CROATIA

Statement by
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at the

73rd Session of the General Assembly
Sixth Committee

Agenda Item 82
Report of the International Law Commission
on the work of its seventieth session
Cluster III

31 October 2018

Check against delivery

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Mr. Chairman, distinguished colleagues,

At the outset, I would like to take this opportunity to welcome the Chair and Members of the International Law Commission and to thank them for their presence today as well as for the presentation of the Commission´s report.

It is my great pleasure to appear before you this year and to share with you Croatia´s views on the work of the International Law Commission.

The focus of our intervention this year is on two topics of the ILC Report – „Succession of States in respect of State responsibility" and „Peremptory norms of general international law (*jus cogens*)".

Mr. Chairman,

As a country that suffered a brutal aggression and massive destructions over a major part of its territory in 1990-ies, during and after the process of dissolution of the predecessor State, the topic „Succession of States in respect of State responsibility" is of utmost importance to the Republic of Croatia. We highly appreciate the significance that the ILC has given to this issue so far and we would like to commend the Special Rapporteur, Mr. Pavel Šturma, for his efforts invested in this important topic. We find his second report and the draft Articles contained therein to be a valuable contribution to the clarification of this extremely complex issue.

In that context, we would especially like to point out draft Article 11, which regulates specific situations in case of a dissolution of states. In our view, Mr. Šturma has rightly noted **that both** - *territorial link and devolution of an organ of the predecessor state into the organ of one of the successor states* - should be taken into consideration as key elements when determining the holder of obligations for internationally wrongful act. Having that in mind, it is our strong opinion that both of these factors – namely territorial link, **as well as devolution of an organ of the predecessor state into the organ of one of the successor states** - should be **explicitly included** in the draft Article 11.

As rightly pointed out by the Special Rapporteur, **precisely this second factor** (devolution of an organ as well as responsibility for internationally wrongful acts), **seems also to be recognized by the International Court of Justice** as a part of its "jurisdiction construct" in the case between Croatia and Serbia on the application of the Genocide Convention.

Namely, in establishing its jurisdiction in this case, the Court accepted Croatia's proposition according to which acts constituting violations of the Genocide Convention committed before 27 April 1992 were attributable to the Socialist Federal Republic of Yugoslavia (SFRY) - that at the time was party to the Genocide Convention - and - as such - was responsible for its violations (Judgment, paras. 106-117). When – upon its formation on 27 April 1992 (after which date the Court's jurisdiction was not disputed) – the Federal Republic of Yugoslavia (FRY) declared that it "shall strictly abide by all the commitments that the SFRY assumed internationally", including the responsibility of the SFRY for the violations of the Genocide Convention, in case other

conditions are met, - the FRY (and subsequently Serbia) also successeded to the responsibility of the SFRY for the violations of the Genocide Convention. This is a rather multi-layered argument which obviously assumes important previous factual findings and answers to a number of significant international legal issues, including the question of attributability of individual acts to states as well as the issue of succession of states to responsibility in specific circumstances - the theme of Mr. Šturma's Report.

By accepting aforementioned Croatia's proposition, the Court made the decision on its (full) jurisdiction in this case dependent on positive answers to a series of consecutive questions:
(a) first of all - whether the events referred to by Croatia actually occurred and whether they were in contravention to the Genocide Convention, and – if so,
(b) second - whether these events were attributable to the SFRY at the time when they occurred, and whether they engaged SFRY's international responsibility,
(c) and, finally, if the latter is the case -whether the FRY, and subsequently Serbia, succeeded to that responsibility.

In short, the Court's jurisdictional construct can be paraphrased in the following manner: the Genocide Convention did not apply to Serbia retroactively, but - although at the relevant time Serbia was not a party to the Genocide Convention - on the basis of the supposed violation thereof, the attributability of such violation to SFRY, which was a party to the Genocide Convention, and the responsibility for the violation that FRY "inherited" from the SFRY due to the devolution of the organs of the SFRY into the organs of the FRY, (which responsibility) Serbia took over from the FRY - Serbia is potentially responsible for the violations of the Genocide Convention.
And there we are at the gist of our discussion on succession of states in respect of state responsibility.

As - again - rightly stated by the Special Rapporteur, **the Court, by accepting the jurisdiction in this case, obviously opened the possibility for succession of state responsibility on the basis of the devolution of organs, but never really tackled this issue because of a negative response to the first question in its jurisdictional construct** – i.e. - whether the events referred to by Croatia actually occurred and whether they were in contravention to the Genocide Convention.

Finally, as regards the issue of succession of responsibility, let me add that, in the light of the above, it is obvious that **when analysing different forms of succession of state responsibility, one should also pay attention to (not so unlikely situation) in which part or parts of the predecessor state that become successor states, could bear responsibility for internationally wrongful acts not only towards third states, but also towards other successor states of the once common state.**

Mr. Chairman,

The second topic of our interest is "Peremptory norms of general international law (*jus cogens*)", and Croatia has always been supportive of the work and discussions on this topic. I would like to welcome the third report of the Special Rapporteur, Mr. Dire Tladi which considered the

consequences and legal effects of peremptory norms of general international law (*jus cogens*), as well as the proposed 13 draft conclusions.

In that context, we would like to point out the draft conclusion 10.1. („*A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law (jus cogens). Such a treaty does not create any rights or obligations.*") and the draft conclusion 11.1. ("*A treaty which, at its conclusion, is in conflict with a peremptory norm of general international law (jus cogens) is invalid in whole, and no part of the treaty may be severed or separated*."), which both, in our view, in essence address the same issue in a same manner. Having that in mind, we would suggest you to consider the possibility of merging these two draft conclusions.

As was mentioned in our intervention last year, we generally support the proposed illustrative list of *jus cogens* norms and in this respect, we are looking forward to the next Special Rapporteur´s report that could contain proposal on how to proceed with the question of an illustrative list of *jus cogens* norms.

Finally, Croatia is particularly pleased with the Commission's decision to include in its long-term programme of work the topic *Universal criminal jurisdiction*. We commented on this important issue in a number of occasions, in particular elaborating on the basic elements (nature, scope and limits) as well as a proper implementation (procedural safeguards) of this noble concept, cautioning thus against its misuse. **In that context, Croatia particularly highlighted the point that universal jurisdiction is a jurisdictional basis of last resort. In other words, it is to be executed only when primary competent state [on the basis of the principle of territoriality, active nationality or passive nationality] is - for a different reasons - unable or unwilling to act.** At the same time, we also cautioned against serious misinterpretations of universal jurisdiction through changes of its spatial (from universal to regional) and temporal (from a posteriori to a priori) framework, leading thus to flagrant infringements of other states' sovereignty.

In short, we strongly believe that the work of the Commission on this issue bears great potential for further clarification of this important legal principle - hopefully through guidelines or conclusions to the practical utility to States.

I thank you.