



PERMANENT MISSION OF THE REPUBLIC OF CROATIA TO THE UNITED NATIONS

Sixty-ninth Session of the United Nations General Assembly

Sixth Committee

Agenda Item 78

Report of the International Law Commission on the Work of its Sixty-sixth Session

Chapter XIV: Other Decisions and Conclusions of the Commission

(Crimes Against Humanity)

STATEMENT OF CROATIA

New York, 28 October 2014

Mr. Chairman, distinguished colleagues,

It is a special privilege to address the Committee on the work of the International Law Commission relating to the Commission's decision to move the topic "Crimes against humanity" from its Long-Term Program of Work to its active agenda.

Croatia congratulates Mr. Sean D. Murphy for his appointment as Special Rapporteur for this important topic. We are encouraged by the Commission's ambitious timetable suggested during last year's introduction of the topic, according to which the Commission may be able to adopt a full set of draft articles on first reading before the end of the current quinquennium.

Croatia fully shares the assessment that the topic crimes against humanity meets all the criteria for its inclusion into the Commission's program of work as being sufficiently advanced in terms of State practice and concrete enough for codification, but also as reflecting the needs of States in respect of the progressive development and codification of international law.

Mr. Chairman,

There is obviously a significant difference in regard to the legal status of three core crimes – namely, genocide, war crimes and crimes against humanity, in particular as regards their codification at the national and international level, including the duty to investigate, prosecute and punish them, with important legal consequences. Namely, unlike the other two core crimes - crimes against humanity - even though they were indirectly introduced to international law by the Hague Conventions of 1899 and 1907, and expressly recognized in the Nuremberg Statute and Protocols Additional to the Geneva Conventions, as well as in the subsequent statutes of International Criminal Tribunals and International Criminal Court, do not necessarily form a part of national legislation nor does a global international agreement exist that requires States to investigate, prosecute and punish such crimes, or to cooperate among themselves towards this end. And all of that, Mr. Chairman, unfortunately despite the fact that those crimes are by all accounts far more prevalent compared to the other two core international crimes. In that context, Croatia fully supports endeavors aimed at developing a global international instrument for the prevention, prosecution and punishment of crimes against humanity as well as cooperation between States in that regard.

Mr. Chairman,

At this very early stage of the project, I would like to share with you our position on a few essential elements of discussion on crimes against humanity to which, in our opinion, the Commission should pay particular attention:

1. It is definitely the Commission's most important task to clearly identify and precisely define the legal notion and scope of crimes against humanity. In this undertaking, in our view, the Commission should, to the greatest extent possible, draw from the considerable foundations established by the international criminal tribunals, and in particular the ICC (definition), their extensive jurisprudence, as well as customary international law. Valuable additions to these sources would also come from practice and comments produced by the ICRC over the years, as well as a definition of the term contained in the Commission's Draft Code of Crimes Against the Peace and Security of Mankind adopted in 1996. This undertaking, in spite of the fact that crimes

against humanity are still not a standard part of national penal codes in many Member States, would hopefully result in the wide acceptance of the proposed definition, including a clarification of any differences that still may exist regarding the notion and scope of the term under discussion, the unification of national legislations and further strengthening of international criminal and humanitarian law.

2. In the discussions to follow Croatia believes that particular importance should be devoted to the question of jurisdiction and its different ramifications. First of all, as regards the possibility of introducing the concept of universal jurisdiction into the draft articles – i.e. the obligation to criminalize crimes against humanity not only in respect of one's own nationals or one's own territory, but also regardless of the fact by whom, against whom or where and, possibly, even when (in referring to the question of statutes of limitation for future crimes) these crimes were committed – Croatia, having particularly in mind the recent developments in Syria and Iraq, but also the nature of contemporary armed conflict with a prevailing role of non-state actors, does support such an approach. At the same time, we fully support the introduction into the draft articles a general obligation to cooperate in the investigation and prosecution of the most serious international crimes on the basis of clearly formulated *aut dedere aut judicare* principle, annulling thus any possibility for the perpetrators of crimes against humanity to avoid national or international justice. This is exactly the approach that the Croatian Penal Code is following while dealing with crimes against humanity and human dignity (Article 90 in connection to Article 16 of the Penal Code of 2013). We sincerely believe that such an approach would open the gates for the efficient prosecution and punishment of all perpetrators of international core crimes regardless of their nationality or location where the stated crimes were committed.

Similarly, it should be noted that universal jurisdiction has to be established and implemented according to universally recognized international criminal law standards and appropriate procedures, including full cooperation between the States concerned.

3. Finally, Mr. Chairman, and still related to the issue of jurisdiction, in our view, the draft articles should be applicable, not only in international, but also in internal (non-international) armed conflicts. By extending the scope of the draft articles to non-international armed conflicts the Commission would uphold the basic principles laying at the origin of the notion of crimes against humanity – i. e. the fundamental understanding that certain rules representing basic humanity, easily detectable by public conscience (which some today obviously fully and completely negate), should be respected in all conflicts, at all times, and by all - without any exception as regards the character of a conflict or its participants.

Mr. Chairman,

Recently we have witnessed many interesting developments precisely in the field we are discussing today on which, in our view, the Commission should closely monitor. I am here in particular referring to the international initiative by a number of States for opening negotiations on a Multilateral Treaty for Mutual Legal Assistance and Extradition in Domestic Prosecution of Atrocity Crimes or the Franco-Mexican proposal on putting the limits on the right to use the veto in the UN Security Council in situations of genocide, war crimes and crimes against humanity. These developments have naturally attracted increasing international attention and support.

In that context, let me use this opportunity to announce my country's intention to join the Multilateral Treaty for Mutual Legal Assistance initiative in the nearest future.

In conclusion, Mr. Chairman, let me express our hope that the very important work of the Commission in this field will, while taking particular care of the Commission's significant work in associated topics (*aut dedere aut judicare*, immunity of state officials), sooner rather than later, result in a new Convention on crimes against humanity, and thus add to the ever stronger architecture for the prevention, prosecution and punishment of the most serious international crimes.

Thank you for your attention.