CROATIA

Statement by

Mr. Sebastian Rogač
First Secretary, Legal Advisor

at the

71st Session of the General Assembly – Sixth Committee

on

Report of the International Law Commission
(Cluster 3, Chapters X, XI and XII)

1 November 2016

Check against delivery

PERMANENT MISSION OF THE REPUBLIC OF CROATIA TO THE UNITED NATIONS
820 SECOND AVE, 19. FL, NEW YORK, NY 10017 | TEL: 212 986 1585 | FAX: 212 986 2011 | CROMISS.UN@MVEP.HR

Mr. Chairman, honorable colleagues,

It is a special privilege for me to address you again this year and discuss Croatia's views on the work of the International Law Commission (ILC).

I will first turn to the topic of "Immunity of State officials from foreign criminal jurisdiction" and start by congratulating the ILC and Special Rapporteur Ms. Concepción Escobar Hernández on her work thus far.

Our intervention today concerns draft article 7 that enumerates crimes in respect of which immunity does not apply. While we consider the list as central to the topic, we would appreciate streamlining our thinking about the definition of these crimes. In particular, we note that the definition of "torture" in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) differs from the definition that was adopted as part of the ILC's ongoing work on the topic of "Crimes against Humanity". As we are supportive of such a wider approach definition-wise in accordance with Article 1 para 2 of the CAT, it is, in our view, necessary to define whether "torture" as a crime in respect of which immunity does not apply – in particular since there is an explicit reference in the report to "torture" as a crime against humanity – is "torture" in the sense of CAT or indeed in the sense of ILC's work on "Crimes against Humanity".

Croatia remains supportive of the ILC's work on this issue and looks forward to the next report which should address the procedural aspects of immunity of State officials from foreign criminal jurisdiction.

The second part of my today's intervention concerns "Provisional application of treaties", in regard to which we are thankful to Special Rapporteur Mr. Gómez-Robledo for his work on clarifying this issue. As a State that indeed utilizes the institute of provisional application of treaties, Croatia finds this set of comments and guidelines on how to provisionally apply treaties in practice very useful.

The legal effects of provisional application concern primarily obligations that arise from the principle of *pacta sunt servanda*, i.e. the duty to perform obligations that stem from such a legal relationship in good faith, including the obligation to refrain from defeating the object and purpose of the treaty. Croatia made observations to this effect last year, so I will not repeat them today. However, we would – in that sense – welcome supplementing draft guideline 2 to reiterate that the practice of provisional application of treaties needs to

adhere not only to the "Vienna Convention" and "other rules of international law", but also to the principles of international law. The reference to principles of international law is quite frequent in this report and adding it at the end of the sentence which is now draft guideline 2 would do justice to that fact.

The duty to perform – in good faith – obligations that stem from such a legal relationship, no matter its provisional nature, is crucial to understand the possibility that a State's breach of this relationship, as discussed in Mr. Gómez-Robledo's report, can actually give rise to the other State's decision to terminate or suspend the provisional application of a treaty. Croatia agrees that Article 60 of the Vienna Convention on the Law of Treaties is – *mutatis mutandis* – applicable in its entirety in the context of provisional application of treaties.

As for why States choose to put an end to provisional application in case of a material breach of a Treaty being provisionally applied, and in particular having in mind Article 60 of the VCLT, Croatia is in full agreement with Mr. Gómez-Robledo and his remarks in paragraphs 80 and 81. Accordingly, a trivial violation of a provision that is considered essential may constitute a material breach and in assessing the "essentiality" of treaty provisions in context of termination or suspension of the operation of the treaty "account must be taken of the reasons motivating the conclusion of the treaty" and precisely these reasons may constitute an evidence of essentiality. The Vienna Convention and its most authoritative commentators agree that what matters here is what matters to the parties and in that sense, there is no ground for the Report of the International Law Commission to assert otherwise. Croatia notes with regret that this subjective, as well as rather objective component in understanding the concept of material breach and the extent and intensity of its violation was disregarded recently by an *ad hoc* international tribunal.

Mr. Chairman, distinguished colleagues,

Let me conclude with also congratulating the ILC and Ms. Jacobsson on their efforts on the question of "Protection of the environment in relation to armed conflict". As a State that recently experienced the devastating effects of armed conflict, Croatia follows closely the work of the ILC on this issue and considers it appropriate to further assess the possibility of transforming these draft principles into draft *articles*, so as to show the importance that the international community attaches to them.
Thank you for your attention.