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INFORMATION CONVEYED BY NEW ZEALAND

INTERNATIONAL COMMITTEE OF THE RED CROSS: CONCERNS ON  
THRESHOLD FOR WAR CRIMES COMMITTED IN NON-INTERNATIONAL  
ARMED CONFLICTS AS CONTAINED IN THE BUREAU PROPOSAL  
(A/CONF.183/C.1/L.59)

Under section D of the Bureau proposal, a threshold has been added restricting the types of non-international armed conflicts the Court would be able to deal with. The International Committee of the Red Cross (ICRC) understands that the threshold that has been added stems from article 1 of Protocol II Additional to the 1949 Geneva Conventions. However, it is essential to stress that many of the crimes listed under section D find their legal basis under general international law, and are not only provided for in Protocol II.

Clear examples of this are: directing attacks against the civilian population; directing attacks at units, transports or personnel lawfully using the emblems of the Geneva Conventions; recruiting children into the armed forces or using children to participate actively in hostilities; forcing the displacement of the civilian population; perfidy and pillage.

This new requirement under section D means that only such conflicts involving armed forces of a State and dissident armed forces or other organized armed groups are covered, thus excluding dissident armed forces fighting against one another. In addition, these dissident armed forces or armed groups would have to:

- (a) Be under responsible command;
- (b) Exercise such control over a part of the territory of a State as to enable them to carry out sustained and concerted military operations; and
- (c) Be able to implement international humanitarian law.

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The reality is that more and more States are confronted with non-international armed conflicts taking place on their territory involving a number of dissident armed groups fighting against one another, or armed groups fighting against the established Government which either does not control part of the territory or does not have a proper chain of command. These types of non-international armed conflicts must also fall under the jurisdiction of the Court.

A threshold such as that found in the Bureau proposal not only would represent a step back from existing law but would also be so restrictive that it would prevent the Court from dealing with the type of atrocities in conflicts which the world has witnessed over the past years.

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