



CROATIA

Statement by

Mr. Toma Galli
Director-General for International Law
Ministry of Foreign and European Affairs

at the

72nd Session of the General Assembly – Sixth Committee

on

Report of the International Law Commission
(Clusters 1-3, Chapters IV., VIII. and IX.)

24 October 2017

Check against delivery

Mr. Chairman, distinguished colleagues,

Let me congratulate you, Mr. Chairman, on your election as the Chair of the Sixth Committee and warmly welcome the presence of the Chair and Members of the ILC at this session. We also thank Mr. Nolte for a very informative introduction and presentation of this year's report of the Commission.

In my intervention I'll shortly comment on the topic of "Crimes against Humanity", as well as on other two topics – Peremptory norms of general international law (*jus cogens*) and Succession of States in respect of State responsibility - since our comments on the latter two topics are highly interlinked with - and follow the same basic idea - as our comments on the topic under discussion.

Mr. Chairman,

Croatia strongly supports the work of the Commission under the topic of "Crimes against Humanity" and welcomes the efforts aimed at developing a global international instrument for the prevention, prosecution and punishment of these crimes, having - at the same time - in mind, existing international initiatives in this field. We thank Mr. Sean Murphey and the Commission for their thorough and dedicated work on this important subject and transmission of the draft Articles for comments and observations. Croatia will carefully consider the draft Articles and provide the Commission with further detailed observations within the requested deadline.

As for now let me briefly mention one general and one more specific point:

1. We note that the definition of "torture" adopted within the work on this topic, differs from the definition of "torture" contained in, for example, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or, for example, the definition of "torture" adopted as a part of Commission's ongoing work on the topic "Immunity of State officials from foreign criminal jurisdiction".

However, it is our firm belief that - for the sake of clarity and cohesion of international law - and in order to prevent its (even) further fragmentation, the definition of "torture" should replicate the definition contained in the relevant international law instruments and drafts under Commission's consideration. In that context, and as regards the use of definitions

and other well established terms, and not only in this case, but in general, in the work of the Commission, Croatia is supportive of an approach which will preserve existing “definitional achievements” and their employment in a uniform manner. In short - it is our suggestion that in its work Commission pays particular attention and starts from the well established uniform terminology developed either within its own work or within the work of any other relevant international body recognized by the Commission. On the other hand, in exceptional cases where changes in existing definitions are necessary in order to accurately reflect new realities, those changes should be thoroughly analyzed and explained, allowing only for minimal aberrations. This remark should in no way be understood as Croatia’s opposition to the progressive development of international law, but exclusively as our advocacy towards its harmonization, coherence and intrinsic purposeful interrelation.

Such an integrative approach is followed in the Commission’s work on a number of topics currently under discussion (for example, Immunity of State officials or Succession of states in respect of State responsibility) and strongly recommended in the Report of the study group of the ILC “Fragmentation of international law: difficulties arising from the diversification and expansion of international law” of 2006.

2. Furthermore, and much more as an editorial remark, we propose to insert the current text of the draft Article 10 “*Aut dedere aut judicare*“ immediately after the text of the draft Article 5 ”Non-refoulement“. The reason behind this proposal is the fact that, in our view, the content of this two draft Articles is highly interdependent and they actually represent obverse and reverse side of the same issue which fact should also be adequately reflected by their position in the text.

Mr. Chairman, with your permission, I will now briefly touch upon two additional topics on the Commission’s agenda - namely Peremptory norms of general international law (*jus cogens*) and Succession of States in respect of State responsibility, since our comments on this two additional topics, as stated before, are closely related to the comments on the topic under discussion.

In that context, let me thank Mr. Tladi, Special Rapporteur for the topic of *jus cogens* on the Second Report, as well as for the presentation of the six draft conclusions. Croatia supports the work on this topic and welcomes further discussions. More concretely, with regard to the draft conclusion 5, especially its para 2, concerning customary international law, as well as its paragraph 3, concerning general principles of law, we strongly believe

that further work on these presumptions should - in order to, as stated above, preserve and improve the clarity, consistency and greater integrity of international law - duly take into account and reflect the Commission's ongoing work on the topic of "Identification of customary international law", as well as the proposed work on the subject of "General principles of law". We are looking forward to the third Special Rapporteur's report, as well as the proposed illustrative list of jus cogens norms, which we generally support.

As regards the topic of Succession of States in respect of State responsibility, Croatia welcomes the inclusion of this topic in the Commission's program of work as well as the appointment of Mr. Sturma as Special Rapporteur.

Croatia takes a great interest in this topic. As some of you might know, the recent dispute on the application of the Genocide Convention in front of the ICJ to which Croatia was a party, hypothetically, *inter alia*, depended precisely on the questions proposed for consideration within this topic. In that dispute, Croatia presented multi-layered argument in support of the Court's jurisdiction, which assumed important previous factual findings and positive answers to a number of significant international legal issues, including the question of attributability of individual criminal acts to States as well as the question of succession of states to responsibility in specific circumstances. The Court converted Croatian assumptions into a number of sub-questions and, responding to the first one - whether the crime of genocide as presented in the claim and the counter-claim was actually committed - found that criminal acts committed, although in their content fell within the scope of the Genocide Convention, did not constitute genocide because the *actus reus* was not accompanied with the sole intention to commit genocide, i.e. required *dolus specialis* was lacking. After arriving to that conclusion, the Court, as rightly noted in the Report, did not consider other two sub-questions within the jurisdictional construct (attributability and succession of responsibility) which represent the very essence of the topic Succession of States in respect of State responsibility.

Croatia stands by its position presented in front of the ICJ and supports the Special Rapporteur's first provisional conclusion regarding questionability of general non-succession of states responsibility in modern international law. We strongly support efforts aimed at clarifying this important issue and its potential to fill the gaps within international law by developing new norms, but having at the same time in mind the subsidiary nature of these rules.

Finally, and as the *ceterum censeo* of my intervention, we reiterate strong support for the Special Representative's explicit intention to ensure a "systematic integration approach" [...] "and utilize the same terms and definitions in a uniform manner".

Croatia stands ready to contribute to further deliberations on this topic and we are looking forward to the Special Rapporteur's next report.

Thank you.