



CROATIA

Statement by

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at the

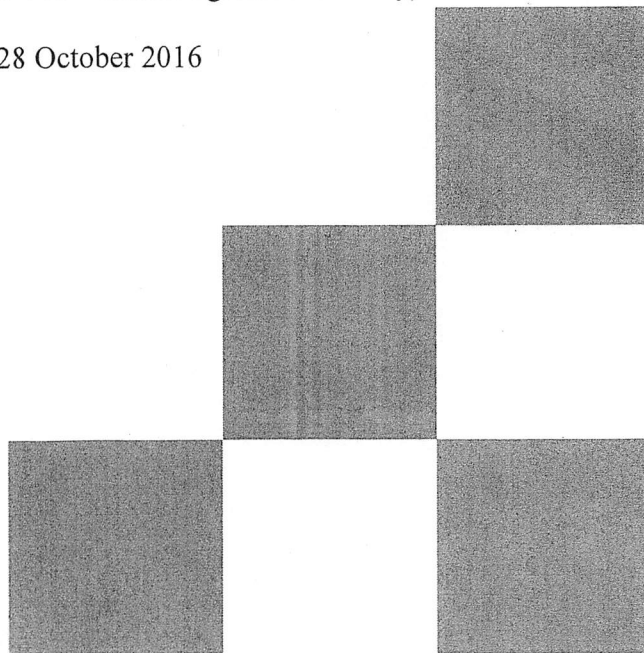
71st Session of the General Assembly – Sixth Committee

on

Report of the International Law Commission
(Cluster 2, Chapter VII. - Crimes against Humanity)

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MEMORANDUM

TO :

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SUBJECT :

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Mr. Chairman, distinguished colleagues,

It is my distinct honour and pleasure to appear before you this year again to discuss the work of the International Law Commission on the topic of "Crimes against Humanity". Let me – at the very outset – express Croatia's appreciation of the work of the Special Rapporteur Mr. Sean Murphy, as well for the efforts that the Secretariat has invested into preparing the memorandum on existing treaty-based mechanisms that may be of relevance to the future work of the International Law Commission on this topic.

Mr. Chairman, fellow colleagues,

Seventy years after World War II and twenty-five years after the events on the territory of the former Yugoslavia, and in spite of the continued commission of such atrocities around the globe, even as we speak, the international community still lacks a global legal instrument to prevent and punish crimes against humanity. As a country that experienced first-hand the commission of far too many acts that constitute crimes against humanity, Croatia staunchly supports all efforts aimed at developing such an instrument. Croatia also stands ready to actively contribute to this endeavour and in that sense, allow me to share a few very hands-on thoughts on the report in front of us today.

First, we observe with appreciation draft Article 5 and its intent to lay out States' obligation to criminalize in their national jurisdictions crimes against humanity and in that context also, in particular, command or other superior responsibility. We welcome this development as confirmation that crimes against humanity are committed not only systematically and on a large scale, but are usually also accompanied by some form of dereliction of duty by the superior. Croatian Criminal Code with its catalogue of crimes as well as forms of liability fully reflects the idea contained in draft Article 5.

With respect to draft Article 5, in particular the language of paragraph 3 (a) and (b), it is our understanding that this Article entails that a single instance of a crime against humanity can simultaneously engage the responsibility of more than one superior at different levels in the chain of command. This also clearly emerges from the case law of the International Criminal Tribunal for the former Yugoslavia (ICTY), for example in the *Krnojelac* case, and we consider its reflection in the text of draft Article 5 as appropriate.

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Second, again with respect to command or other superior responsibility, we appreciate the distinction that was made here between, on one side, “a military commander or person effectively acting as a military commander” and, on the other side, essentially *other* “superior and subordinate relationships” as such. We note that there is no further characterization of this relationship, which is why it is not necessarily restricted to the military chain of command. We think this wording reflects well the current state of play in modern warfare and the fact that superior and subordinate relationships can come in different shapes and forms. In that sense, we understand the language of draft Article 5, paragraph 3 (a) and (b) as reflecting the possibility that the responsibility of *de jure* or *de facto* military commanders, as well as other superiors, including civilians, can arise not only with respect to crimes committed by military forces under their effective command and control, but also with respect to crimes committed by individuals under such control, not necessarily belonging to military structures.

Mr. Chairman, fellow colleagues,

Let me conclude by saying that the aforementioned understanding of command or other superior responsibility, together with more encompassing definitions of crimes against humanity, as proposed in this report, fully reflect our understanding of these crimes and our resolve to fight impunity and ensure their proper punishment.

While the sense of urgency has never been greater, crimes against humanity – at this point – remain the only core set of crimes within the jurisdiction of international criminal tribunals that do not have a dedicated convention.

Croatia sees such a global treaty as part of our concerted efforts to prevent the commission of such heinous crimes and to punish the perpetrators. As we again congratulate the International Law Commission and Mr. Murphy on their efforts so far with respect to this crucial topic, we look forward to even more substantial developments in the year to come and express our readiness to assist in a way that the International Law Commission and Mr. Murphy deem desirable.

Thank you.