King's fleeing to the Netherlands. In 1937, the League of Nations also adopted a statute on an international criminal court, which never came into force, since only one state, India, ratified it.

indicted by the Court, leaving no room for the criticism of "victor's justice", which was leveled against the Nuremberg and Tokyo Military Tribunals. Fourthly, the drafting of the Rome Statute made significant contributions towards the development of international criminal law and international humanitarian law by laying down detailed provisions on procedural and substantive law. This bulky 128-article instrument, together with a separate document on Elements of Crimes, elaborates major crimes under the jurisdiction of the Court, thereby not only recording the recent developments in customary law, but also introducing some elements of the progressive developments in international humanitarian law. In addition, the Rome Statute has also made remarkable progress in extending protection to those vulnerable in the situations under its jurisdiction, such as victims, witnesses and women and children. The procedural rights of the accused are also fully guaranteed under the Statute to ensure a fair trial. Last, but not least, the Court, unlike those in the domestic judicial system, consists of the judiciary and prosecution together, even though these two branches work independently. This type of amalgam might be inevitable, given the decentralized state of international community. Many devices of checks and balances between the two branches are built in the Statute in order to ensure fair trials.

All in all, the creation of the ICC was an attempt for humankind to eradicate a culture of impunity by holding individually accountable those persons who committed egregious crimes of international significance. While the Court's main role is to punish grave crimes after they have taken place, its long-term objective is to deter their recurrence by leaving no room for perpetrators of such crimes to enjoy impunity under the shelter of national sovereignty. In achieving the goal of the Court, punishment and deterrence are two sides of the same coin. To be a reliable deterrent, the Court must show the world its effectiveness by bringing to justice any individuals who have committed crimes under the Statute. Likewise, the proof that the court can serve as a strong deterrent will help create an environment favorable to its operation by increasing cooperation by states, which is a crucial requirement for investigating and indicting criminals.

The Structure and Operation of the Court

Like the structure of its predecessors, ICTY and ICTR, the organs of the Court consist of the Presidency, the judiciary subdivided into

three Divisions, the Office of the Prosecutor, and the Registry[5]. There are 18 judges elected for a single nine-year term by a two-thirds majority at a meeting of the Assembly of States Parties. The election scheme is very complex, in order to take into account diverse criteria such as gender, geography and specialty[6]. By an absolute majority, judges elect the President and two Vice-Presidents, who constitute the Presidency, responsible for administration and operation of the Court. Upon election, judges are organized into three divisions: the Pre-Trial and Trial Divisions, with a minimum of six judges each, and the Appeals Division with the President and four other judges. In actual proceedings, the Pre-Trial Chamber consists of one or three judges of the Pre-Trial Division, the Trial Chamber is composed of three judges of the Trial Division, and the Appeals Chamber is made up of the five judges of the Appeals Division.

The Office of the Prosecutor, responsible for investigations and prosecution, is composed of the Prosecutor, elected for a single nine-year term by an absolute majority at a meeting of the Assembly of States Parties, and one or more Deputy Prosecutors elected in the same manner from a list of candidates drawn up by the Prosecutor and other staff members. The Registry, in charge of the non-judicial aspects of the administration and servicing of the Court, consists of the Registrar and Deputy Registrar, each elected for a term of five years by an absolute majority of judges upon the recommendation of the Assembly of States Parties. In addition, as a treaty body, the Assembly of States Parties, composed of all parties to the Rome Statute, also plays an important role in steering the operation of the Court by giving general guidelines and setting the budget of the Court.

Defining the jurisdiction and trigger mechanisms of the Court was the most difficult issue throughout the process of the Court's establishment due to their highly political character. The crimes under the Court's

[5]See Article 34.

[6]At the first election in February 2003, there was required to be a minimum of six female judges, a minimum of nine judges in the field of criminal law and procedure and a minimum of eight judges in the field of international law. In addition, the geographical distribution requirement stipulated a minimum of two judges each from Asia and Eastern Europe, and three judges each from Africa, Western Europe and Latin America. See Resolution ICC-ASP/1/Res.3 regarding Procedure for the Election of the Judges for the International Criminal Court, adopted on 9 September 2002.

jurisdiction are genocide, crimes against humanity and war crimes[7]. The definition of genocide caused little controversy, as it was possible to use the same definition as that in the 1954 Geneva Convention that is now considered customary law thanks to its universality. However, defining the other two crimes was more contentious. Another important crime, the crime of aggression, was left out from the Statute due to the failure to agree on its definition and conditions for exercise of jurisdiction over it.

With respect to the definition of crimes against humanity, the Statute introduces elements of progressive development, reflecting what has evolved in international law since the Nuremberg trials[8]. Recognizing that this crime could also take place in time of peace[9], it enumerates a comprehensive list of eleven acts that constitute crimes against humanity and sets a threshold of "widespread or systematic attack directed against civilian population"[10], over which they become punishable under the Statute. In return for the adoption of the current disjunctive tests in favor of a low threshold, a compromise was made to address the concerns of those who favored a higher threshold by putting two conjunctive tests on the definition of 'attack.'[11] It is therefore fair to say that the Rome Statute contains a few important innovations in comparison with other legal instruments of a similar kind.

War crimes are the most controversial crime in the Statute, as they are expected to dominate the actual cases under the Court's jurisdiction

[7]See Article 5(1).

[8]As such elements of progressive development, first, the Rome Statute, unlike the Nuremberg Charter and the ICTR Statute, forgoes the requirement for the crime to be based on discrimination on ethnic, political, racial or religious grounds. Second, the Rome Statute imposed a new requirement that the convicted person should have knowledge of the attack even if he or she need not be accountable for the attack as a whole. Third, from the principle of *nullum crimen sine lege*, it provides a comprehensive list of acts punishable under the definition of crimes against humanity, while adding some new acts such as enforced disappearance and apartheid to the list, and extending to situations such as acts of imprisonment and rape.

[9]The Nuremberg Charter and the Statute of the ICTY called for a nexus to armed conflict in order to constitute a crime against humanity. However, the Appeals Chamber of the ICTY denied such a requirement for the reason that other instruments except the Nuremberg Charter do not require a nexus to armed conflict.

[10]See the chapeau of Article 7(1).

[11]See Article 2 (2)(a) of the Rome Statute, which defines an "attack against civilian population" as "a course of conduct involving the *multiple* commission of acts, pursuant to or in furtherance of *a State or organizational policy*. " [Emphasis added.] For a view on this delicate compromise, see D. Robinson, "Defining Crimes against Humanity at the Rome Conference" (1999) 93 AJIL 51.

and involve the activities of troops sent for peacekeeping or peace enforcement actions. Article 8 of the Rome Statute on war crimes is a product of compromise designed to strike a balance between those in favor of a wide coverage and those in favor of a limited coverage. The threshold in respect of war crimes is lower than that in respect of crimes against humanity, because the use of the phrase 'in particular' in paragraph 1 leaves room for punishing war crimes that were committed neither as part of a plan or policy nor as part of a large-scale commission.[12] Article 8 of the Statute is modeled after the Bonn Paper with slight modifications.[13] There was little controversy about the inclusion of grave breaches of the four Geneva Conventions of 1949, which are kept intact in subparagraph (a), while sixteen other serious violations of the laws and customs in international armed conflicts are prescribed in subparagraph (b) without specific mention of their relevant sources. In setting forth individual crimes, the Statute combines elements of the 'Hague law' and the 'Geneva law', although giving priority to the former, which has crystallized into customary law over a long period.[14]

Despite resistance from states faced with a potential or real internal war, Article 8 of the Statute made significant progress in embracing internal armed conflicts by laying down not only serious violations of Article 3 common to the four Geneva Conventions in subparagraph (c) but also those of the 1977 Additional Protocol II in subparagraph (e). In return, the Statute excludes internal disturbances and tensions from the scope of internal war in subparagraphs (d) and (f), and sets out a disclaimer clause recognizing the right of a government to maintain law and order or defend territorial integrity by all legitimate means in paragraph 3. Regarding the use of prohibited weapons, the Statute adopts a generic clause to be implemented by a future amendment to enumerate the list of prohibited weapons. Developing states in Asia,

[12]Article 8(1) of the Rome Statute reads: "The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes." [Emphasis added.] This reflects a compromise between the United States and other big powers that wanted to limit the scope of war crimes by using the phrase 'only' and the like-minded states that preferred a wider scope of war crimes by attaching no restriction.

[13]By taking the initiative of holding two inter-sessional meetings of interested states, Germany succeeded in working out the Bonn Paper, reflecting a compromise between the United States proposal that focused on the Hague law and the New Zealand/Switzerland proposal that centered around the 1977 Additional Protocol I, and encompassing internal war in a wide manner.

[14]H. von Hebel and D. Robinson, "Crimes within the Jurisdiction of the Court," in R. S. Lee (ed.), *The International Criminal Court* (1999), 124.

African and Latin America vehemently argued for the inclusion of nuclear weapons in such list, and further objected to the inclusion of biological and chemical weapons as a compromise in the fear that it might be construed as legalizing the use of nuclear weapons. However, their demand to include nuclear weapons in such list was seen as unrealistic to accommodate, because the nuclear weapon states and their allies enjoying the security of the nuclear umbrella would not join the Court were the use of nuclear weapons prohibited and punished.

On balance, the interests of those eager for a wider coverage of war crimes seem to prevail in the final text in the Rome Statute. The temporal jurisdiction of the Court is limited to crimes committed after July 1, 2002, but for a state joining the Court after July 1, 2002, to crimes committed after the entry into force of the Statute for that state.[15] Hence any crime prior to July 1, 2002 is excluded from the Court's jurisdiction. It is domestic courts or the special courts for Sierra Leone, East Timor or Cambodia that can handle such crimes. The Statute adopts the concept of automatic jurisdiction, which requires a state becoming a party to it to automatically accept the jurisdiction of the Court over all the crimes under the Statute.[16] In return, it also imposes preconditions on the exercise of jurisdiction by the Court. Except for a referral by the Security Council, the Court may exercise its jurisdiction only when one or more of the territorial states in which the crime took place or the national states of the accused are parties to the Statute, representing territorial and active personal jurisdiction.[17] This is a contracted form of the Korean proposal aimed at seeking a middle ground between universal and optional jurisdiction.[18] As it is far short of universal jurisdiction, this mechanism will lead to significant lacunae in the exercise of jurisdiction by the Court, preventing it from taking up cases that will often arise thanks to globalization, for which the custodial state of an accused criminal is willing to cooperate with the Court. This is also quite unbalanced, when compared with the referral by the UN Security Council to which this precondition does not apply.

[15]See Article 11 of the Statute.
[16]See Article 12(1) of the Statute.
[17]See Article 12(2) of the Statute.
[18]Originally, the Korean proposal contained two more nexuses that, if adopted, would accord the Court wider jurisdiction: the custodial state that has custody of the accused and the victim's national state. Unfortunately, only two out of these four nexuses survived in the process of seeking a 'package deal' at the final stage of the Rome Conference, substantially narrowing the scope of the Court's jurisdiction.

The ways of triggering the exercise of jurisdiction by the Court are threefold: it can be triggered by the state party, the UN Security Council acting under Chapter VII of the UN Charter, or the Prosecutor. Except for a few states, such as India, Mexico, Nigeria and Pakistan, that had a strong reluctance to grant such a prerogative to the Security Council, there was little opposition to the first two triggers. However, the issue of whether or not the *proprio motu* power should be given to the Prosecutor was so sensitive and politically charged that its adoption had to await a decision at the final moment. Those states against such trigger feared, among other things, politically motivated abuses placing their troops under undue threat of frivolous charges.[19] To alleviate these concerns, the Statute has built-in checks against possible abuses by the Prosecutor: authorization by the Pre-Trial Chamber before initiating an investigation, preliminary rulings regarding admissibility, and challenges to the jurisdiction or admissibility.[20] To persuade those skeptical states to join it, the Court needs to demonstrate in its future operation that these checks can prevent the Prosecutor from resorting to politically motivated charges.

The procedure of the Court reflects a hybrid of continental law and the common law, overcoming their differences with a reasonable compromise. Coupled with intensive negotiations at the inter-sessional meetings, the progress in the integration of European procedural law helped facilitate the finding of a middle ground. Pre-trial procedures for the investigation and prosecution of a crime are dealt with in the nine articles in Part 5 of the Statute. Upon referral or on its *proprio motu* motion, the Prosecutor should determine whether to start an investigation upon consideration of the existence of a reasonable factual and legal basis, admissibility and the interests of justice.[21] In cases where there is to be no investigation, the Prosecutor shall inform the Pre-Trial Chamber. During an investigation, the Prosecutor must respect the rights of persons under investigation, as well as the interests of victims and witnesses, in the same manner as those rights are respected under domestic law.[22] To check the role of the Prosecutor,

[19]For details of such concerns, see the statement of the U.S. delegation, entitled "The Concerns of the United States regarding the Proposal for a Proprio Motu Prosecutor," at the Rome Conference on June 22, 1998.

[20]See Articles 15, 18 and 19 of the Statute.

[21]See Article 53 (1) of the Statute.

[22]See Articles 54 and 55 of the Statute.

the Pre-Trial Chamber is given extensive powers over investigation and prosecution to make orders or rulings and to issue arrest warrants or a summons.[23] In case of emergency, the Prosecutor may request a provisional arrest. The custodial state must execute the request for provisional arrest, arrest or surrender in accordance with its law, while it may allow interim release pending surrender upon recommendation of the Pre-Trial Chamber in urgent and exceptional circumstances.[24]

After a reasonable time, the Pre-Trial Chamber shall hold a hearing in order to determine whether to confirm, decline or amend the charges against the person under investigation, regardless of his or her custodial status.[25] Trial proceedings may be instituted only with respect to confirmed charges through the constitution of a Trial Chamber by the Presidency. The Statute is not clear how it will handle cases in which the accused is granted a pardon or exempt from criminal responsibility by an amnesty.[26] Trial proceedings are dealt with in Part 6 of the Statute, which consists of fifteen articles. Neither *in absentia* trials nor plea bargains are allowed under the Statute.[27] As with domestic criminal procedure, the accused shall be presumed innocent and accorded minimum guarantees on procedural rights, including a fair public hearing, during the trial.[28] The Statute is a pioneering international legal instrument in promoting the protection of victims and witnesses as well as reparations to victims.[29] Any violation against the administration of justice or misconduct before the Court is also punishable in accordance with its Rules of Procedure and Evidence.[30] With regard to the protection of national security information, an issue which was very controversial at the Rome Conference, the Statute

[23]To cite a few, see Articles 15, 18, 19, 53(3), 54(2), 56, 58, 59(5), 60, 61(7), and 72.

[24]See Article 59 of the Statute.

[25]See Article 61 of the Statute.

[26]Article 53(2)(c) of the Statute allows the Prosecutor not to seek a prosecution "in the interests of justice," a phrase that encompasses a wide range of possibilities as it lacks a clear definition.

[27]See Articles 63 and 65(5) of the Statute.

[28]See Articles 66 and 67 of the Statute.

[29]See Articles 68, 75 and 79 of the Statute. For the purpose of protection, the Court may, given special considerations related to a crime involving sexual or gender violence or violence against children, allow for proceedings *in camera* or the electronic presentation of evidence, get the advice of the Victims and Witness Unit, and withhold evidence or information sensitive to the security of a witness. For the purpose of reparations, the Court may order the convicted to make reparations to victims, and the Assembly of States Parties shall, for the benefit of victims and their families, set up a Trust Fund, to which fines or forfeited property shall be transferred.

[30]See Articles 70 and 71 of the Statute.

prescribes the right of the state affected to take all reasonable steps through cooperative means to protect its national security interests. Where these steps do not resolve the matter, the Court is permitted to request further consultations, order disclosure, refer the matter to the Assembly of States Parties or the Security Council, or make inference as a fact.[31]

Trial decisions are ideally unanimous, but may be taken by a majority of the judges, allowing a dissenting opinion.[32] The death penalty is excluded from the list of applicable penalties, making a term of life imprisonment the maximum penalty.[33] An appeal may be made once on the request of the Prosecutor or the convicted person on the grounds of a procedural, factual or legal error, or sentencing disproportionate to the crime.[34] Revision of a conviction or sentence may be sought in case of the discovery of new evidence, falsification of decisive evidence that the conviction depended on, or serious breach of duty by the judges.[35] Enforcement of sentences of imprisonment is done in the state designated by the Court from a list of states having indicated their intention to do so.[36]

Without its own arms to secure the custody of criminals or the acquisition of evidence, the Court's work has no choice but to rely on the full cooperation of states for this purpose. Unlike in the domestic legal system, the difference of the location of the Court from that of crime or of custody of criminal makes it essential for the Court to seek judicial assistance and the surrender of the fugitive criminal from states. In Part 9 of the Statute, seventeen articles cover judicial assistance and surrender between the Court and states. The Court may make requests for the arrest and surrender of the accused, provisional arrest, and other forms of judicial assistance such as the determination of the whereabouts of persons, taking and preservation of evidence,

[31]See Article 72 of the Statute.
[32]See Article 74 (3) of the Statute.
[33]See Article 77 of the Statute. The issue of capital punishment was also very controversial at the Rome Conference. As a compromise to forgo the death penalty in the Statute, a disclaimer clause designed not to prejudice the domestic application of the death penalty was inserted in Article 80 of the Statute, together with the statement of the President of the Conference to a similar effect.
[34]See Article 81 of the Statute.
[35]See Article 84 of the Statute.
[36]See Article 103 of the Statute. The Court conducts overall oversight over the enforcement and may alter the designation of the state of enforcement.

questioning, service of documents, examination of places, temporary transfer of persons, search and seizure, and protection of victims and witnesses.[37] The requested state shall comply with the request in accordance with its domestic procedure, while postponement is allowable in respect of an ongoing investigation or prosecution or where there is an admissibility challenge.[38] In case problems arise in respect of the execution of a request, the requested state may also seek consultation with the Court to resolve them. Meanwhile, the state or diplomatic immunity of a third state or obligations under international agreements could block the Court from making such requests, unless it obtains the waiver of the third state or the consent of the sending state respectively.[39] The costs for execution of requests are to be borne by the requested state or the Court, following the rule of the place of accruement.[40]

ICC and the enforcement of International humanitarian law

The ICC was created as a judicial body for enforcing international humanitarian law (IHL). However, the jurisdiction of the Court rests on the assumption that it complements national criminal jurisdictions.[41] This means that the Court is not allowed to exercise its jurisdiction over a case if a state has exercised its domestic criminal jurisdiction over the same case. The rule of complementarity in the ICC differs from the cases of ICTY and ICTR, whose jurisdictions take precedence over the national criminal jurisdictions of the relevant states, namely the former Yugoslavia and Rwanda.[42] There are several reasons for this difference.

Primarily, the ICC is a permanent organ supposed to deal with any cases under its jurisdiction, while both ICTY and ICTR were set up as subsidiary bodies of the Security Council to cover specific situations

[37]See Articles 89, 90, 91, 92 and 93 of the Statute.

[38]See Articles 86, 94, 95 and 99 of the Statute.

[39]See Article 98 of the Statute. The United States is seeking to conclude bilateral agreements with other states on the non-surrender of its citizens to the Court on the basis of this Article.

[40]See Article 100 of the Statute.

[41]Under Article 17 of the Statute, a case is admissible to the Court in case the state having jurisdiction over it is unwilling or unable to investigate or prosecute the case in question. See also paragraph 10 of the Preamble and Article 1 of the Statute.

[42]See Article 9, paragraph 2 of the Statute of the ICTY and Article8, paragraph 2 of the Statute of the ICTR.

on an ad hoc basis. The fact that there was little prospect for the former Yugoslavia and Rwanda themselves to execute criminal justice triggered the intervention of the Security Council. Secondly, running an international criminal court is a highly costly business.[43] Were it to handle every crime regardless of gravity, the Court would be inundated with trivial cases, undermining its effectiveness and causing its costs to balloon. It is therefore desirable to seek a division of work between the ICC and domestic courts, ensuring that the ICC concentrates on the higher echelon of those suspected of being responsible for crimes under its jurisdiction.[44] Thirdly, establishing the primacy of domestic criminal jurisdiction was essential for embracing states reluctant to compromise their sovereignty as well as states eager to place their troops sent abroad under the protection of their own domestic criminal jurisdiction. Last, but not least, it is impossible to disregard the existing legal framework for enforcing IHL, which has largely remained in the domestic domain. As a corollary of this evolution of international criminal justice, the Court's main role is to complement any failures in domestic criminal jurisdiction. Against this backdrop, the Court should be employed as a last resort, only when the relevant state is unwilling or unable to enforce IHL. The abstract criteria for determining 'unwillingness' or 'inability' in the Statute need to be crystallized by the future jurisprudence of the Pre-Trial Chamber.

In this regard, the international community should address the impunity gap that could arise out of diversified forums for the enforcement of IHL. The creation of special courts like those for Sierra Leone, Cambodia and East Timor, a hybrid of domestic and international court, also increases the need to prevent the impunity gap. A seamless web of coordination and cooperation among these three different categories of courts could and should offer solutions. To this end, all actors involved, namely, states, international organizations and NGOs, should make concerted and coordinated efforts to fill any possible

[43]The biennium budget of the ICTY and ICTR for 2002-2003 amounted to about four hundred million US dollars, accounting for roughly 14 % of the regular budget of the United Nations for the same period.

[44]It is thus interesting to note that the Security Council recently reconfirmed its Completion Strategy for the ICTY and ICTR. This Strategy requires completion of all trials by 2008, and includes the creation of a war crimes chamber in Sarajevo and the rendering of financial support to domestic prosecutions in Bosnia and Herzegovina and the region, so as to transfer to them cases involving persons of intermediate and lower ranks in the docket of the ICTY. See Resolution 1534, dated March 26, 2004, S/RES/1534 (2004).

impunity gap in an effective manner.[45] The restoration of law and order and the establishment of a judicial system in conflict-stricken or failed states should be given priority in the process of peace building.

It is not uncommon that peace and justice conflict with each other in bringing to end armed conflicts. Executing justice might occasionally stand in the way of restoring peace. Hence the Rome Statute provides that the work of the Court should be suspended if the Security Council so determines by a binding resolution under Chapter VII of the UN Charter.[46] However, the deferral of an investigation or prosecution shall be made based on an affirmative action of the Security Council, and remain effective for one year with the possibility of renewal in the same way. These two caveats have an effect of minimizing the intervention of the Security Council in the Court's work, even though it is necessary to give due consideration to the primary role of the Security Council in the maintenance of international peace and security. Any acts by the Security Council to bring an end to an armed conflict should not permanently sacrifice the pursuit of justice. Temporarily taken by the Security Council until peace is restored, such measures should neither condone nor pardon those who committed any heinous crimes in grave contravention of IHL. Otherwise it would undermine the goal of the Court by sending a wrong signal to other potential perpetrators that their crimes during armed conflicts could be left unaccountable as a bargain in the quest for peace. History has taught us that genuine and sustainable peace can and must build on justice. Peace constructed without justice is susceptible to easy collapse, for those who feel justice has not been done will continue to seek a chance to do justice whenever it comes, creating a vicious circle of vengeance.

In the same vein, the role of Truth and Reconciliation Commissions

[45]L. M. Ocampo, *The First Steps of the International Criminal Court: Creating a Credible Court of Last Resort*, Section 3, "Paper on Some Policy Issues before the Office of the Prosecutor," 2004, p.7.

[46]See Article 16 of the Statute. Based on a Singapore proposal with some amendments, this was a product of compromise between the permanent members of the Security Council and other states. The permanent members favored the draft of the International Law Commission which prohibited the ICC from handling a case as long as the Security Council takes up the relevant situation under Chapter VII. The majority of states feared that the Security Council would exercise a virtual veto power over the work of the ICC by taking up a case, which would block the Court from investigating or prosecuting that case.

(TRC) in the process of peace building is also worth careful consideration. As was stated earlier in this article, the Statute is ambiguous about whether the Court's jurisdiction is admissible or not when the accused becomes exempt from domestic criminal jurisdiction by an amnesty granted by a TRC.[47] Should the rule of complementarity strictly apply to such cases, the ICC would not be able to exercise its jurisdiction over such persons. Given the danger of bogus cases being decided by a TRC to protect serious offenders from prosecution, though, the Court needs to be able to determine the genuineness of a decision by a TRC. In the same token, the contributions of a TRC towards healing the wounds of a conflict-stricken society need to be fully taken into account in the decision of the Court about the admissibility of a case. This is especially true with respect to the lower and middle echelon of perpetrators in a given situation.

Asia and the ICC

With the admission of Central Asian states into the Asian Group, Asia is currently the largest regional group at the United Nations. However, having only twelve State parties to the Rome Statute,[48] Asia demonstrates a very low rate of accession in comparison with other regions.[49] Given the high number of Asian State parties to the four Geneva Conventions and two Additional Protocols[50] as well as Asian signatories to the Rome Statute that have not yet ratified the Statute,[51] though, there is still plenty of room for more Asian states to join the Court.

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[47]This ambiguity about the Court's power in respect of an amnesty granted by a Truth and Reconciliation Commission seems to be intentional, in order to address the strong pressure from human rights NGOs. See M. H. Arsanjani, "The Rome Statute of the International Criminal Court" (1999) 93 AJIL38.

[48]Asian State parties to the Rome Statute are Afghanistan (10 February 2003), Cyprus (7 March 2002), Cambodia (11 April 2002), Fiji (29 November 1999), Jordan (11 April 2002), Marshall Islands (7 December 2000), Mongolia (11 April 2002), Nauru (12 November 2001), Samoa (16 September 2002), Republic of Korea (13 November 2002), Tajikistan (5 May 2000) and Timor-Leste (6 September 2002). The dates in the brackets indicate the date that each state deposited its instrument of ratification, accession, acceptance or approval.

[49]The approximate rate of accession for each region is Africa (39%), Asia (24%), Eastern Europe (71%), Latin America (58%) and Western Europe (89%).

[50]Out of its entire membership of 53 states, the Asian Group has currently 53 State parties to the four Geneva Conventions, 31 parties to Additional Protocol I and 28 parties to Additional Protocol II.

[51]There are twelve states falling within this category: Bahrain, Bangladesh, Iran, Kuwait, Kyrgyzstan, Oman, Philippines, Solomon Islands, Thailand, United Arab Emirates, Uzbekistan and Yemen.

During the last two centuries, most Asian states have been struggling to achieve decolonization and modernization. In this long process, a natural tendency has emerged in Asia that states are reluctant to accept anything that might compromise their sovereignty, due to their sensitivity to preserving their independence and preventing foreign intervention. There is no denying that most Asian states still remaining in a developing stage tend to be fairly passive in international relations. To make matters worse, some states in Asia harbor the potential for internal armed conflicts, which can be ascribed to dormant ethnic, religious, and cultural tensions within their borders. Territorial and other important disputes among states that could flare up into armed conflicts are also still lingering in the region. All in all, these negative factors combined together have created a psychological wall against the Court.

On the other hand, however, the great potential for armed conflicts in Asia calls for as many Asian states as possible to embrace the Court. Their wide accession to the Court will offer them a good chance to build confidence within Asia by promoting the letter and spirit of IHL in the region. The accession of many Asian states to the Statute will help mitigate distrust among confronting adversaries between states or within a state by nurturing a culture of humanitarianism in Asia. The presence of many Asian states in the ICC will also serve to curb heinous crimes in the region by ensuring that IHL is fully enforceable in Asia.

The basic purpose of creating the Court was to achieve a thorough enforcement of IHL by eliminating the culture of impunity that has been flagrant since the end of the Cold War. As was well demonstrated in the Slobodan Milosevic trial by the ICTY, any leader who leads a war replete with egregious violations of IHL can no longer hide under the cloak of sovereignty once considered inviolable so as to avoid his or her ultimate prosecution and punishment by the international community. The fact that such leaders cannot go abroad freely and must live under the threat of arrest and punishment will be a good psychological deterrent not to commit egregious crimes during armed conflicts. Even if it cannot prevent the occurrence of armed conflicts, the Court can mitigate the cruelty of armed conflicts by helping enforce IHL. Taken one step further, wide accession to the Court could

serve the region by acting as an indirect deterrent against aggression in the future, if the crime of aggression becomes punishable following the completion of work on the definition and conditions for exercising jurisdiction over that crime.

From a different viewpoint, the active participation of Asian states is required to enhance the equitable regional representation in the Court, and to achieve the goal of a universal court for international criminal justice. It will also contribute toward the inclusion of an Asian perspective and Asian wisdom in the work of the Court. To accomplish the goal of wide acceptance of the Court by Asian states, the Court, state parties to the Statute, ICRC and NGOs should carry out a vigorous outreach campaign toward hesitant Asian non-state parties. The key to persuading them is to prove at the initial stage that the ICC is an independent, fair and effective judicial organ, immune from political contamination.

Prospects for the ICC

With the election of 18 judges, the Prosecutor and a Deputy-Prosecutor, and the Registrar in the first half of 2003, the ICC completed the initial stage of setting up its basic infrastructure relatively quickly. In the latter half of 2003, the Court embarked on recruiting working-level staff for each organ of the Court. The work of the Preparatory Commission for the International Criminal Court on eight important documents for the operation of the Court, including the Rules of Procedure and Evidence, Elements of Crime and the Relationship Agreement with the United Nations, was a boost for starting up the Court.[52]

Based on this initial work, the Court is now ready to take up cases filed under the Statute. Two State parties, Uganda and the Democratic Republic of Congo, have already filed referrals to the Prosecutor on the situations in the Barlonya camp in northeastern Uganda in December 2003, and the Ituri region in northeastern Congo in April 2004, respectively, and the Prosecutor has started to collect

[52]The Preparatory Commission set up by resolution F of the Final Act of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court held ten sessions from 1999 to 2002. The Commission adopted eight draft texts required to be drawn up under Resolution F, together with other proposals for practical arrangements for the meeting of the Assembly of State Parties, establishment of subsidiary bodies and procedures for nominations and for the conduct of elections.

information to prepare for the investigation. It is fair to say that at this stage in its infancy, the Court is making steady progress on its path to becoming a full-fledged international criminal court.

Despite these steps forward, however, many daunting tasks still lie ahead for the Court. The first and foremost task is to achieve the universality of the Rome Statute at an early date. Relying heavily on the cooperation from the State parties for its operation, the Court is in urgent need of a seamless web of jurisdiction and cooperation bolstered by a universal membership. Otherwise, the effectiveness of the Court will be eroded due to a lack of jurisdiction or cooperation from states against future crimes that might fall under the Statute. Any impediment to the effectiveness of the Court is likely to impair its deterrent role, vitiating the very purpose of the Court.

The pace of states adhering to the Statute is expected to slow down, as most advocates have already done so, but there is still room for increasing its membership, given the 46 signatories that have not yet ratified the Statute. It is troubling, however, that many big states like China, India, Japan, Russia and the United States still remain outside the Court. In particular, the negative attitude of the United States is one of the greatest challenges to the prospects of the Court.

Without the cooperation of the United States, which plays the leading role in peace enforcement actions, the ICC will have an enormous difficulty in arresting criminals, collecting evidence or locating witnesses. Most cases put to the Court are likely to take place in very volatile and dangerous situations during or shortly after armed conflicts, in which an investigation or prosecution requires a certain degree of military protection. To be an effective court in the long run, the ICC needs the support and cooperation of major powers, in particular the United States. Another practical ground for the importance of embracing major powers is the funding for running the Court. In light of the formidable cost of the Court's operation, the absence of major contributors like the United States and Japan will cause difficulties for the budget of the Court.[53]

[53]Pursuant to Article 115 of the Statute, the budget of the Court consists of assessed contributions of state parties and funds of the United Nations with respect to referrals by the Security Council. As the assessment contributions are largely based on the United Nations scale, the shares of the U.S. and Japan would account for roughly half the total contributions.

In the short term, U.S. measures to undermine the integrity of the Court are very harmful for the early stage of development of the Court. Despite its vow not to impose its will with respect to the ICC on other states, the U.S. enacted the American Servicemembers' Protection Act, authorizing the cut-off of military aid to some states supporting the Court. At the Security Council, it also obtained a one-year renewable exemption of peacekeeping troops from the jurisdiction of the Court.[54]

The most controversial U.S. attempt has been extensive efforts to conclude bilateral non-surrender agreements with the State parties to the Statute with a view to shielding Americans from the prosecution and trial of the Court.[55] This approach, based on an interpretation that Article 98, paragraph 2 of the Statute allows such bilateral agreements, has received criticism from the adherents of the ICC, because such interpretation is contrary to the intention of the drafters of that Article and its literary meaning.[56] Nevertheless, the U.S. campaign to expand this immunity network will likely continue for the foreseeable future.

Unfortunately, there is little prospect of the U.S. changing its disapproving stance toward the ICC. The key to embracing the U.S. is to address its concerns by proving that the Court is impervious to politically motivated prosecutions, as well as showing that the Court is an effective tool for deterring serious violations of IHL. The admission of other big states will also work as a boost for altering the U.S. attitude. This indicates how important the initial record of the Court is for its future. The Court should work in a fair, impartial and independent way so that the apprehensions of hesitating states prove wrong.

Another significant element in the future of the Court is how the

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[54]Initially, the U.S. Government attempted to obtain such an exemption in respect of the UN mission in East Timor without success in May 2002. Two months later, its strenuous efforts bore fruit by conditioning the renewal of the UN mission in Bosnia-Herzegovina on the granting of such an exemption. See UN Security Council Resolution 1422 dated 12 July 2002. S/RES/1422 (2002).

[55]As of April 7, 2004, the US government has concluded 75 agreements, out of which 13 were ratified, and 33 were agreed upon with State parties to the Rome Statute.

[56]The critics' view is that Article 98(2) was inserted to cover international obligations under existing Status of Forces Agreements in light of the reference to 'sending states.' See, *inter alia,* Amnesty International, *International Criminal Court: US Efforts to Obtain Impunity for Genocide, Crimes Against Humanity and War Crimes*, pp.5-17.

international community wraps up the work on the definition of the crime of aggression and the conditions for the Court's exercise of jurisdiction over that crime.[57] As several states regard the success of this endeavor as being a significant factor in their adherence to the Court, its early conclusion will facilitate the efforts to increase the membership of the Court.

The success of the ICC is crucial for accomplishing humankind' s long quest for peace built on justice. The international community has great stakes in this venture to bring to fruition a century-long dream in previously untrodden territory, the expansion of the rule of law in international relations. The ICC is not in itself a panacea to deter and punish egregious crimes of IHL, but combined with other means to ensure compliance with IHL, the ICC can fulfill its intended function. It is high time for Asian states to take a bolder and more forwardlooking attitude toward the ICC as a valuable means toward achieving a peaceful and just regional and world order.

[57]Despite intensive efforts, the Rome Conference failed to include the crime of aggression in the punishable crimes of the Court, due to the divergence on how that crime is defined and how much power the Security Council can wield over the exercise of jurisdiction by the Court. Instead, the Statute leaves those two issues for future work, which is now being handled by the Assembly of State Parties. See Article 5 (2) of the Statute.

Implementation of International Humanitarian Law at the National Level

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Implementation of IHL at the national level is a very broad subject, a subject that has already been at the centre of several presentations and discussions at this seminar. The challenge of implementation is of crucial importance if we want to avoid attacks against civilians, forced displacement of populations, destruction of infrastructure vital to civilian populations, the use of civilians as human shields, sexual violence, torture, destruction of civilian property and looting – all serious violations of international humanitarian law that cause untold suffering.

Implementation is a matter of concern for many actors: States of course – and in particular their armed forces – but also armed opposition groups. It is a matter for national and international tribunals, and also for civil society. It is also a matter for the International Red Cross and Red Crescent Movement, and more particularly for the ICRC, given its mandate to work for the faithful application of IHL. Implementation can be subdivided very roughly according to the following time-line: obligations in peacetime, obligations during armed conflict, and obligations after the armed conflict is over. Even if these different phases will often overlap, these distinctions provide a useful analytical framework.

It is evidently the measures to be taken *during* armed conflict that are the most urgent. This is clearly the main challenge today. The ICRC has recently hosted five regional seminars that focused on how to improve compliance with IHL *during* armed conflicts, whether international or non-international. The seminars, which were attended by government officials, National Society representatives, academics and NGOs, were held in Cairo, Kuala Lumpur, Mexico City, Pretoria and Bruges (Belgium) between April and September 2003. The wealth of ideas and proposals put forward during the discussions should provide an excellent basis for further work. During these seminars, a special emphasis was put on Common Article 1 to the Geneva

Conventions, according to which all States – even those States not involved in an on-going conflict – have an obligation to respect and ensure respect of IHL in all circumstances. This includes taking whatever steps they can towards States and armed groups - over which they might have some influence - to stop the violations. This obligation is repeated in Article 1 of Additional Protocol I.

The scope of this rule is very wide, but it also has some limitations: a variety of measures are at the disposal of States, such as public denunciation, diplomatic pressure and economic sanctions, but this obligation can never serve as a basis for the use of force. A further reference should be made to Article 89 of Additional Protocol I, which contains the obligation for States to act, in cases of serious violations of IHL, in cooperation with the United Nations and in conformity with the United Nations Charter. There is thus a collective responsibility of States to promote respect for IHL. It can only be regretted that States tend not to take this obligation very seriously. It is crucial that States assume their responsibilities, show leadership and take action when humanitarian law is the object of serious violations.

Among the implementation mechanisms discussed was the International Fact-Finding Commission set up according to Article 90 of Additional Protocol I. There was broad agreement that this mechanism – which has never been used so far – had a real potential and should be actively promoted. States are encouraged to accept its competence and to ask the Commission to become active. So far, only 65 States have accepted the Commission's competence. It was recognized during these seminars that all too often, violations of IHL were not due to a lack of knowledge of the law, but rather to lack of political will to apply that law. The difficult challenge ahead of us will therefore be how to generate political will among the parties to armed conflicts.

As we have already discussed, the challenge is clearly not a lack of rules. Indeed, on the whole, IHL is quite adequate to respond to the challenges of contemporary armed conflicts.
14. Whereas States should concentrate their efforts on respect for IHL during armed conflict, they do have other important obligations already in peace-time and once the armed conflict is over. As we have already heard, States have an obligation to search for and prosecute

persons suspected of having committed grave breaches of the Geneva Conventions and their Additional Protocols. They may also hand over such suspects to another State for prosecution. This issue has already been addressed and I do therefore not wish to discuss it again.

I would just like to mention two points: *First*, from the viewpoint of the ICRC, it is very regrettable that the mechanisms for the punishment of grave breaches of IHL have not been fully applies for many years. *Second,* concerning the question of a possible cooperation of the ICRC with tribunals, the ICRC has made it very clear that it cannot provide evidence in court. The International Criminal Tribunal for the Former Yugoslavia has recognized that the ICRC has a customary right to refuse to give evidence, and the *Rules of Procedure and Evidence* of the International Criminal Court contain a clear immunity from testimony for the ICRC. The ICRC needs this protection in order to be able to conduct its operational activities in the field. It cannot build a relationship of trust with the parties to an armed conflict and at the same time cooperate with the judiciary. We are very pleased that this immunity has been recognized at the international level. With regards to national courts, the ICRC benefits from a similar immunity through its Headquarters Agreements.

Excellencies, Ladies and Gentlemen, Of course, the very aim of IHL is to apply in situations of armed conflict in order to prevent and reduce suffering. However, it is essential that certain measures are taken already in peace-time. My brief presentation will now focus on these. Let me say first that States have the main responsibility for the implementation of IHL at the national level. The ratification of, or accession to, IHL treaties is only the beginning on a long road to reaching the objective of the protection of human dignity. The further steps are more challenging as they require more time and resources, both financial and human, and, above all, more political will and determination.

As you are well aware, the main treaties of humanitarian law are the four Geneva Conventions of 1949 and their two Additional Protocols of 1977. With 191 States Parties at this day, the four Geneva Conventions are universally accepted. The Additional Protocols have also been very successful: 161 States are now party to Protocol I, whereas 156 States are bound by Protocol II. There are, however, other

treaties that are of relevance for IHL. Other important IHL treaties are:
The1925 Geneva Gas Protocol (133 States Party).
The 1954 Convention on the protection of cultural property (109 Sates Party), and its two Protocols, including the recent Second Protocol of 1999.
The 1972 Biological Weapons Convention (151 States Party).
The 1980 Convention on Certain Conventional Weapons (94 States Party), and its five Protocols.
The 1993 Chemical Weapons Convention (162 States Party).
The 1997 Ottawa Treaty banning anti-personnel mines (141 States Party).
The 1998 Rome Statute of the International Criminal Court (94 States Party).
The 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (72 States Party).

This long list of treaties shows how dynamic the development of IHL has been in the recent past. This body of law has thus proven that it is capable to adapt to new challenges. The ICRC would of course wish a greater number of States to be party to these treaties, also in this region. A review of the state of participation in IHL treaties in this region shows that if all States are bound by the Geneva Conventions, there is still a significant number of States that have not yet accepted the Additional Protocols.

The level of participation in other treaties is even lower. I am referring here mainly to the Cultural Property Convention, to the Statute of the International Criminal Court, to the Convention on Certain Conventional Weapons and to the Ottawa Treaty. The ICRC would therefore like to encourage the States concerned to seriously examine the possibility to become bound by these important instruments. It is important that as many States as possible are bound by IHL treaties and other relevant treaties, as broad ratification confirms the validity of the rule and, therefore, contributes to better respect. But adherence to international instruments is only the first, but essential step that must be followed by additional action at the domestic level to make the provisions they contain enforceable.

What are the practical steps that must be taken to this effect by national authorities?

First of all, States must adjust their existing national legislation or adopt new laws, in particular to regulate the use and protection of the red cross or red crescent emblem[1] as well as to allow the repression of the grave breaches and other serious violations of IHL, in particular as defined in the Geneva Conventions and Additional Protocol I.[2]

The authorities must ensure the widest possible dissemination of knowledge of humanitarian law. Their armed forces and persons, who, in time of armed conflict, shall assume responsibilities in respect of the implementation of the Geneva Conventions and their Additional Protocols, shall receive special training[3] .

The subject of IHL should be introduced into the military manuals. The authorities must select and train qualified personnel in IHL and appoint legal advisers to assist military commanders in applying the law and providing appropriate instruction for the armed forces.

Cultural property, civil defence works and installations containing dangerous forces should be properly identified by the special signs provided for under IHL. Medical and religious personnel, journalists and staff assigned to specific tasks should be given identity cards.

Furthermore, military objectives should not be located within or near densely populated areas.

In addition, new weapons and methods of warfare should comply with the rules of international law. Last, but not least, States must translate the Geneva Conventions and their Additional Protocols into their national language(s)[4] , so that their texts can be read and understood by any of their nationals concerned.

It is also important that certain additional responsibilities are entrusted

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[1]Article 54 First Geneva Convention.

[2]Articles 49 and 50 of the First Geneva Convention, Articles 50 and 51 of the Second Geneva Convention, Articles 129 and 130 of the Third Geneva Convention, Articles 146 and 147 of the Fourth Geneva Convention, Articles 11 and 85 of the Additional Protocol I.

[3]Article 47 of the First Geneva Convention, Article 48 of the Second Geneva Convention, Article 127 of the Third Geneva Convention, Article 144 of the Fourth Geneva Convention, Article 83 of the Additional Protocol I, Article 19 of the Additional Protocol II.

[4]Article 48 of the First Geneva Convention, Article 49 of the Second Geneva Convention, Article 128 of the Third Geneva Convention, Article 145 of the Fourth Geneva Convention.

to the military commanders, who must ensure that members of the armed forces under their control are aware of their obligations under IHL, prevent violations of humanitarian law, stop breaches and report them to competent authorities[5]. It should be noted that violations of the Geneva Conventions and their Additional Protocols by a subordinate do not absolve his superiors from penal or disciplinary responsibility. [6]

Excellencies, Ladies and Gentlemen,
In 1996, in order to assist States in their enormous national implementation work, the ICRC created its *Advisory Service in International Humanitarian Law,* which aims at fostering a systematic and proactive response to the ICRC's efforts to enhance the steadily adoption of national measures of implementation of IHL. The Advisory Service is composed of a small team in Geneva and about 10 regional legal experts based in our field delegations.

The Advisory Service's three priorities are to encourage States to participate in IHL treaties, to promote national implementation of obligations arising from these treaties and to collect and facilitate the exchange of information on national laws and regulations and of other measures of implementation that have been adopted or that are being prepared. Since its creation, the Advisory Service has devoted itself to the promotion of the broadest possible debate on subjects relating to the ratification of IHL treaties and their national implementation, through the organization and participation in a number of workshops, conferences, seminars and discussion groups, at the national and regional levels. In 2003 for example, the ICRC was involved in meetings in Belarus, Bhutan, the Comoros, Costa Rica, Egypt, Gabon, Georgia, Guatemala, India, the Ivory Coast, Lebanon, Nigeria, Peru, South Africa, Spain, Sudan, Tanzania, the United States, Uzbekistan, and Yemen.

Some recent examples can be given to illustrate these activities: On 9 and 10 June 2003, a regional expert meeting was held In Kuala Lumpur on means and mechanisms of ensuring respect for IHL at the national and international level. Attended by high-ranking officials and experts from 22 countries of the Asian and Pacific region, the

[5]Article 87 of the Additional Protocol I.
[6]Article 86, para. 2 of the Additional Protocol I.

meeting included discussions on the obligations of States to adopt national measures of implementation and on the role and mandate of the National IHL Committees. ICRC representatives attended also the Pacific Islands Legal Officers Meeting, which was held in Samoa in 2002 and was hosted in 2003 by the government of Nauru. The ICRC was present as one of a limited number of observers and gave briefings on the importance of ratifying IHL instruments and the need to create domestic implementing legislation. Over the three days of the meeting, the Attorney-Generals had the opportunity to discuss specific IHL issues relevant to their country with the ICRC Legal Adviser in an informal environment. Also in 2002, the ICRC visited Papua New Guinea and Fiji, hosting seminars on the Additional Protocols to explain the value and importance of ratifying these treaties. A similar visit by the ICRC to Tonga, where it hosted a round table on the Additional Protocols, resulted in their ratification. In 2003 the ICRC hosted a number of small events in the Marshall Islands to urge ratification of the Geneva Conventions and Additional Protocols, and frequent communication on this subject has been established with Nauru.

The ICRC organized or took part in several national and regional meetings on the ratification and implementation of the Ottawa Convention on anti-personnel mines. One of them - the Fifth Meeting of States Parties to the Ottawa Convention - was held in Bangkok on 15-19 September 2003. The ICRC tabled five proposals, including one specifically concerned with the obligations of States Parties to adopt national implementation measures under the Convention, in particular measures to prevent and suppress violations. In contacts with various government representatives, the ICRC recommended adherence to the existing treaties on the protection of cultural property in the event of armed conflict, in particular the Second Protocol to the 1954 Hague Convention.

On the other hand, the Advisory Service, upon request from the concerned national authorities, provided technical assistance to many States. Practical advice was given on drafting legislation on the emblem, e.g. in East Timor and in Indonesia. Japan is in the process of adhering to the 1977 Additional Protocols and Thailand is seriously considering acceding to these treaties in the near future. Steps are under way in several States with a view to revising the criminal

legislation and procedure to bring it in line with obligations under IHL and the ICC Statute and allow for the punishment of war crimes and other crimes of international law, e.g. in the Philippines, in Indonesia, in Thailand, in East Timor and in Cambodia. Furthermore, States that are Party to the Ottawa Convention, such as Thailand, are in the process of preparing implementing legislation thereto.

As most of you probably know, many States have set up National Committees or similar bodies on IHL. These bodies, which include representatives of the various ministries concerned, as well as national entities and specialists appointed for that purpose, advise and assist governments in promoting and implementing IHL. They are an effective means of promoting respect for this law in the States where they have been set up and have proved useful in facilitating the adoption of national measures to implement IHL. Their establishment has therefore always been encouraged by the Advisory Service, which also assists them in their work.

The number of National Committees on International Humanitarian Law has continued to increase steadily. Currently, there is a total of 66 such bodies throughout all regions of the world. We would take the opportunity of having with us representatives of the Republic of Korea to again convey our congratulations on the creation of their National Committee at the end of 2002. We are also pleased to note - in this region - the existence of National IHL Committees in Australia, Indonesia, Japan, New Zealand and in the Philippines. To facilitate the exchange of information and experience while strengthening contacts between the committees, the Advisory Service has recently launched an electronic forum allowing for interactive discussion and providing access to relevant documentation. Contacts were also encouraged through the organization by, or with the support of, the ICRC of regional meetings of the national committees in different regions of the world, e.g. in Belarus, Guatemala, Kenya, Morocco and Slovenia. In 2002, the ICRC organized the second universal meeting of such Committees in Geneva: it resulted in the publication of practical advice for the role and functioning of such bodies.

Information on new national legislation and case law relating to IHL is collected and analysed by the Advisory Service and published twice-yearly in the International Review of the Red Cross. Besides, at this

time the ICRC's electronic database on national implementation of IHL contains updated entries on domestic legislation and case law in around 100 States. Depending on their respective scope of activity and mandate, the ICRC cooperates also with other organizations in order to develop the best possible synergies, sensitize their member States to IHL issues and act in coordination to achieve shared goals of ratification and national implementation.

Cooperation and dialogue between the ICRC and the Asian-African Legal Consultative Organization (AALCO) was further developed during the Organization's annual conference in Seoul in June 2003 by holding a special full-day session devoted to IHL and various aspects of its enforcement and national implementation. A resolution on IHL, calling for enhanced compliance by member States, was adopted on that occasion. It should be noted that the ICRC has recently concluded a cooperation agreement with AALCO. The importance of national implementation of IHL was reaffirmed by the 28th International Conference of the Red Cross and Red Crescent, convened in Geneva in late 2003. The *Agenda for Humanitarian Action* adopted by the Conference and numerous pledges by States and National Societies concerned participation in international treaties and their implementation at the country level.

To conclude, let me say that national implementation of IHL is an ongoing task. The promise of better respect for IHL will not be fulfilled without sustained and increased commitment from governments. It is our hope that this seminar will contribute to the national implementation of IHL, and will provide an additional incentive for all those concerned. The ICRC, either through its Advisory Service in Geneva or through its experts in the field, will be very pleased to assist you and your Government in that important task.

The Partnership between the Government and the Red Cross and Red Crescent Movement in Disseminating, Implementing and Enforcing International Humanitarian Law from the Korean Perspective

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Introduction

In the Roman era, Marcus Tullius Cicero declared that "in the midst of arms, law stands mute." Nevertheless, since Henri Dunant witnessed the cruelty of war in Solferino in 1869 and set about ensuring that humanity exists on the battlefield, international humanitarian law (IHL) has developed as a set of universally recognized legal norms applicable during armed conflicts, be they international or non-international. IHL rests on the premise that, even if war is unavoidable, there are certain non-derogable humanitarian obligations that must be observed by all belligerents.[1] By restricting the methods and means of warfare and protecting the wounded, prisoners of war and civilians during armed conflicts and occupation, IHL also helps to facilitate the healing process after the cessation of hostilities. With the outburst of civil wars since the demise of the Cold War, the dissemination and enforcement of IHL has assumed increased significance.

Hence IHL has become primarily a body of international legal norms applicable during armed conflicts; a very unusual situation indeed. It is not an easy task to make IHL effective, particularly given the low level of expectation for its observance in the midst of the extreme life-threatening scenarios. In this vein, the normative effectiveness of IHL

[1]As the de Martens clause prescribes, civilians and combatants remain under the protection and authority of the principles of international law derived from *established custom*, from *the principles of humanity* and from *the dictates of public conscience* in cases not covered by treaties and traditional customary international law. (emphasis added) M. Sassoli and A. Bouvier, How Does Law Protect in War?, 1999, p.113.

largely depends on the responsiveness of the actual actors involved in hostilities. During times of peace, IHL needs to be disseminated to them so that it can be better observed during times of armed conflicts. In addition, IHL should be implemented by domestic enactments and thoroughly enforced against its violators. Otherwise, non-compliance would cause IHL to ring hollow.

To ensure compliance with IHL, States are under a general obligation to disseminate, implement and enforce it. While the military is the key sector in this aspect, many ministries within the government are involved in fulfilling this obligation. However, the Red Cross, civil society and NGOs also have important roles to play in order to complement the primary role of the government.

Today, the role of the Red Cross and Red Crescent Movement and its relationship with States in assisting them to carry out their obligations under the IHL regime is more prominent than ever before. In Korea, the Korean Red Cross Society, in cooperation with the ICRC, has worked closely with the Korean Government to promote IHL throughout Korean society. This article is intended to shed light on the partnership for the promotion of IHL that has evolved between the Korean Government and the Red Cross Movement. Having experienced one of the deadliest internecine wars of the last century, one which claimed almost four million lives on both sides, Korea continues to attach great importance to IHL, and has accumulated unique experience in this field.

The Role of the Government and the Red Cross and Red Crescent Movement under IHL

The International Red Cross and Red Crescent Movement is comprised of the International Committee of the Red Cross (ICRC), the International Federation of Red Cross and Red Crescent Societies, and 179 National Red Cross and Red Crescent Societies, including the Korean Red Cross Society. The ICRC is accorded an important role as the lead agency for the Red Cross Movement in times of armed conflicts pursuant to the four Geneva Conventions of 1949 and the two Additional Protocols of 1977. In addition, the responsibilities of the ICRC are also based on the Statutes of the International Red Cross and Red Crescent Movement. The special status of the ICRC and the National Red Cross Societies in the dissemination and implementation of IHL might be ascribed to their historical achievements in this field

as well as their proven impartiality, independence and neutrality. In particular, the decreasing resort to the Protecting Power regime due to the dwindling number of neutral States highlights the importance of the Red Cross Movement as a whole in overseeing and facilitating the implementation of IHL on the ground. States are encouraged to respect and ensure respect for IHL by supporting the humanitarian efforts of the ICRC.

The mandate of the ICRC is two-fold. Its first responsibility is to protect and assist, without discrimination, the victims of armed conflict. In practical terms, the ICRC endeavors to protect the wounded, prisoners of war and civilians, as well as to provide emergency and medical assistance to the civilian population. Another important responsibility is the ICRC's role as the promoter and guardian of IHL. In carrying out its duties in this regard, the ICRC has endeavored to achieve universal adherence by States to all IHL instruments, to provide training and education on IHL, and to promote the implementation of IHL in all armed conflicts. In performing its role as the promoter and guardian of IHL, the ICRC maintains a close partnership with the military, which is the most direct addressee of IHL norms. However, the target of the ICRC efforts goes beyond the members of the armed forces. In order to foster a culture in which IHL is supported and respected, it is indispensable to enhance the awareness of humanitarian rules among politicians, government officials, the media, students and the public. Moreover, the ICRC also maintains a close cooperative relationship with the States, and assists them in carrying out their obligations under IHL.

And what precisely are a State's obligations under IHL? To cite a few, in the field of dissemination, States are obliged to i) disseminate humanitarian law as widely as possible; ii) train and appoint personnel qualified in humanitarian law, including legal advisers within the armed forces; and iii) ensure that protected sites are properly situated and marked. In the field of implementation, States shall i) adopt implementing legislation, such as, *inter alia*, punishing grave breaches of the IHL instruments to which they are party to; ii) prevent and suppress the misuse of the Red Cross and Red Crescent emblems; iii) define and guarantee the status of protected persons; iv) ensure fundamental guarantees of humane treatment and due process in punishing the violators of IHL.

Cooperation in the implementation of IHL

As a peace-loving State, the Republic of Korea is one of the most advanced countries in Asia with respect to its record of accession to IHL instruments. With the exception of only two instruments,[2] the Republic of Korea is party to all IHL instruments.[3] As an active player in the creation of the International Criminal Court, the Korean Government ratified the Rome Statute in November 2002 and has undertaken a leading role in the outreach efforts directed at Asian non-State Parties.[4] Two Korean judges are now in active duty in the International Criminal Court and International Criminal Tribunal for Former Yugoslavia, and a Korean ad interim judge was elected for the International Criminal Tribunal for Rwanda. Recently, the Korean Government deposited an instrument of declaration to accept the competence of the International Fact-Finding Commission set up under Article 90 of the Additional Protocol I, becoming the seventh Asian State to do so. Hence, the Republic of Korea has taken all enforcement measures available in this time of peace.

Under the Geneva Conventions and the Additional Protocols, a State Party must enact national laws to make them fully applicable and enforceable in their territory and impose appropriate penal sanctions

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[2]They are the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two protocols as well as the 1997 Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and Their Destruction.

[3]The instruments the Republic of Korea adhered to are four Geneva Conventions (August 16, 1966), two Additional Protocols (January 15, 1982), the Convention on the Rights of the Child of 1989 (November 20, 1991), the ICC Statute (November 13, 2002), the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques of 1976 (December 2, 1986), the Geneva Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and Warfare of 1925 (January 4, 1989), the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction of 1972 (June 25, 1987), the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects of 1980 and its Protocols 1 of 1980 and amended 2 of 1996 (May 9, 2001) and its Amendment of 2001 (February 13, 2003), and the Convention on the Prohibition of the Development, Production and Stockpiling and Use of Chemical Weapons and on Their Destruction of 1993 (April 28, 1997). The indicated date is the date when each treaty entered into force in respect of the Republic of Korea.

[4]As the host country of the 42nd Annual Meeting of the Asia-African Legal Consultative Organization held in Seoul in June 2003, the Republic of Korea organized a Special Meeting on "the Relevance of International Humanitarian Law in Today's Armed Conflicts," including the issue of ICC, and played the pivotal role in adopting "the Seoul Resolution on International Humanitarian Law."

on grave breaches of IHL.[5] Even more important than the adoption of domestic laws and regulations is how faithfully and effectively they are enforced. Full and effective compliance with IHL will ultimately depend on a State's commitment to humanitarian values. The timing of implementation is also a significant factor, as they need to be taken well in advance of armed conflicts.

Korea is a monist State with respect to its relationship between international law and domestic law. Article 6, paragraph 1 of the Korean Constitution lays down that treaties concluded pursuant to the Constitution and generally recognized rules of international law become part of Korean domestic law and have the same binding force. Thus customary rules of IHL as well as the four Geneva Conventions and two Additional Protocols, cardinal instruments that Korea ratified, are binding and enforceable at the domestic level without special enactment. In view of *nullum crimen sine lege*, however, this automatic transformation is not sufficient to implement and enforce the relevant instruments, as the domestic court will not be able to punish the perpetrators of them due to the absence of concrete penalties for each crime. Hence it is essential to enact an implementing bill to give effect to the criminalization clauses in the instruments and set out procedural matters.

To facilitate the implementation of its obligations under IHL treaties, Korea has taken measures ranging from the incorporation of treaty provisions into its domestic laws to the adoption of other legislative, administrative and practical measures for their full implementation. For instance, the Criminal Code of the Armed Forces stipulates punishments for violations of the Geneva Conventions, such as plundering, rape, and the illegal destruction of property during armed conflicts. Korea also enacted the Law on the Regulation of the Use and Transfer of Certain Conventional Weapons including Mines as well as the Act on the Control of the Production, Export and Import of Specific Chemicals for the Prohibition of Chemical Weapons. In April, the Ministry of Justice, in cooperation with the Ministry of Foreign Affairs and Trade, completed and put to public notice for legislation, a

[5]See Articles 48-50 of the First Geneva convention; Articles 49-51 of the Second Geneva Convention; Articles 128-130 of the Third Geneva Convention; Article 145-147 of the Fourth Geneva Convention; and Articles 84-91 of the Additional Protocol I.

draft implementation act of the Rome Statute, which will be presented to the National Assembly for its enactment in 2004.

The Korean Government recently embarked on a review of what further needs to be done to fulfill its obligations under the IHL instruments to which it has adhered, including the need to enact a bill to fully implement the Geneva Conventions and Additional Protocols. A concrete action plan will be developed as a result of this review. Besides the efforts to bring into domestic effect international instruments, the Ministry of National Defense has assigned legal advisors in the military to provide legal counsel on the application of the Geneva Conventions and the Additional Protocols, as required under Article 82 of the Additional Protocol I.

Cooperation with the Korean Red Cross Society

The Korean Red Cross Society (KRCS) was founded by Emperor Kojong's Royal Decree No.47 in1905, following the Korean Government's signing of the Geneva Conventions I and II in 1903. After the Japanese Annexation of Korea in 1910, the Provisional Government exiled in China revived the Korean Red Cross Society in 1919. Right after its independence in 1945, the Government of the Republic of Korea enacted the Act on the Organization of the Korean Red Cross Society in 1949, pursuant to which the Society was recreated. The KRCS was recognized by the ICRC in May 1955 and admitted to the International Federation in September 1955. It will hold the Annual Assembly of the International Federation in Seoul next year in commemoration of its 100th anniversary.

The Korean Government and the KRCS have cultivated a close cooperative relationship in pursuit of disseminating and implementing IHL.[6] Setting IHL as a priority on its agenda, the KRCS has assisted and supported the Government mainly by giving advice, providing information and reporting on relevant activities upon request. The Society, jointly with the Ministry of National Defense, has conducted workshops or seminars[7] to deepen and bring up to date the knowledge

[6]Under Article 7 of the Act on the Organization of the Korean Red Cross Society, the KRCS is mandated in the field of IHL to protect the prisoners of war and victims during an armed conflict in accordance with the Geneva Conventions, take care of and protect the wounded during an armed conflict as a subsidiary organ of the military, and disseminate IHL.

[7]Since 1973, the KRCS, jointly with the Korean Society of International Law, has held Annual Seminar on IHL, in which experts on IHL and officials have discussed current issues of IHL.

of officers about IHL, and has run educational courses for soldiers. In consonance with Strategy 2010 of the International Federation of Red Cross and Red Crescent Societies, the Society has also made efforts to educate lecturers who will disseminate IHL in various sectors in Korea and train qualified personnel for the application of IHL.[8] Since 1977, the KRCS has also published the Korean Journal of International Humanitarian Law, which is being widely distributed to national, public and university libraries. The KRCS is also playing a guardian role of the Red Cross emblems.[9]

As a core organ in charge of these projects, the KRCS operates the International Humanitarian Law Institute, a research institute on IHL within its apparatus. To institutionalize cooperation with academia and the Government, the Society also created the Advisory Committee on IHL composed of 10 members from academia and the KRCS and two *ex officio* members of the Ministry of Foreign Affairs and Trade and the Ministry of National Defense in 1975. The Committee has been instrumental in making preparations for the ratification of or accession to international instruments such as the two Additional Protocols of 1977. This type of hybrid body has proved useful for funneling the expertise and experience of academia and the Society into policy planning and implementation by the Government. The KRCS is also actively engaged in international cooperation in the field of IHL. It has sent scholars, military personnel and experts to regional and international seminars on IHL on a regular basis. Moreover, the KRCS, jointly with the Ministry of Foreign Affairs and Trade, is planning to host an East Asian regional seminar on IHL under the auspices of the ICRC in 2005.

Reunion of separated families

At the 27th International Conference of the Red Cross and Red Crescent Societies in 1998, the Republic of Korea pledged, *inter alia*, that it would develop and implement a specific policy and direction to contribute to realizing peace and security on the Korean Peninsula by effectively responding to the needs of the most vulnerable people,

[8]Article 6 of the Additional Protocol I and Articles 25 to 27 of the 1954 Hague Convention provide that qualified personnel shall be trained to facilitate the implementation of the Geneva Conventions and the Additional Protocols and the 1954 Hague Convention for their execution.

[9]See Articles 25 and 27 of the Act on the Organization of the Korean Red Cross Society.

and do its utmost to find a solution for pending humanitarian issues including the matter of separated families between South and North Korea by resuming Inter-Korean Red Cross talks.

Under the Fourth Geneva Convention and Additional Protocol I,[10] State Parties must facilitate the reunion of members of families dispersed owing to an armed conflict and encourage the work of humanitarian organizations engaged in this task. Yet, since the division of the Korean Peninsula in 1945, hundreds of thousands of people in the two Koreas remain separated from their families. The situation of elderly people is of particular concern in this context.

The first Inter-Korean Red Cross dialogue was initiated in 1971. During the Cold War era and the decade following its demise, however, the complex political situations on the Korean peninsula made only sporadic exchanges possible. However, since the adoption of the Joint Declaration at the Inter-Korean summit in 2000, the Red Cross Societies of both Koreas have initiated regular visitations among separated family members in both Koreas. As of March 2004, approximately 9,000 separated family members had met at nine rounds of reunion meetings, 2,267 people had been able to locate their missing family members and 600 people had exchanged letters.[11]

Regrettably, once these visits are concluded, the families are again separated and unable to contact each other. The Korean Government has fully cooperated to facilitate the work of the KRCS to increase the frequency of these family visits and to ensure that those who have participated in the family-visit program remain in touch with their relatives afterwards. As important steps forward in this direction, the Korean Government and the KRCS proposed an increase in the exchange of letters among the separated families and the establishment of a permanent reunion center near the Demilitarized Zone, calling for the North to accept these measures at the earliest possible date.

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[10]See Articles 25 and 26 of the Fourth Geneva Convention and Article 74 of the Additional Protocol I. In addition to reunion, each Party to the conflict must facilitate enquiries made by members of families dispersed because of the war with the object of renewing contact with one another. All persons in the territory of a Party to the conflict, or in a territory occupied by it, shall be enabled to give news of a strictly personal nature to members of their families, wherever they may be, and to receive news from them.

[11]Regarding the details of the record, see http://www.redcross.or.kr/wwwpost/index.

Protection of cultural property

Belligerents must take all feasible measures to prevent the pillage of cultural property and acts of hostility against such property not used for military purposes. The Korean Government recently embarked on domestic procedures for its accession to the 1954 Hague Convention for the Protection of Cultural Property in the event of Armed Conflict and its Protocols, which will be completed within 2004. The Cultural Properties Administration maintains close consultations with the Ministry of National Defense in matters of the designation and marking of important cultural properties, refuges for cultural objects, and their transport during an armed conflict.

Visits to prisoners of war

Under the Geneva Conventions, parties to an international armed conflict are under obligation to accept visits by ICRC delegates to all prisoner-of-war camps, places where civilians of enemy nationality may be detained and to occupied territories in general.[12] Unfortunately, the North's recalcitrance had hampered the ICRC's ability to play a constructive role during and after the Korean War in providing protection for the civilian population, prisoners of war and other detainees. The only exception was the involvement of national Red Cross Societies of the troop contributing States to the United Nations Command on the one hand, and North Korea and China on the other, in the repatriation of prisoners of war.[13]

Peacetime humanitarian operations

In peacetime, the ICRC plays a role in providing humanitarian assistance to the civilian population. In July 2002, the Korean Ministry of Public Health extended its cooperation to the ICRC and the Democratic People's Republic of Korea Red Cross Society in their efforts to launch an amputee rehabilitation program in a prosthetic center in Songrim, south of Pyongyang. The Center provides rehabilitation services and produces orthopedic devices for those whose limbs were maimed in landmine explosions.

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[12]See Article 126 of the Third Geneva Convention and Article 143 of the Fourth Geneva Convention.

[13]Pursuant to Article 3(57) of the Korean Armistice Agreement of 1953, joint Red Cross teams were established to assist in the execution by both sides of the Agreement relating to the repatriation of prisoners of war.

Cooperation in the dissemination of IHL

The Korean Government actively cooperates with the ICRC and the KRCS in the dissemination of IHL within the armed forces, government circles, universities, schools, the medical profession and the general public.[14] By carrying out dissemination efforts hand in hand, the Government and the Red Cross Movement are able to utilize the synergy of each other's activities.

Any rule that is not understood by those who must observe it will not be effective. Thus, the IHL program has been made a compulsory course in defense institutions and military academies throughout Korea. The relevant IHL instruments have been translated into readily comprehensible language for the members of the armed forces according to their rank and functions. The KRCS and the ICRC have produced various publications and audio-visual materials for education on IHL, and have donated them to several military training courses and institutions. In carrying out dissemination work, South Korea faces enormous burden of translating the principle texts into the Korean language. It is hoped that well-written manuals on IHL will contribute to the diffusion of knowledge about these laws among military personnel.

The ICRC has established an Advisory Service on the implementation of IHL, attached to its Legal Division, to assist States in their implementation and dissemination efforts. The Advisory Service provides advice on legal and administrative measures which States must undertake in order to comply with their obligations under IHL. The Korean Government is mindful of the need to contribute its existing national legislation and other relevant information to the Advisory Service documentation centre on a regular basis. The Korean Government has also nurtured close cooperation with the Regional Office of the ICRC in Bangkok in the field of IHL.

[14]Under the Geneva law, dissemination activities shall be developed at various levels for the military forces and the civilian population. See Article 47 of the First Geneva convention, Article 48 of the Second Geneva Convention; Article 127 of the Third Geneva convention; Article 144 of the Fourth Geneva Convention; Article 83 of the Additional Protocol I; and Article 19 of the Additional Protocol II. In particular, State Parties shall ensure that the armed forces receive instruction in IHL. See Article 82 of the Additional Protocol I.

Various seminars organized by the ICRC at the national and regional level serve to promote contact and the exchange of information among those involved in the task of implementation, such as government, the armed forces, civil defense organizations, local authorities, academia and the national Red Cross or Red Crescent Society. South Korea has been an active participant in these seminars. Focused mainly on national activities, the KRCS also plays an active role in disseminating IHL, by, *inter alia*, organizing seminars and academic courses to enhance the general public's awareness of IHL as well as that of its staff and volunteers.

Establishment of the Korean National Committee for IHL

It is not the lacunae in the existing IHL rules, but the lack of political will to implement them that has often resulted in non-compliance with IHL norms. Given that IHL is expected to be applied during the extreme scenarios of armed conflicts, its effective implementation requires sufficient dissemination during peacetime as a matter of urgency. The recent rapid increase in non-international armed conflicts, in which armed groups lack the ability or willingness to enforce IHL, calls for an even more thorough and urgent dissemination of IHL in times of peace.

The national implementation and dissemination of IHL requires close cooperation among government ministries and civil society. In recognition of this need, Resolution X of the 24th International Conference of the Red Cross and Red Crescent called on States to set up a national committee composed of relevant government ministries and civil society to promote the implementation and dissemination of IHL. On the initiative of the Ministry of Foreign Affairs and Trade, the Korean Government established the Korean National Committee for IHL in October 2002 to provide it with recommendations and advice on measures for the implementation and dissemination of IHL.

The members of the Committee include government officials from the Ministry of Foreign Affairs and Trade, Ministry of Education and Human Resources Development, Ministry of Justice, Ministry of National Defense, Cultural Properties Administration, members of the KRCS and professors specializing in IHL. Meeting at least twice a year, the Committee reviews the recent developments in the field of IHL, exchanges information and opinions and assesses the current

problems in order to make proposals for the further implementation and dissemination of IHL. It further serves to explore the possibilities of ratifying or acceding to IHL treaties to which Korea is not yet a party.[15] The Committee has also commissioned reports on the domestic implementation of IHL.

Conclusion

Frequent violations of IHL and the widespread ignorance of the content of these crucial laws have caused States to hesitate in their acceptance and application of IHL. By the same token, the great complexity and the technical nature of IHL often unintentionally serve to hinder their effective implementation. Such hurdles can only be overcome through joint efforts and continued cooperation between States and the Red Cross Movement to promote and develop IHL.

Armed conflicts, indiscriminate violence and acts of terror continue to threaten the safety and security of innocent people and undermine efforts to bring about lasting peace and stability in the world. In accordance with the basic rules of IHL, States shall respect and ensure the respect of IHL, regardless of the nature or origin of the conflict. As a first step, States are called upon to consider ratification of, or accession to, IHL instruments to which they are not yet party and to make use of existing implementation mechanisms, such as enquiry procedure, the International Fact-Finding Commission, and the International Criminal Court pursuant to their international obligations.

At the vortex of the geopolitical rivalry surrounding the Korean peninsula, the Republic of Korea continues to attach a high priority to the promotion of the ideals of IHL. Korea has a long tradition of humanitarianism during warfare. In the ancient Shilla Kingdom that unified the other two kingdoms of the Korean peninsula in the 9th century, all warriors were expected to live up to the Hwarang Spirit, which, like the principle of distinction nowadays, required them to avoid harm to all civilians.

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[15]For instance, the recent decision of the Korean Government to accede to the 1954 Hague Convention and make a declaration to accept the competence of the International Fact-Finding Commission was largely indebted to the serious deliberation at this Committee, which facilitated intensive inter-ministerial consultation.

It is the firm conviction of the Korean people that the spirit of humanitarianism reflected in IHL will serve to create trust among the States and bring peace in the region. Korea's relationship with the Red Cross Movement has come a long way since it signed the first Geneva Convention of 1864 almost one century ago. Throughout this long process, South Korea has consistently demonstrated its full commitment to the promotion of and adherence to IHL, and will continue to intensify and broaden its partnership with the Red Cross Movement and the States in the region to fulfill the noble goals and ideals of humanitarianism well into the future.