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Statement by

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on

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Mr. Chairman, distinguished colleagues,

It is a great pleasure to address this Committee on the work of the International Law Commission under the Cluster 3, covering three important topics (Protection of the environment in relation to armed conflicts; Immunities of State official from foreign criminal jurisdiction; Provisional application of treaties). Let me express our appreciation for the most able work of the Special Rapporteurs Mrs. Marie G. Jacobsson, Mrs. Escobar Hernandez and Mr. Gomez-Robledo and their invaluable contribution to the work of the Commission. Croatia will continue to actively participate in the discussions on the abovementioned topics and actively follow them.

Mr. Chairman, distinguished colleagues,

As regards the topic "Protection of the environment in relation to armed conflicts" Croatia supports the efforts aimed at clarifying and further elaborating the scope and content of the rules and principles of international environmental law applicable in armed conflicts, without any modification of the law of armed conflict or its rules, and in particular rules on specific weapons. We welcome the Commission's intention to include non-international armed conflicts in this project (while excluding internal disturbances and tensions), while at the same time, recognizing the possibility that scope of protection and applicable rules would differ for international and non-international armed conflicts, and in particular so as regards phases I and III of the project.

In connection to the use of terms during this exercise, and in particular terms „environment" and "armed conflict", in our view, the definition of the term "armed conflict", as clearly defined in the codified international humanitarian law, should be retained and fully applied in the current context. On the other hand, as regards the term "environment", and having in particular in mind that the existing international legal instruments contain different definitions of this term, the definition adopted by the Commission during the work on the Principles on the allocation of loss in the case of trans-boundary harm arising out of hazardous activities of 2006 (principle 2) - seems as an appropriate starting point.

Mr. Chairman, distinguished colleagues, should there be a need to address the treatment of cultural heritage within the subject at hand at all, we strongly suggest a careful approach in order to avoid unnecessary expansion of the scope of the topic or revising established international norms on the protection of cultural heritage. It is our firm belief that a clear distinction should be made between the protection of the environment and the protection of cultural heritage, once again having in particular regard to the existing legislation on the protection of cultural heritage in the event of armed conflict.

Mr. Chairman, distinguished colleagues,

As regards the draft principles provisionally adopted by the Drafting Committee, let me share with you two comments:

1. We strongly believe that it is not possible simply to transpose provisions of the law of armed conflict - as it applies with regard to the protection of civilians or civilian objects - to the protection of the environment (draft principle II-1). Accordingly, Croatia welcomes the Special Rapporteur's decision not to pursue initially proposed formulation

of "civilian status" of the natural environment and supports the draft principle as provisionally adopted by the Drafting Committee – which has to be read in reference to the most relevant principles and rules of armed conflict.

2. As regards draft principles I-x and II-5, which deal with the designation of protected zones, we strongly believe that this important question requires further thorough examination. In that context, we fully support suggestions addressed to the Special Rapporteur to continue its analysis of this issue and to further elaborate on the proposed regime, including differences in a degree of protection offered to the States by different ways of establishing such areas.

Finally, Mr. Chairman, distinguished colleagues, as regards Croatian legislation aimed at protection of the environment in relation to armed conflict, let me inform you that Croatia is a State Party to all international instruments relevant in this field, and in particular to the Additional Protocol I to the 1949 Geneva Conventions and the Rome Statute. The only exception in that regard is the ENMOD Convention, to which we have intention to accede in the nearest future (internal procedure in that regard has been recently initiated). In addition, let me mention that the Croatian Criminal Code in its Article 91 para 4 criminalizes "the launching of an attack in connection to an armed conflict in the knowledge that such an attack would cause widespread, long-term and severe damage to the natural environment which is manifestly excessive to the concrete and direct overall military advantage". Finally, let me add that internal rules and guidelines of the Croatian Armed Forces, including manuals on tactical and operational processes, contain guidelines for the protection of the environment during exercise or combat activities of the armed forces.

Finally, Croatia fully supports the proposal to formulate a separate draft principle which would reflect a duty for States to undertake protection of the environment in relation to armed conflict through national legislative measures consistent with applicable international law.

Mr. Chairman, distinguished colleagues,

As regards the topic „Immunities of State official from foreign criminal jurisdiction", Croatia supports approach followed by the Special Rapporteur, including its intention to clearly define "an act performed in an official capacity". We find the proposed definition, in particular after the valuable work of the Drafting Committee on the final shape of the relevant paragraph, very useful and contributing to legal certainty of the subject. In that context, we welcome the deletion of the initially proposed link between "an act performed in an official capacity" and the crime, in order to avoid any possible misunderstanding or erroneous interpretation of the nature of an official act (understanding of an official act *per se* as a crime).

As regards provisionally adopted draft Article 6, dealing with the material scope of the immunity of State officials, Croatia believes that its content does not fully correspond to its title. Namely, Article 6 para 3, while dealing exclusively with persons having *ratione personae* after those persons have ceased to be State officials, introduces - precisely because of previous immunity *ratione personae* of those persons - their

immunity *ratione materiae*. Although not fully convinced that there is a need for this paragraph (whose content seems to better fit as a commentary, either to this Article or article 4), we are of the view, that if retained, para 3 should explicitly recognize and properly reflect existing intersection of the status based immunity *ratione personae and* conduct based immunity *ratione materiae*. Namely, we see this transition as a slightly different problem from the problem of immunity *ratione materiae stricto sensu* dealt with in the two previous paragraphs. Such additional explanation would, in our view, make clear why this provision is introduced in the Article 6, and not, for example, in the already adopted Article 4. (which, in its para 3, implies that after the loss of immunity *ratione personae* respective person shall enjoy immunity *ratione materie).*

Mr. Chairman, distinguished colleagues, Croatia supports the "single act dual responsibility" concept as introduced by the Special Rapporteur, according to which any act of the State official performed in an official capacity is attributable not only to that person (individual criminal responsibility), but also to the State that provided him/her with immunity (State responsibility). As confirmed by the previous diligent work of the Commission, and in particular by the Drat Articles on Responsibility of States for Internationally Wrongful Acts, this concept is firmly established in international law and should be properly reflected in the draft Articles.

Finally, let add that Croatia strongly supports restrictive approach to the issue of immunity from criminal jurisdiction, according to which such immunity is necessary constrained by a number of limitations or exceptions, in particular as regards core international crimes, acts *ultra vires*, *acta jure gestionis* or acts of State officials accused by international courts or tribunals (whose warrants States are obliged to execute). In that context, Croatia is looking forward to the next year's work of Special Rapporteur which, as announced, should thoroughly address the key questions of limitations and exceptions to immunity and their consequences.

Mr. Chairman, distinguished colleagues,

Finally, as regards the topic "Provisional application of treaties" let me stress that Croatia fully shares the Commission's understanding according to which the rights and obligations of a State which has decided to provisionally apply a treaty are the same as if the treaty was in force (legal effects of provisional application of treaties) and that a breach of the obligations assumed under the provisional application of a treaty is an internationally wrongful act which gives rise to the international responsibility of the State.

Croatia appreciates the initial series of the draft guidelines on the provisional application of treaties presented by the Special Rapporteur, including thorough analysis of the relationship between provisional application and other provisions of the 1969 Vienna Convention, and is very much looking forward to his intention to continue formulating supplementing drafting guidelines. In that context, there are a number of principles and rules pertinent to provisional application which, in our view, should, in one way or another, find their rightful place and precise articulation in the draft guidelines. Here we primarily think of the fact that legal effects of the provisionally applied treaties

are enforceable and cannot subsequently be called into question in view of the "provisional" nature of the treaty's application. Equally so, legal effects of provisional application encompass not only the obligation to refrain from defeating the object and purpose of the treaty similar to obligations expected of a State that signs an international agreement, but also very important obligations arising from the rule *pacta sunt servanda* and the obligation to fulfil the treaty in the good faith. All these principles and rules would generally come under (or would be derivable from) guideline 4, which, in our opinion, should be further developed or serve as an basis for development of additional principles.

Furthermore, Mr. Chairman, and as regards concrete Draft guidelines, Croatia believes that the reference to „such as a resolution adopted by international conference" in last part of the Draft guideline 2, should be taken with caution. Namely, in our view, the adoption of a resolution by an international conference does not necessarily constitute an agreement among States which participated in the conference which adopted the resolution on the provisional application of a treaty concerned. Such a resolution, at best, (only) in general terms allows for the possibility of the provisional application of a treaty, subject to some kind of later consent of each State concerned. In other words, the „(flexible) agreement" on provisional application is finally reached only if and when individual State make use of this opportunity and decides on provisional application of a treaty according to the possibility provided for such action in relevant resolution. Accordingly, and for the sake of clarity, we would therefore propose to omit the reference to "resolutions" in the Draft guideline 2.

As regards the draft guideline 5, Croatia would favor formulation of this draft guideline in line with paragraph 57 and 59 of the Special Rapporteur Third report. At the same time, in our view, it would be helpful also to address a possibility of termination of provisional application because of a material breach or simply because of its non-application by other State/States concerned.

Mr. Chairman, distinguished colleagues, let me further inform you that Croatia's legislation generally allows provisional application and our domestic law - the Law on Conclusion and Implementation of Treaties of 1996 - contains specific provision regulating provisional application of treaties. According to its Article 10, the consent for provisional application may be grated on behalf of the Republic of Croatia only upon approval of the President (this provision is not any more applicable after constitutional changes abandoning the presidential system) or the Government. The approval is in principle given within the governmental decision on initiating the process of conclusion (i.e. signing) of the treaty. At the same time, para 2 of the same Article, paraphrasing almost explicitly para 2 of Article 25 of the Vienna Convention on the Law of Treaties, stipulates that "if not otherwise provided by the treaty or if negotiating parties did not agree otherwise, provisional application terminates if the Republic of Croatia decides not to become a party to the treaty concerned and notifies such intention to other international subjects amongst which the treaty concerned provisionally applies".

Finally, Mr. Chairman, distinguished colleagues, let me inform you that Croatia since 1991 agreed to provisional application of 76 treaties, including a number of treaties of particular relevance.

Thank you for your attention.