



AUSTRALIA



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Report of the International Law Commission on the work of its 66th session Cluster II: Obligation to extradite or prosecute

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(Check against delivery)

Mr Chair

Australia takes this opportunity to express its thanks to the Working Group on the obligation to extradite or prosecute and to its Chair, Mr Kittichaisaree, in particular.

Mr Chair

In common with the International Law Commission, Australia sees the obligation to extradite or prosecute as a key feature of the international community's commitment to ending impunity for certain core crimes.

For Australia, the final report of the Working Group highlights two particular and important considerations concerning the application of the obligation in the future. The first consideration is the gap between the existence of the obligation and its implementation. The second is the need to ensure a wider application of the principle to ensure a more comprehensive coverage. This would help to achieve the goal we referred to earlier of ending impunity for core crimes at international law.

In relation to the first matter, Australia encourages all States to ensure that they are in a position to fulfil their relevant obligations to investigate and prosecute or extradite those responsible for relevant offences. In this respect, the Final Report of the Working Group contains a useful analysis of the 2012 decision of the International Court of Justice in the case concerning Questions relating to the Obligation to Prosecute or Extradite. As noted by the Commission, that decision is very helpful in elucidating aspects relevant to the implementation of the obligation to extradite or prosecute, particularly in relation to the Hague Convention type formulation of the principle used in many treaties. The Court in that case examined the fundamental elements of the obligation as well as the consequences of failing to give it proper effect. The Commission has noted the comment of the Court that a State's obligation extends beyond merely enacting legislation - that State must also actually exercise jurisdiction in accordance with the relevant Convention. The Commission's report also drew attention to the statement of Judge Donoghue in her separate Declaration that while the dispositive paragraphs of the Court's judgment only bind the parties to that case, the Court's interpretation has implications for other States who are subject to the same obligation.

On the second consideration we mentioned earlier – that is, expanding the application of the principle, the Commission has noted the lack of international conventions creating an obligation to extradite or prosecute most crimes against humanity and war crimes other than grave breaches. In this respect, Australia notes the decision of the Commission to include the topic of ‘Crimes against Humanity’ in its programme of work and its appointment of Mr Sean Murphy as Special Rapporteur. Australia assumes that in its examination of this important topic the Commission will give consideration to a broader application of the obligation to extradite or prosecute to crimes against humanity. In the meantime States should continue to cooperate to ensure the full investigation and prosecution of such crimes under the framework of applicable bilateral mutual legal assistance and extradition agreements and arrangements.

Thank you.