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Statement by

**Mr. Sebastian Rogač
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on

**Agenda item 85
The scope and application of the principle of
universal jurisdiction**

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Mr. Chairman, distinguished colleagues,

Universal jurisdiction is a powerful tool in our pivotal quest to end impunity. Equally powerful should be our efforts to ensure that universal jurisdiction is applied lawfully and not misused for political purposes.

In that context, allow me a few comments on the Serbian Law on the Organization and Competence of State Authorities in War Crime Proceedings (hereinafter LWC) as a warning example of the distortion of universal jurisdiction and its lawful application. By adopting and implementing the LWC, Serbia not only flatly contradicts the definition and basic principles of universal jurisdiction, but also harshly misapplies this noble concept for political purposes.

First of all, Mr. Chairman, and in stark contrast to universal jurisdiction's basic prerequisite of unconditional applicability to all States and areas, without regard to where the crime was committed and solely based on the gravity of the crime, LWC applies only to a handful of States, including my own country. Such anteriorly defined territorial scope profoundly alters and cuts deep into the very notion of universal jurisdiction, its concept and purpose. From a subsidiary (*aposteriori*) "safety net", set up as the last resort in the fight against impunity when States which are primarily called upon to act are clearly unable or unwilling to do so, the LWC metamorphoses into an *a priori* indictment and verdict against sovereign States, selected at Serbia's discretion.

Secondly, as clearly confirmed by the Rome Statute of the ICC and accepted widely in jurisprudence, it is hard to think of universal jurisdiction without thinking of the principle of subsidiarity (complementarity). However, in sharp contrast to what I just stated, this nucleus of universal jurisdiction has not found its way into the LWC. By adopting and implementing the LWC, Serbia absolutely ignores clearly expressed and objectively confirmed readiness of Croatia to prosecute alleged international crimes committed on its territory.

Finally, Mr. Chairman, such parachuting into the criminal jurisdictions of neighboring States is in such stark contradiction to the basic principles of international law as enshrined in the UN Charter, including the principle of sovereign equality of States, but also the fundamentals of the EU Members interrelations, that it could be considered an unfortunate error if there was not for Serbia's adamant efforts to keep this legislation in place. These efforts come despite numerous objections that were made against the LWC and despite the fact that Serbian Criminal Code contains the principle of universal jurisdiction in its proper form.

In short, Mr. Chairman, instead of serving as a politically neutral subsidiary mechanism in the fight against impunity, the LWC amounts to an insidious legal aggression.

The fact that the only State ever to be found responsible for breaches of the Genocide Convention, whose direct criminal involvement in the events in the former Yugoslavia has been proven beyond doubt (while the responsibility of its military and other officials for the worst international crimes has been largely confirmed), purports to assume the role of a regional policeman and supreme judge, makes this whole case that

much more tragic and absurd. Serbia's attempts to assume this role under the guise of universal jurisdiction and as a champion of transitional justice makes it cynical.

In short, Mr. Chairman, the LWC has nothing to do with universal jurisdiction and its lawful application, but it has a lot to do with attempts to rewrite history, redistribute responsibility and equalize culpability for the bloodiest armed conflict Europe had seen since the Second World War, while at the same time, as recent reports unfortunately suggest, rejecting any political, legal or moral catharsis of one's own.

It is well known that the introduction of the LWC has affected relations between States in our part of the world, and that it threatens to continue to do so in the foreseeable future, as well. If one State is allowed to get away with a such deceptive practice and cover-up of ulterior political motifs by the noble veil of universal jurisdiction, what guarantee do we have that other States will not follow suit, with more than predictable results - complete legal chaos, overlapping jurisdictions and encroachment upon sovereignties?

We therefore call on Serbia to amend the LWC as soon as possible and respectfully remind that within the context of EU accession negotiations, it accepted as an interim benchmark to avoid the conflict of jurisdictions, implement its war crimes legislation without discrimination and - together with the EU Commission and its neighbors - discuss controversial legislation until a mutually agreeable solution is found. We deeply believe that Serbian commitment to these undertakings will serve as an incentive for a thorough re-examination of this highly controversial law and its appropriate amendments.

Mr. Chairman, fellow colleagues, putting yourselves in Croatia's shoes seems like an excellent exercise for a full and instinctive understanding of the utter illegality, unacceptability and absurdness, as well as of the dangers of LWC. What State would ever accept criminal jurisdiction of neighboring States for acts allegedly committed by its citizens, on its own territory, and against its own citizens?

I will leave the answer to you, and conclude by saying that we must prevent and beware of possible manipulations with the concept of universal jurisdiction for political purposes. For its part, and while protecting its citizens from the misuse of the LWC, Croatia will continue its efforts, working together with all States assembled in this august Chamber, to ensure that the noble concept of universal jurisdiction and its lawful application is further strengthened, developed and adequately protected.

Thank you, Mr. Chairman.