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WAR CRIMES IN INTERNATIONAL HUMANITARIAN LAW

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International Humanitarian Law (IHL) is mainly composed of international consuetudinary law and the following international treaties:

I. The Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field;

II. The Geneva Convention for the amelioration of the condition of the wounded, sick and shipwrecked members of armed forces at sea;

III. The Geneva Convention relative to the treatment of prisoners of war;

IV. The Geneva Convention relative to the protection of civilian persons in time of war, all of them dated August 12, 1949;

V. The Additional Protocol I to the Geneva Conventions, relating to the protection of victims of international armed conflicts;

VI. The Additional Protocol II to such Conventions relating to the protection of victims of non-international armed conflicts, both of June 8, 1977;

VII. The Rome Statute, of July 17, 1998, which established the International Criminal Court (ICC) that "shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern" and is therefore empowered to exercise complementary jurisdiction to national criminal jurisdictions over persons and, finally, the Hague Convention for the Protection of Cultural Property in the event of Armed Conflict of 1954, and the 1954 and 1999 Protocols.[44]

The main purpose of IHL is to protect civilians in the event of armed conflict, that is to say, provide protection to individuals not involved in hostilities, as well as those who are no longer involved, for example, wounded combatants and war prisoners, for whom the IHL claims humanitarian treatment. Similarly, the purpose of the IHL is to ameliorate the most atrocious manifestations of armed conflict and to that end it proposes to limit the methods and means of making war as well as to regulate the possession and use of certain arms, based on the principle that Parties to an armed conflict do not have unlimited rights regarding the choice of the methods and means of making war, which is why Item 2 of Article 35 of the aforementioned Additional Protocol I prohibits "…..to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering"; on the other hand, item b) of Article 8.2 of the Rome Statute contains the following prohibitions, among others: employing poison or poisoned weapons, employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices; bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or has incisions. Another purpose of IHL is to protect cultural property in the event of armed conflict.

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44. Besides having competence as regards war crimes, the ICC also attends to crimes of lese-humanity, these being crimes committed both during periods of peace and in wartime and by State and non-State agents. No reference to such crimes is made herein.

At present, the IHL considers individuals criminally liable and in this regard they are reminded that also in the Versailles Treaty, adopted at the end of the First World War, the setting up of *ad hoc* tribunals was determined in order to prosecute persons accused of committing acts infringing laws and uses of war, and although on that occasion no tribunal was established, processes were instead initiated to penalize some persons accused of these crimes. Similarly, after the Second World War, courts were established to prosecute individuals for crimes against peace, for war crimes and for crimes of lese-humanity. In this aspect, mention can be made of the judicial prosecutions by military courts in Germany, the Nuremberg trials, and trials conducted in other countries such as the Far-East courts. In addition, the IHL considers criminally liable persons with authority over subordinates who engage in war crimes. To this criminal individual liability refer both the Additional Protocol I to the Geneva Conventions as well as the Rome Statute that established the ICC.

We must make it clear that IHL applies both in the event of international armed conflicts as well as non-international armed conflicts but not to domestic armed conflicts.

International armed conflicts are:

- "Cases of declared war or any other armed conflict which arise between two or more of the High Contracting Parties [to the Geneva Conventions], even if the state of war is not recognized by one of them" (Article 2 of all 4 Geneva Conventions);
- "Cases of partial or total occupation of the territory of a High Contracting Party, even if the occupation meets with no armed resistance" (Article 2 of the 4 Geneva Conventions);
- "Armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations (Article 1.4 of Additional Protocol I).

In conformity with the provisions of item 1 of Article 1 of Additional Protocol II, non-international armed conflicts are those "which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol".

American States grant important relevance to the IHL, as the 35 states of the American region are Parties to the 4 1949 Geneva Conventions; 34 to the Additional Protocol I (the United States of America is not a party), and 33 to the Additional Protocol II (the United States of America and Mexico are not parties); 23 of those States are also parties to the Rome Statute and it has been informed that other States in the regional could become Parties to the Statute in the near future.

As said above, the IHL does not apply to domestic armed conflicts, that is, to situations of internal disturbances and tensions and to other acts of a similar nature but without the intensity of an armed conflict, as established by Item 2 of Article 1 of the Additional Protocol II to the Geneva Conventions relating to the protection of victims of non-international armed conflicts, and also by items d) and f) of paragraph 2 of Article 8 of the Rome Statute, which reads that it "…does not apply to situations of internal

disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature… It applies to armed conflicts…". Consequently, we must conclude that it is up to the Government of each State to reinstate public order by any means permitted in International Law.

In addition to the situations above, which are eminently of a domestic nature, the International Law of Human Rights applies, and in this regard we may cite the words used on January 25, 2008 during the special session of the OAS Committee on Juridical and Political Affairs, the Regional Delegate of the International Committee of the Red Cross (hereinafter the ICRC) for Argentina, Brazil, Chile, Paraguay and Uruguay:

… situations of 'domestic violence' - which can not be described as 'armed conflict' - are below the threshold of the application of IHL. For these conflicts there is the Human Rights International Law, that regulates the use of force by state agents. We could classify these norms on human rights as a form of "humanitarian principles" because, as regards the defense of life and human dignity, they can be found both in the norms on human rights and in the IHL…

(…)

ICRC intervention is motivated by three factors:

1. the extent of the humanitarian consequences;

2. the added value of work from the institution, based on its experience and ability as well as its "modus operandi" as a neutral, impartial and independent organization; and

3. acceptance by the authorities.

(…)

… in a situation of "armed conflict", whether international or non-international, the humanitarian action of the ICRC has the backing of the mandate granted to our institution by the international community through the Geneva Conventions and their Additional Protocols, as the essential basis of the IHL.

In situations of "internal violence", where the provisions of IHL are not applied, the "Humanitarian Law Initiative" can be inherited from the Statutes of the Movement of the Red Cross and Red Crescent. Although this mandate granted to the ICRC to perform a humanitarian role in this context is less legalistic than that granted to the Geneva Conventions, it should be highlighted that the statutes of the Red Cross Movement also express the wish of the States. These statutes were adopted in the framework of an international conference which every four years gathers together the members of the Movement with the Party States to the Geneva Conventions and which guide our humanitarian (Red Cross) activities.

Once the gravity derived from the situation of "domestic violence" has been determined, and the agreement of the authorities to carry out a humanitarian operation has been achieved, the ICRC "mutatis mutandis" uses the same mode of action that would be applied in a context of armed conflict.

In Latin America the humanitarian response of the ICRC vis-à-vis "internal violence" follows two parallel patterns: one could be denominated "preventive' and the other "operative".

The activities performed in the preventive field comprise cooperation programs with security forces and have the purpose of revising and fine-tuning all

the operational or educational guidelines as regards the rules of human rights applicable to the use of force. Another preventive field refers to sensitivization of students at the high-school level on themes and situations that might give rise to thoughts on violence and its consequences.

The operational field, for example, comprises the following activities:

- bilateral dialogue with authorities on the consequences that might stem from the inadequate or disproportionate use of force with the aim of monitoring conditions of arrest and treatment;

(…)

- support to prison authorities to improve the management of imprisonment sites; and/or
- development of medical-social programs conducted by the Red Cross National Societies in areas affected by situations of violence".[45]

Article 1 of the Rome Statute determines that the International Criminal Court shall have the "power to exercise its jurisdiction over persons for the most serious crimes of international concern, … and shall be complementary to national criminal jurisdictions". On the other hand, Article 5 of the Statute specifies that: "The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole … with respect to the following crimes:" crimes of lese-humanity, including genocide, war crimes and the crime of aggression. In the latter case, the understanding is that the ICC shall exercise jurisdiction once a definition is adopted, and Article 8 of the Rome Statute establishes that the ICC 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".

What, then, are war crimes? In accordance with the above, war crimes are serious infringements against the laws and customs of war, committed against persons or property protected by IHL norms in case of international or non-international armed conflict.

Some such crimes are: willful killing (for example, attacking a person knowing that he/she is out of combat due to sickness or injuries); torture, inhuman treatment; biological experiments; willfully causing great suffering; seriously jeopardizing physical integrity or health; attacking civilian populations or civilians; compelling protected persons to serve in the forces of the enemy; depriving a person of his/her right to a fair and regular trial; the taking of hostages; the destruction and seizure of property not justified by military needs and conducted illicitly and arbitrarily on a large scale.[46]

In the aforementioned document the ICRC establishes that it is "essential that States Parties to the Rome Statute harmonize their criminal legislation with the Statute so that they can penalize internally crimes under the jurisdiction of the Court in each

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45. Organización de los Estados Americanos. Consejo Permanente. Comisión de Asuntos Jurídicos y Políticos. **Informe final: sesión especial de la Comisión de Asuntos Jurídicos y Políticos sobre temas de actualidad del Derecho Internacional Humanitario**, Washington, D.C., 25 enero 2008. CP/CAJP-2649/08, p.46-47. Document available only in Spanish. (Non-official translation).

46. These infractions are referred to in article 2 of all 4 Geneva Conventions; articles 50, 51, 130 and 147, respectively, of said Conventions; Additional Protocol I of 1977, especially articles 1, 11 and 85.

case".[47] It further recommends that when States incorporate war crimes to the domestic legislation, they must ensure that the definitions of such crimes contain all the constitutive elements provided by International Law, but at the same time warns that they should try not to "add conditions whose effect would be the exclusion of conduct classified as war crimes according to those treaties"[48] (the 1949 Geneva Treaties and the Additional Protocol I) and expresses that "the domestic criminal legislation should allow the punishment any acts corresponding to war crimes, such as defined in the Geneva Conventions and Additional Protocol I, while it is not admissible to limit the scope of criminal types. For example, no conditions should be added whose effect would be to exclude conducts defined as war crimes according to those treaties".[49]

The reason for the ICRC warning is that some differences exist between the 1949 Geneva Conventions (especially Additional Protocol I of 1977), and the Rome Statute. These differences include the following: the Rome Statute codifies a number of war crimes that do not always correspond to a serious infringement in the sense given by the Geneva legislation; Additional Protocol I lists some crimes that are not mentioned in the Statute, while at the same time mentioning some crimes that are similar to certain serious infringements in Additional Protocol I, but with more restrictive elements, namely, that the Statute demands higher qualifying conditions for a crime to exist and for that reason does not penalize all criminal conduct that States should penalize according to Additional Protocol I; consequently, ICRC´s concern is that States that are Parties to the Geneva Conventions and the Rome Statute might amend their criminal legislation in order to harmonize it to the Statute, which is of a later date, while at the same time fearing non-compliance of the norms included in the Geneva legislation, which is why it advises that "the harmonization of criminal law vis-à-vis the Rome Statute must not undermine the obligations arising from the Geneva Conventions and Protocol I. It is rather a question of harmonizing the regime established in these two instruments with that of the Statute … the rules of the Statute must strengthen rather than weaken the architecture erected to define war crimes and whatever concerns the rules on criminal responsibility and the exercise of criminal prosecution"[50], since it considers that the 23 American States, besides being Parties to the Geneva legislation, also belong to the Rome Statute, and have committed themselves by international law to punish war crimes according to the system established by the Geneva Convention and Protocol I.

In this regard the ICRC explains that "The Geneva Conventions of 1949 established a system whose strict application will make it impossible for war criminals

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47. Presentación del doctor Antón Camen ante la Comisión de Asuntos Jurídicos y Políticos (Washington, D.C., 28 de enero de 2008): CP/CAJP/INF.84/08, 12 febrero 2008. **Presentaciones: sesión de trabajo sobre la Corte Penal Internacional.** p.1. See also COMITÉ INTERNACIONAL DE LA CRUZ ROJA. **Represión de los crímenes de guerra en la legislación penal nacional de los Estados americanos**. Marzo 2008. p.4. Documents available only in Spanish. (Non-official translation).
48. COMITÉ INTERNACIONAL DE LA CRUZ ROJA. **Represión de los crímenes de guerra en la legislación penal nacional de los Estados americanos**. March 2008, p.9, III, 2º §. Document available only in Spanish. (non-official translation).
49. COMITÉ INTERNACIONAL DE LA CRUZ ROJA. **Represión de los crímenes de guerra en la legislación penal nacional de los Estados americanos**. March 2008, p.9, III, 2º §. Document available only in Spanish (non-official translation).
50. See note 4 above, p. 2 and 4, respectively.

to escape being judged by the courts of their own country or in any other State"[51], because the Geneva Conventions 1949 establish a universal jurisdiction to punish this type of crime, reinforced by the fact that 194 States are Parties to said Conventions and have committed themselves to applying their provisions. "As a matter of fact, articles 49, 50, 129 and 146 of the 4 Geneva Conventions, respectively, accept no limit as to the nationality of the authors or victims, nor concerning the place where the crimes were committed. So they differ from jurisdiction based on territoriality, active personality (nationality of the suspect) or passive personality (nationality of the victim), or the national interest of the State. In other words, no requirement is required as to any link with the place of the crime, only the interest of all that war crimes be punished".[52] That is to say, universal jurisdiction allows a State to persecute and punish any author of a war crime regardless of their nationality, that of the victim, and the place where the crime was committed.

At this point it bears recalling that the General Secretary of the United Nations recommended the Security Council to "urge Member States to adopt national legislations for the prosecution of individuals responsible for genocide, crimes against humanity and war crimes. Member States should initiate prosecution of persons under their authority or on their territory for grave breaches of international humanitarian law on the basis of the principle of universal jurisdiction and report thereon to the Security Council" (Security Council, S/1999/957, 8 September 1999, Report of the General Secretary to the Security Council on Protection of Civilians in Armed Conflicts, p. 19). In turn, on 16 April 1999 the Inter-American Committee on Human Rights recommended Member States of the OAS to adopt the necessary measures to invoke and exercise universal jurisdiction in the case of individuals who commit crimes that are the competence of the ICC: genocide, crimes of lese-humanity and war crimes.

The ICRC is right in claiming that the Rome Statute should not modify Geneva legislation, especially when it demands higher conditions than the latter to configure a crime, since in these cases the crimes contained in the Geneva legislation would not be punished, and adds that although the Rome Statute "does not explicitly oblige the States to punish crimes of the competence of the Court. But it does presuppose it, since the mechanism of complementarity it foresees depends on the States being able to punish such crimes in the national sphere".[53] Indeed, as has already been said, articles 1 and 5 of the Rome Statute recognize that the Party States to the Geneva Conventions have original jurisdiction on crimes contained in said Conventions on prescribing that the jurisdiction of the ICC is complementary to that of the States, since the competence of the ICC can only be exercised when a State "is unwilling or unable genuinely to carry out the investigation or prosecution" as provided in item 1 of article 17 of the Rome Statute, which states:

Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:

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51. COMITÉ INTERNACIONAL DE LA CRUZ ROJA. **Represión de los crímenes de guerra en la legislación penal nacional de los Estados americanos**. Marzo 2008, p.17, 1º §. Document available only in Spanish (non-official translation).
52. *Idem*, p.17, 2º §.
53. COMITÉ INTERNACIONAL DE LA CRUZ ROJA. **Represión de los crímenes de guerra en la legislación penal nacional de los Estados americanos**. Marzo 2008, p.4, 2º §. Document available only in Spanish (non-official translation).

(a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;

(b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;

(c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;

(d) The case is not of sufficient gravity to justify further action by the Court.

That is to say, only when the situations are different from those referred to in the transcribed article will the ICC have jurisdiction over the matters listed, and the fact that the article is drafted in the form of exceptions confirms the priority jurisdiction that States have in these matters. The exceptional situations referred to in article 17 are precisely those that led the international community of States to set up the ICC, since occasionally - and especially as a consequence of armed conflict - the judicial apparatus of a State disappears or is in unable to judge these crimes or else the State authorities lack the necessary elements to try those responsible, and even in other cases because the very authorities who are to try the crimes are responsible for committing them, which is precisely why the ICC was set up, since these grave crimes, if left unpunished, not only affect the State of jurisdiction but also the international community, insofar as they "threaten the peace, security and well-being of the world".[54]

Besides article 17, other articles such as 4, 13 and 14 of the Statute confirm the competence of the ICC to review the action of the courts of a Party State in a crime envisaged in the Geneva legislation and the Rome Statute, and to deal with the case if this proceeds in accordance with the provisions in the Statute and the Elements of Crimes, since article 21 of the Statute orders that the ICC, on judging a crime, should apply "in the first place, this [Rome] Statute, Elements of Crimes…" because these, according to what is established in item 1 of article 9 of the Statute, "shall assist the Court in the interpretation of articles 6, 7 and 8" of this Statute, which refer respectively to the crime of genocide, crimes of lese-humanity and war crimes.

"The effectiveness of the Court thus depends on the successful inclusion of the Rome Statute in internal law both with regard to conducting national procedures and cooperating with the Court". (Bruce Broomhall, in the book Corte Penal Internacional).[55]

According to what has been expressed so far, the situation of war crimes is as follows:

> If a State is Party to the Geneva Conventions of 1949 and Additional Protocol I but is not Party to the Rome Statute, and a war crime envisioned in one of the Conventions or in Additional Protocol I is committed in its jurisdiction, and the State in question fails to punish it because it "is not willing or unable

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54. Rome Statute of the International Criminal Court, Preamble.

55. BROOMHALL, Bruce. **Corte Penal Internacional: una guía para su implementación nacional.** International Association of Criminal Law, 1999, p. 118. As can be seen, the quotation fails to mention the Elements of War Crimes contained in the Rome Statute, since the Elements were only drawn up and approved by the Party States in the Statute in August 2002).

> genuinely to carry out the investigation or prosecution", this infraction shall remain unpunished although this is also provided for in the Rome Statute, unless some other State wishes to punish it on the grounds of the universal jurisdiction that all States have for this type of crime, as established in the Geneva Conventions. In any case, the ICRC is concerned that the Party States to the Geneva legislation, whether Parties or not to the Rome Statute, should conserve said legislation intact, since this means "ascertaining that their criminal legislation allows, as the indispensable and obligatory minimum, punishing war crimes as defined by the Geneva Conventions and their Additional Protocol I".[56]

On the other hand, if a war crime is committed in a State that is Party to the Geneva Conventions and to the Rome Statute, this State has jurisdiction to judge and punish this crime. Likewise, any other Party State to these Conventions has such competence based on universal jurisdiction, but if none of these States punishes it or fails to punish it in due measure, the ICC may deal with the crime if it lies within the scope covered by article 17 of the Rome Statute transcribed above.

In respect to the situation presented in the previous paragraph, the ICRC, as stated above, fears that the crimes envisaged in the Geneva legislation whose juridical assumptions fall short of the grave crimes that belong to the complementary jurisdiction of the ICC, remain unpunished if the Rome Statute modifies or annuls the Geneva legislation. Indeed, the general rule of law of treaties relating to "application of successive treaties relating to the same subject-matters" provides that "when a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail", contained in item 3 of article 30 of the Vienna Convention on the Law of Treaties of 1969.

There is some reason for thinking that the above-mentioned principle could apply because both the Geneva Conventions and Additional Protocol I and the Rome Statute are successive treaties on the same matter; however, in the case under examination there is a situation that could be called unique, namely that if a war crime is serious it belongs to the competence of two law courts: one the national tribunal that each Party State establishes to judge the crimes committed within their jurisdiction, and the other the ICC, created by the collective will of States in the Rome Statute, which considers that the "posterior law derogates anterior law" principle of law does not apply in this case if the proposition of the international community of States is taken into consideration: to create an instance or special forum to punish not all war crimes but certainly the most serious, as provided for in article 8 of the ICC: "For the purpose of this Statute, 'war crimes' means: (a) grave breaches of the Geneva Conventions of 12 August 1949". Some of these crimes have already been mentioned.

The reason for drawing the conclusion that the general principle of law - posterior law derogates anterior law – does not apply in the case in question is that this principle applies when only one court intervenes but not when there are two courts created by different subjects and different methods, as in the case of the ICC. The reasoning behind creating the ICC is that the Party States to the Geneva legislation pledged to judge war crimes but some of these crimes are so serious that it will be very difficult for States to

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56. COMITÉ INTERNACIONAL DE LA CRUZ ROJA. **Represión de los crímenes de guerra en la legislación penal nacional de los Estados americanos**. Marzo 2008, p. 4, 3º §. Document available only in Spanish (non-official translation).

be able to punish them with their own resources because, as said earlier, some courts may have disappeared during the conflict while in others the same authorities who should judge the crimes are the guilty parties, which is why a special tribunal is set up, in other words a complementary or additional instance, in the case of the ICC, for the purpose of punishing some of these crimes if the authorities of the State of jurisdiction cannot or are unwilling to do so, but the ICC cannot deal with all the war crimes contained in the Geneva treaties because it was set up not to substitute the courts of the Member States of the Rome Statute but rather to deal with the most serious crimes of principal concern to the international community. Accordingly, article 8 of the Rome Statute, which refers to war crimes, states: "in particular when committed as part of a plan or policy or as part of the large-scale commission of such crimes", which – according to the third paragraph of the preamble of the Rome Statute - "threaten the peace, security and well-being of the world". The international community, through the ICC, has the right and duty to attend to and punish these crimes regardless of whether the States continue to have priority jurisdiction to judge all war crimes, including the most serious if they so wish and are able to do so, in accordance with what is set forth in the Geneva legislation and the Rome Statute. On setting up the ICC, it was never said that this would substitute the States in their duty to punish the crimes envisioned in the Geneva Conventions or the Rome Statute, for the ICC only deals with a crime that is serious if the State of jurisdiction "is unwilling or unable genuinely to carry out the investigation or prosecution". The Rome Statute created the ICC, as stated in article 1, to "exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions", that is, the Statute does not impose on the States that are party to it the obligation to punish such crimes, since in the Preamble, and not in the text proper, it only "recalls" that "it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes" without specifying which international crimes are referred to, nor does it impose on the States the obligation to judge in their State courts crimes contained in the Statute, since, as said before, the State of jurisdiction may not be able or willing to judge a serious crime.

From what has been expressed so far, it can be concluded that the Party States, bearing in mind what is set forth in the 1949 Conventions, Additional Protocol I and the Rome Statute, should include in their national legislations - as alternatives - on the one hand the elements of the crimes of the Geneva legislation, and on the other hand the elements of war crimes referred to in article 9 of the Rome Statute which were approved by the members of the assembly of the Party States to the Statute. That is to say, the Rome Statute does not replace or modify the Geneva legislation and so the latter, like the Rome version, would be in effect at the same time in a State that is Party to the Conventions of Geneva and the Rome Statute, and the State could judge the crimes dealt with in all international treaties, but if it does not judge a crime provided for in the Roma Statute, then the ICC will do so.

As far as including the IHL treaties in national criminal law is concerned, it is considered that this should be done, on the one hand, according to the procedure established by the internal law of a State in this regard, either by changing the treaties into laws or by including them directly in its legislation, and on the other hand in accordance with the pertinent rules of International Law, including the corresponding provisions of the Vienna Convention on the Law of Treaties of 1969, for the States that are Party to this treaty.

Due to the difficulty felt by some States in including the IHL treaties in their legislation, it is appropriate to refer to the simple and swift - albeit imperfect - procedure adopted by some States to insert the crimes provided for in treaties into their own legislations, which consists in including in their Criminal Code an article with a text similar to the following: "If a crime is committed that is not included in this Code but in an international treaty that the State is obliged to respect, the treaty will be applied, taking into account the pertinent provisions of internal criminal law".

In turn, in the document mentioned above: "Repression of war crimes in the criminal legislation of American States", the ICRC refers to this procedure in the following terms: "Another procedure would be an overall accusation of war crimes in the national law by referral to treaties and international customary law".[57]

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[57]. COMITÉ INTERNACIONAL DE LA CRUZ ROJA. **Represión de los crímenes de guerra en la legislación penal nacional de los Estados americanos**. Marzo 2008, p.28, "Conclusión". Document available only in Spanish (non-official translation).