



CROATIA

PERMANENT MISSION TO THE UNITED NATIONS
NEW YORK

Check against delivery

Statement by

H.E. Ambassador Andreja Metelko-Zgombić
Director-General
Directorate for European Law, International Law
and Consular Affairs
Ministry of Foreign and European Affairs

on

Agenda item 83
Report of the International Law Commission
(Part II, Chapter VII)

70th Session of the General Assembly
Sixth Committee
20th Meeting

4 November 2015

United Nations, New York

820 Second Avenue, 19th Floor, New York, NY 10017
tel. (212) 986-1585, fax (212) 986-2011
e-mail: cromiss.un@mvep.hr
<http://un.mvp.hr>

Mr. Chairman, distinguished colleagues,

It is a special privilege to address this Committee on the work of the International Law Commission relating to the topic "Crimes against humanity". Let me express our appreciation for the very informative and comprehensive First report prepared by Special Rapporteur Mr. Sean Murphey, as well as for the presentation of the (first) four provisionally adopted draft Articles. Croatia strongly supports all efforts aimed at developing a global international instrument for the prevention, prosecution and punishment of crimes against humanity and States' cooperation in that regard and stands ready to actively contribute to this endeavor.

At this very early stage of the project, I would like to share with you our position on a few important elements contained in the draft Articles provisionally adopted by the Commission. Let me start by saying that Croatia welcomes brake-up of the initially proposed draft Articles by Special Rapporteur, which resulted into the four finally provisionally adopted draft Articles, including a separate Article on Scope. Such an approach, in our view, contributes to the conceptual clarity and streamlining of the subject, according to the model previously applied by the Commission.

As regards the content of the provisionally adopted draft Articles, two issues, in particular, attracted our attention:

1. inclusion of the reference to armed conflict in the provisionally adopted draft Article 2; and
2. reference to a "State or organizational policy" contained in the provisionally adopted draft Article 3 para 2.a.

Mr. Chairman, distinguished colleagues,

It is one of the Commission's most important tasks during this project, first of all, to clearly identify and precisely define the legal notion and scope of crimes against humanity. In this undertaking the Commission should, to the greatest extent possible, draw from existing legal framework which resides in various international conventions, customary international law, national laws and prior instruments of the Commission, as well as the various international criminal courts and tribunals' statutes and jurisprudence. This project should also include a drawing of a precise line between core international crimes, and in particular, crimes against humanity and war crimes - still somewhat blurred in theory and practice - as testified, for example, by jurisprudence of the ICTY (e.g. - the question if persons *hors de combat* are included or excluded from the ambit of crimes against humanity when the crimes committed against them occur as part of a widespread or systematic attack against the civilian population, see e.g. case Šljivančanin/Radić/Mrkšić II as opposed to case Martić II). The Commission's contribution in that regard would be highly appreciated as a necessary precondition for a solid codification of generally accepted developments in international humanitarian, international criminal and international human rights law.

In that context, and starting from the history of the notion of crimes against humanity, basic elements contained in the definition of that notion and the current stage of its development, Croatia sees no need for the specific reference to armed conflict in provisionally adopted draft Article 2. In our view, the omission of such reference in case of crimes against humanity would additionally (this time in relation to armed conflict) accentuate the distinction between crimes against humanity and war crimes. War crimes are inseparably connected to armed conflict, can be committed exclusively in armed conflict or on territories under occupation (yet another potential for confusion between crimes against humanity and war crimes as regulated by the Fourth Geneva Convention) and, consequently, reference to armed conflict represents an inevitable part of their definition. On the other hand, crimes against humanity are not necessarily connected to armed conflict - they can be equally committed in armed conflict as well as outside armed conflict - i.e., according to the contemporary and expressly confirmed understanding, armed conflict does not in any way form an essential part of these crimes. This significant difference between crimes against humanity and war crimes would, in our opinion, be better expressed by omission of any reference to armed conflict than by its superfluous inclusion. We believe that the provisionally adopted draft Article 2 should reflect the end process of almost one hundred years development of the notion of crimes against humanity without any unnecessary (historical) connotations. In that vein, it is significant to note that the definition of crimes against humanity contained in Article 7 of the Rome Statute, which to the greatest extent served as a model for crafting draft Article 2, and which should be regarded as reflecting the latest development of customary international law – contains no reference to armed conflict whatsoever.

Mr. Chairman,

As regards the reference to specific elements that render crimes against humanity different from other core international crimes (e.g. widespread or systematic attack; directed against any civilian population; with knowledge of the attack), and, in particular, reference to the existence of “a State or organizational policy”, it is, in our view, important to clearly confirm this understanding according to which such reference, as contained in provisionally adopted draft Article 3.2.a., undoubtedly includes conduct of non-state actors. In that vein, Croatia considers the words “organizational policy” as encompassing policy or actions of any organization or group with the capacity and resources to plan and carry out a widespread and systematic attack, which may or may not be affiliated with the Government - precisely as it was suggested by the Commission in its comments to what later became the draft Code of Crimes against the Peace and Security of Mankind, as well as in accordance with contemporary jurisdictional trends (ICTY, ICTR). By unambiguous extension of the scope of the draft articles to non-state actors the Commission would uphold the basic principles laying at the origin of the notion of crimes against humanity – i. e. the fundamental understanding that certain rules representing basic humanity should be respected in all situations, at all times, and by all - without any exception as regards the character of a conflict or its participants. Croatia, having particularly in mind the recent developments in Syria and Iraq, with prevailing role of non-state actors, strongly supports such an approach.

In conclusion, Mr. Chairman, one last, (almost editorial remark), which concerns the provisionally adopted draft Article 3.1.j and 3.2.h, where - instead of currently deployed, but slightly outdated as well as very specific term “apartheid” (although fully aware of Article 7.2.h of the Rome Statute) - we would rather see a more general and comprehensive notion of “racial discrimination or segregation”.

Mr. Chairman, distinguished colleagues, thank you for your attention.