

ALGERIA



الجزائر

Permanent Mission of Algeria
to the United Nations
New York

بعثة الجزائر الدائمة
لدى الأمم المتحدة
نيويورك

69th Session of the United Nations General Assembly

Statement by:

Mohamed Salah Eddine BELAID,

Counselor

Before the 6th Committee

On agenda item 78

« Report of the International Law Commission

on the work of its sixty sixth session»

Part II (Chapter VI, Chapter VIII & Chapter IX)

“The obligation to extradite or prosecute (aut dedere aut judicare)”

“Protection of the atmosphere”

“Immunity of State Officials from foreign criminal jurisdictions”

New York – October 29 2014

Please check against delivery

Mr. Chairman,

First of all, allow me to express, once again, our appreciation to the Chairman of the International Law Commission, Mr. Kirill Gevorgian for the presentation he has made on the second cluster of the work of the 66th session of the ILC.

My comments will focus, in this second part, on the chapters VI, VIII and IX of the report of the Commission respectively entitled "*The obligation to extradite or prosecute (aut dedere aut judicare)*" ; "*Protection of the atmosphere*" and "*Immunity of State officials from foreign criminal jurisdiction*".

First: The obligation to extradite or prosecute (aut dedere aut judicare).

Mr. Chairman,

My delegation would like to commend the International Law Commission for the conclusion of its consideration of the topic "Obligation to extradite or prosecute (*aut dedere aut judicare*).

We welcome the adoption of the final report of the Working Group on this item, (including the 2013 report) which we consider as an outcome of practical value to the international community that will certainly provide useful guidance for us, Member States.

We notice with satisfaction that this final report had covered all the issues raised by the 6th Committee during the last session, particularly: Gaps in the existing conventional regime; the relationship between the obligation to extradite or prosecute and *erga omnes* obligations or *jus-cogens* norms; the customary international law status of the obligation to extradite or prosecute; and other matters of continued relevance in the 2009 General Framework.

Lastly, my delegation would like to express its appreciation to the Chairman of the Working Group, Mr. Kriangsak Kittichaisaree, for the presentation of his report A/CN.4/L.844 and his tireless effort and valuable contribution in conducting the work regarding this subject. We extend our gratitude to the former Special Rapporteur on this topic, Mr. Zdzislaw Galicki.

Second: Protection of the atmosphere.

Mr. Chairman,

My delegation attaches great importance to the topic entitled "Protection of the atmosphere". In this regard, we would like to express our appreciation to the Special rapporteur Mr. Shinya Murase for the presentation of his first report (A/CN.4/667) under this item.

We take note of the approach chosen by the Special rapporteur to undertake this highly technical topic which seeks to address the general objective of the project, clarify the rationale for work on the topic, outline its general scope, and identify the relevant basic concepts, perspectives and approaches to be taken with respect to this subject.

My delegation takes also note of the proposition of introducing three draft guidelines, which are of a general nature, concerning the "Use of terms", "The Scope of the guidelines" and the "Legal status of the Atmosphere".

In this regard, we would like to recall the 2013 understanding that insists inter alia that the "*Work on the topic will proceed in a manner so as not to interfere with relevant political negotiations, including on climate change, ozone depletion, and long-range transboundary air pollution*" and also that "*The topic will not deal with, but is also without prejudice to, questions such as: liability of States and their nationals, the polluter-pays principle, the precautionary principle, common but differentiated responsibilities, and the transfer of funds and technology to developing countries*".

Lastly, my delegation notes with interest the debate undertaken within the Commission with regard the necessity to fully comply with the terms of the 2013 understanding and fully agrees with the view expressed by the Special Rapporteur and the Commission that "*the most important decisions regarding the protection of the atmosphere were to be taken at the political level, and the Commission, in its work, could not be expected to prescribe or substitute for specific decisions and action at that political level*".

Third: Immunity of State officials from foreign criminal jurisdiction.

My delegation would like to thank the Special Rapporteur, Ms. Concepción Escobar Hernández, for her third report A/CN.4/673 submitted at the 66th session of the International Law Commission.

In this regard, it is important to recall that this report was the basis for the provisional adoption of the two draft articles we have before us today, namely draft article 2 subparagraph (e) related to the general concept of “*an official*” and draft article 5 related to the subjective scope of immunity *ratione materiae*.

Mr. Chairman,

In general terms, my delegation is of the view that the immunity of State officials from criminal jurisdiction is a well-established norm in both international relations and international customary law.

Deriving directly from the immunity of the State, which is granted under customary international law, the immunity of State officials from criminal jurisdiction is meant to bar the exercise of domestic and foreign jurisdictions, alike, on this category of officials.

This link between the immunity of State and the immunity of its officials was, indirectly, stated in the Judgment of the International Court of Justice on February 3rd 2012, which concludes that “*under customary international law as it presently stands, a State is not deprived of immunity by reason of the fact that it is accused of serious violations of international human rights law or the international law of armed conflict*” and even though the Court has clearly pointed out in this paragraph that “*it is addressing only the immunity of the State itself from the jurisdiction of the courts of other States*”, it has the merit to rise, somehow, without answering because it wasn't an issue in that case, the question of “*whether, and if so to what extent, immunity might apply in criminal proceedings against an official of the State*”.

This link between the immunity of State and the immunity of the State officials is of utmost importance and should prevail when it comes to apply or define the immunity of State officials from the exercise foreign criminal jurisdiction.

Mr. Chairman,

With regard to the persons enjoying immunity *ratione personae*, we have noticed last year with satisfaction that the draft article 3 has listed, after a long legal debate, the three main persons to whom this type of immunity applies, namely,

the Heads of State, Heads of Government and Ministers of Foreign Affairs. This listing reflects, indeed, a general consensus in the international community.

On the scope of immunity *ratione personae*, my delegation considers that even after their term in office, the State officials should be granted immunity for the acts performed in the exercise of their functions. In this regard we welcome the content of draft article 4 paragraph (3), provisionally adopted in the 65th session of the ILC, which grants the application of the rules of international law concerning immunity *ratione materiae* to the “Troika” after the cessation of immunity *ratione personae*.

For the draft article 2 subparagraph (e) which reads: “*State official*” means any individual who represents the State or who exercises State functions”, my delegation notes with interest that this definition of general nature of the term “State official” is applicable and must be understood as encompassing persons who enjoy immunity *ratione personae* and those who enjoy immunity *ratione materiae* from the exercise of foreign criminal jurisdiction.

We believe that the two criteria set out in the sub paragraph (e) in order to identify who could be considered “State official” constitutes a judicious choice with regard to capture the general trend in the international practice which gives an increasing role to the other high-ranking officials when it comes to represent the State or to exercise some State functions. This role should entitle them to enjoy the immunity *ratione materiae* from foreign criminal jurisdiction.

For draft article 5 that reads “*State officials acting as such enjoy immunity ratione materiae from the exercise of foreign criminal jurisdiction*”, my delegation concurs that this draft, which focuses on the subjective scope of this category of immunity, refers to the official nature of the acts of the officials and emphasizes the functional nature of immunity *ratione materiae*.

My delegation also agrees that it is not possible to draw up a list of persons enjoying immunity *ratione materiae* and finds that this draft article, as well as, the draft article 2 (e) would allow to identify the persons to whom this immunity applies.

Lastly, my delegation takes due note of the view expressed by some members of the Commission with regard to the functional nature of immunity *ratione materiae*, which supposes that the definition of immunity *ratione materiae* had to be based on the nature of the acts performed and not the individual who performs these acts. In this regard we look forward for the future work of the Commission

on the other element of immunity *ratione materiae* regime, namely the substantive and temporal scope of immunity *ratione materiae*.

Mr. Chairman,

In conclusion, I would like to recall my delegation's preference to the methodological approach, which focuses on the codification of existing rules of international law on the topic of the immunity of State officials from foreign criminal jurisdiction, given the controversial, sensitive and political nature of any proposals that would be based on the progressive development approach. In this regard my delegation shares the observations made, previously, by some delegations and some members of the Commission regarding the particular importance of the distinction between progressive development of international law and its codification in the consideration of this topic.

I thank you.