

THE REPUBLIC OF SERBIA

SEVENTY-FIRST SESSION

SIXTH COMMITTEE

AGENDA ITEM 85: The scope and application of the Principle of Universal Jurisdiction

Check against delivery

S T A T E M E N T

by

Mr. Boris Holovka

Minister Counsellor

Permanent Mission of the Republic of Serbia to the United Nations

13 October 2016

Mr. Chairman,

As stated previously by my delegation and affirmed by a number of speakers, the principle of universal jurisdiction is a valuable tool for prosecuting crimes of grave nature, particularly gross violations of International Humanitarian Law. In this respect, Serbia strongly believes that war crimes, crimes against humanity and the crime of genocide could never fall under exclusive jurisdiction of a State on whose territory such crimes were committed and that they are, as such, recognized as a concern of the international community as a whole. Having that in mind, we consider that national jurisdiction, which always has to be complementary to international jurisdiction, can be an essential subsidiary tool in fighting impunity, particularly where there is no manifest will by the States of nationality.

In that regard and within the scope of universal jurisdiction provided by the Criminal Code of Serbia, the Law on the Organization and Competence of Government Authorities in War Crimes Proceedings of the Republic of Serbia of 2003 provides for jurisdiction over war crimes committed in the territory of the former Yugoslavia during the conflict, regardless of the nationality of the suspect or of the victim. The defendants in trials under the Law have been those found in the territory of Serbia and not indicted by the neighbouring countries, with no trials held in absentia. The trials conducted under this Law are monitored by the OSCE Mission in Serbia and have become a part of ICTY monitoring during the process of its completion strategy.

With regard to the Statement made by the representative of the Republic of Croatia regarding the above-mentioned Law and its application, let me present the following facts:

The provisions of the Law are in full accordance with, and are based on, the Convention on the Prevention and Punishment of the Crime of Genocide and the Geneva Conventions of 1949 as it prevents impunity for these crimes. The Law was adopted because of the obligation of the Republic of Serbia to the ICTY and does not target Croatia or any other State, in particular. After all, only one, out of 170 persons tried under this Law is the citizen of Croatia. The Law was given a positive opinion by the Venice Commission and has been in force since 2003.

This Law is not in contravention with the bilateral agreement on cooperation in this matter that Serbia concluded with Croatia in 2006 and with the Memorandum of

Understanding on prosecutorial cooperation of 2005 between the two countries. The cooperation under these documents had proceeded unimpeded until the Law Declaring Null and Void Certain Legal Documents of the Judicial Bodies of the former JNA, the former SFRY and the Republic of Serbia was adopted by the Republic of Croatia in 2011. The Law declared null and void all legal acts by which Croatian nationals were suspected, indicted or sentenced for criminal offences during the war in Croatia. Article 3 of the Law provides for the refusal by the Croatian judiciary to act in matters that are contrary to the legal order of the Republic of Croatia and are detrimental to its sovereignty and security. As a consequence, all cooperation ceased and 75 cases involving persons suspected of the commission of war crimes remain pending.

Prior to January 2015, Croatia did not request that Serbia amend its Law on war crimes which leads us to believe that it is being done now for political reasons. It is evident, therefore, that Croatia's actions are not based on legal grounds, but rather on political motives, as well as an intention to ensure impunity of its nationals for the commission of the gravest crimes.

Serbia will neither amend nor repeal this Law because it is its international obligation, just as it is the obligation of the Republic of Croatia, to prosecute the persons suspected of committing war crimes regardless of their nationality. We consider that all those who committed war crimes should be prosecuted and that, if not prosecuted in their own States, they should be prosecuted and tried in other countries ready to do so in accordance with the principles of international law. After all, the question of the punishment of war crimes has long exceeded the scope of competence of national jurisdictions and become a rule of customary international law, contained in many international legal documents ratified both by Serbia and Croatia.

With regard to the claims made by the representative of the Republic of Croatia to the effect that universal jurisdiction is misused for political purposes and in order to "rewrite history", perhaps it is exactly Croatia's efforts in this field that are intended to "rewrite history" and swipe aside the crimes committed against the Serbian population during the conflict of the 1990s, as well as those committed by the fascist regime of the Independent State of Croatia in World War Two. Let me recall in that connection, Mr. Chairman, that only one person has been sentenced by the Croatian judiciary for the crimes committed in operation "Storm", for instance, in which 2500 Serbs, mostly civilians, were brutally killed, while 250 thousand of them were expelled, that out of 3584 indictments for war crimes raised by the end of 2015, only 119 were raised against the members of the Croatian armed forces and that rehabilitation of perpetrators of war crimes in Croatia, from conflicts recent and past, continues unabated.

In conclusion, I would like to address a call to the Republic of Croatia to try war crimes itself rather than to make baseless accusations of my country. The Republic of Serbia remains truly committed to a common future in Europe, promotion of regional cooperation and the goodneighbourly relations with Croatia, based on mutual respect and understanding.

Thank you.