



CROATIA

Statement by

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- *Check against delivery* -

Mr. Chair, distinguished colleagues,

At the outset, let me take this opportunity to welcome the Chair and the Members of the International Law Commission and reiterate our deep appreciation of their work, and to thank them for the presentation of the Commission's report.

In this year's statement we will touch upon all topics under considerations of the Commission.

[Immunity of State officials from foreign criminal jurisdiction]

Mr. Chair,

Allow me to begin with the topic "Immunity of State officials from foreign criminal jurisdiction" and in this regard we welcome the first report of the Special Rapporteur Mr. Grossman Guiloff continuing the work of his predecessors on this important and contemporary matter. Recalling the importance of balancing the principle of sovereign equality of States with accountability for international crimes and with regard to the possible expansion of the list of crimes covered by draft article 7, we would like to emphasize that the crime of aggression is the "mother of crimes" during which numerous war crimes and crimes against humanity are committed. Hence, it is one of the crimes covered by the Rome Statute and, it is included within our national criminal law. We support article 7 as a central provision of the draft articles which is crucial for ensuring accountability for the most heinous crimes. Therefore, the list of exceptions to functional immunity in draft article 7 should also contain a reference to the crime of aggression, especially since it is a leadership crime which requires to overcome immunities in order to ensure accountability, as well as, its prevention. Furthermore, since Croatia was a victim of aggression during the 1990-es, we encourage reconsidering inclusion of the crime of aggression as well in the list of crimes in draft article 7.

[Sea-level rise in relation to international law]

Mr. Chair,

Let me now turn to the topic "Sea-level rise in relation to international law" which has proven to be one of the fast-growing global risks. Due to its coastal geography, Croatia is not immune to the threats posed by sea-level rise so we have been and will continue to closely and actively follow future discussions and deliberations of the ILC and the Study Group on pressing existential threats posed by sea-level rise.

We thank the Study Group and its Co-Chairs Ms. Galvao Teles and Mr. Ruda Santolaria for their efforts and we welcome the additional paper on issues related to statehood and the protection of persons affected by sea-level rise. We find the issue of statehood and protection of persons of particular importance since the potential effects of the sea-level rise to this end may cause unprecedented situations which need to be addressed properly.

Issues around the continuity of statehood in the face of sea-level rise and protection of persons are politically and legally complex, and moreover the applicable legal framework is fragmented. In this context, and despite that law of the sea aspects are addressed separately from the two

sub-topics currently under discussion, we would like to reiterate our long-standing position on the need to fully preserve the integrity of the United Nations Convention on the Law of the Sea. We believe that international courts and tribunals play an important role in clarifying the applicable rules that guide the conduct of States and other actors in dealing with the climate change issues, including the sea-level rise and its effects, many of which are unprecedented.

We look forward to the continuation of discussions on this important topic within the ILC that should be approached with particular caution.

[Settlement of disputes to which international organizations are parties]

Mr. Chair,

Let me turn to the topic “Settlement of disputes to which international organizations are parties“. We thank the Special Rapporteur Mr. Reinisch for his second report which we find very interesting. We specifically concur with guideline 6 which focuses on arbitration and judicial settlement, and core requirements of the rule of law for those who have been empowered to settle a dispute. In our opinion, as we have been advocating in numerous occasions, independence and impartiality of adjudicators are of outmost importance and are paramount requirements for the dispute settlement mechanisms as well as for the credibility of the whole dispute settlement process. Moreover, independence and impartiality of adjudicators are also a legal obligation under applicable rules of international law.

In addition, with regard to this topic we would like to raise once again the issue of definition of the term “international organization” which we also raised last year, but we noted that it has not been reflected in the current report. To recall, Croatia suggested, in order to be more precise, a slight amendment to the definition of the term “international organization” which consists in adding the word “sovereign” in draft Guidelines 2 (a) between words “other” and “entities”. We are convinced that this addition would further improve the text in order to distinguish the international organizations from other international bodies and entities and other subjects of international law.

Furthermore, we notice that the intention of the Special Rapporteur is to address both international disputes and disputes of a private law character. In order to mainstream the work of the Commission on this important topic and to avoid any potential challenges, we believe that the focus of the future Commission’s considerations should be on international disputes, and to leave the disputes of private law character aside since those are, in principle, governed by national legislation.

We are looking forward to the further examinations of this topic.

[Subsidiary means for determination of rules of international law]

Mr. Chair,

Let me briefly touch upon the topic “Subsidiary means for determination of rules of international law”, more precisely Conclusion 4, which stipulates the role of decisions of

international and national courts and tribunals as subsidiary means for the determination of rules of international law. In this sense Croatia would like to link it with the deliberations on the previous topic “Settlement of disputes to which international organizations are parties” and to emphasize that the core principles of independence and impartiality are of outmost importance here as well and need to apply. Namely, in order for a decision of a wide variety of bodies, not just judicial ones - as explained in Commentary on Conclusion 4 – to be considered as part of the process of identifying or determining the existence and content of rules of international law, the independence and impartiality of those bodies and their adjudicators are essential and crucial, a paramount prerequisite.

[Prevention and repression of piracy and armed robbery at sea]

Mr. Chair,

With regard to the topic “Prevention and repression of piracy and armed robbery at sea” Croatia considers this to be a very important and contemporary issue, and believes that we all have to actively contribute to the fight against these evolving security threats. Therefore, we express our appreciation to the former Special Rapporteur Mr. Cisse for his efforts invested in examining this topic and we welcome the appointment of Mr. Savadogo as a new Special Rapporteur. We also welcome the second report, which we find a solid ground for further considerations which on our view should be focused in careful examinations of already existing legal framework and mechanisms with an aim to avoid duplications and repetitions.

[Non- legally binding international agreements]

Mr. Chair,

Let me now briefly touch upon the topic “Non- legally binding international agreements”. We welcome the first report of the Special Rapporteur Mr. Forteau on this important topic considering that we are faced with an ever-increasing number of legally non-binding international instruments. In this regard, with respect to the use of term “agreement” we believe that having in mind the character of these documents and practices of the majority of States, it would be more appropriate to use term “instrument” instead of “agreement”. We believe that the debates and work on this topic in different fora will contribute to a better understanding and practical guidance, without losing the flexibility for States to make use of non-legally binding international instruments. Also, it is our strong view that the intention of subjects, i. e. participants of these instruments is and should be a crucial criterion for determining the nature of these instruments.

[Succession of States in respect of State responsibility]

Mr. Chair,

Lastly my delegation would like to briefly address the topic “Succession of States in respect of State responsibility”, which we have addressed regularly in previous occasions.

In the 1990-es, during and after the process of dissolution of the predecessor State, Croatia suffered the most serious crimes, consequences of which are still present. This year we mark the 20th anniversary of the entry into force of the Agreement on Succession Issues, however the process of succession has not been completed yet. In this regard, Croatia has been supporting the great efforts that the Commission invested in examining this topic since 2017. We took note of the recommendations of the re-established Working Group, and wait for its next report.

Let me conclude by reiterating that Croatia attaches great importance to the role and work of the ILC. We would like to emphasize a need of synthesis of this valuable and profound work, therefore we are looking forward to continued engagement in further debates in the Sixth Committee.

I thank you for your attention.