



CZECH REPUBLIC

Permanent Mission of the Czech Republic to the United Nations

Check Against Delivery

69th Session of the
General Assembly

Agenda Item 78

**Report of the ILC:
The Obligation to Extradite or Prosecute
The Protection of the Atmosphere
Immunity of State Officials from Foreign Criminal Jurisdiction**

Statement by

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New York, October 29, 2014

Mr. Chairman,

In the present statement, the Czech Republic would like to focus on the Chapters VI, VIII and IX of this year's report of the International Law Commission.

Firstly, the Czech Republic commends the Commission and its Working Group under the chairmanship of Mr. Kriangsak Kittichaisaree for their outstanding contribution to the topic „The obligation to extradite or prosecute“. The Commission's reports on this topic, namely those adopted in 2013 and 2014, as well as the surveys prepared by the Commission's secretariat, provide a thorough overview and clarification of topical issues in this area. The reports and surveys can serve as useful guidance for States in further dealing with the issues concerning the obligation to extradite or prosecute, either on multilateral or bilateral level, as well as an important source of information in discussions concerning the issues of the exercise of universal jurisdiction. The Commission's reports highlight the fact that there is a lack of international conventions containing the obligation to extradite or prosecute in relation to crimes against humanity, war crimes other than grave breaches and war crimes in non-international armed conflict, and only a rudimentary regime for the international cooperation in relation to genocide. Further, the Commission's reports point to important recent developments on the international level, such as the Judgment of the International Court of Justice in the case concerning Questions relating to the Obligation to Prosecute or Extradite, as well as to recent multilateral conventions containing this obligation, and recommend that States consider these regimes in undertaking to close any gaps in the existing conventional regime. The Czech Republic shares the views and recommendations of the Commission and is aware of their connection to the topic „Crimes against humanity“ included in the Commission's programme of work, as well as with the discussions concerning the exercise of universal jurisdiction. The Czech Republic is prepared to consider any initiatives in this regard.

As regards the topic of „The protection of the atmosphere“, the Czech Republic would like to thank the Special Rapporteur, Mr. Shinya Murase, for his thorough report and the Commission for its input into this difficult topic. The Czech Republic recognizes that this topic might represent an opportunity for the Commission to address issues pertaining to the protection of the atmosphere from the perspective of general international law. At the same time, the Czech Republic perceives current difficulties concerning this topic, namely that it is not yet entirely clear, what the general orientation and direction of the topic should be and whether the Commission can make a relevant contribution to this topic, having regard to other existing global endeavors in the protection of the atmosphere.

With regard to the topic of „Immunity of State officials from foreign criminal jurisdiction“, the Czech Republic appreciates this year's report presented by the Special Rapporteur, Mrs. Concepción Escobar Hernández, as well as the adoption of additional two draft articles by the Commission containing the definition of State official and persons enjoying immunity *ratione materiae*. In general, the Czech Republic is of the opinion that these two provisions are not controversial and adequately complement the set of draft articles provisionally adopted up to now. The Czech Republic notes, as stated in the Commission's commentary to draft Article 2 (e), that the decisive factor for defining „State official“ is the link between the individual and the State, whereas the form taken by that link is irrelevant. According to the Commission's commentary, these issues, namely relating to *de facto* officials and *de facto* links between the individual and the State, may be more appropriately addressed in connection with a definition of „acts performed in an official capacity“.

The Czech Republic previously expressed its opinion that the immunity *ratione materiae* is based on the principle, according to which State officials are immune from the

jurisdiction of a foreign State with regard to „acts performed in an official capacity“, since these acts are attributable to the State they represent. In this connection, the Czech Republic regards it as useful to consider these issues in the context of the relevant provisions of Chapter II of the articles on responsibility of States for internationally wrongful acts, which describe the attribution of conduct to a State and deal also with *de facto* links between individuals and the States. Furthermore, it will be useful to take into account relevant criminal law treaties, such as the Convention against Torture or International Convention for the Protection of All Persons from Enforced Disappearance, which provide for an extra-territorial criminal jurisdiction and expressly contemplate prosecution of crimes committed in an official capacity, including *de facto* official capacity. The Czech Republic is aware of the fact that the issues concerning the scope of and exceptions to the immunity *ratione materiae* belong to the most complex aspects of this topic and awaits with interest the report by the Special Rapporteur and the ensuing discussion of the Commission on these issues.

Thank you, Mr. Chairman.