I T A L Y

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SIXTH COMMITTEE

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Statement by

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There seems also to be agreement on the fact that international crimes are offences of an exceptional nature which necessitate adequate legal responses. On one level, national courts must exercise their primary responsibilities, on the other, international mechanisms may be available to prosecute these crimes.

However, rules and principles in this area need not be construed as exceptions to the rule of immunity of state officials. These could be specific norms strictly linked to the provisions establishing the individual criminal responsibility of the officials who commit certain classes of crimes. In particular, war crimes, crimes against humanity and genocide may entail the responsibility of both the individuals as well as the State on whom these crimes are attributable, and hence the immunity paradigm may not be necessarily the most appropriate in these circumstances.

In this direction we would support the efforts of the Special Rapporteur to deepen the analysis and look forward to contribute to it. The whole relationship between jurisdictions and immunities may profit from being comprehensively revisited in this workshow and we look forward to any element of further reflection in the future work of the Special Rapporteur.

As far as the distinction between *ratione materiae* and *ratione personae* immunity is concerned, we believe that this distinction continues to be important and even if, in particular for international crimes, there may still be instances where the *ratione personae* immunity (usually unsuccessfully) hampers effective prosecution, what is important to determine is that *ratione materiae* immunity justifies such crimes.

(2) On the topic of *aut dedere aut judicare* we would like to encourage the Commission to give further energy to the work in this area.

The obligation to extradite or prosecute is an important tool (specifically provided for in certain treaties) for the purpose of avoiding impunity for crimes that involves States which have a specific relationship in cooperating with each other in the fight against crimes. It offers a clear choice to the State that commits or allegedly commits crimes to contribute directly by adjudicating or indirectly by transferring the person to another jurisdiction able and willing.

A principle of cooperation underlies the bilateral relationship that can be established on the basis of the principle; this principle is particularly important in the area of prosecution of crimes of concern for the international community as a whole, such as e.g. the Rome Statute crimes or crimes of terrorism. It is a useful principle to avoid that States may become safe havens for alleged perpetrators of serious crimes.

There are provisions on *aut dedere aut judicare* contained in specific conventions/treaties and domestic legislation which allow for elaborating such a notion. However there may be doubts as to the possibility to identify numerous principles for a general law in this area and to link them from the conventional context.

A thorough reflection on the existence of principles dealing with judicial [illegible] general or in specific areas may be [illegible] be appropriate.

(3) Formation and evidence of customary international law

Finally, Mr Chairman, let me turn to the last topic we wish to address. The issue of *Formation and Evidence of customary international law*.

We see with great curiosity this theme in the programme of the ILC and are confident that the Special Rapporteur will be able to gather ample information on this subject and provide useful research.

It is hard to deny that it is an issue which [illegible] of its complexity caution should be exercised in formulating any reasoning that may restrict the action of judges at the international and domestic levels as well as other interpreters. One of the most [illegible] spontaneous manner, through the interaction of a variety of actions and taking into account a variety of factors. This interaction should not be given [illegible] may result too artificial to be useful.
The very nature of international law requires [illegible] relevant legal act or fact.

The idea to make a study [illegible] concur to the formation and evidence of international [illegible] this as an exhaustive process.

While it may be [illegible] determined field of international law, with the purpose [illegible] as e.g. the monumental work of the ICRC on international customary law in the area of IHL; the attempt to describe a set of [illegible] international customary law in general terms [illegible] constraining. It would run contrary to the essence of [illegible] spontaneous law (which is the *necessary value to fund of international relations*, and cannot be circumscribed by a codification exercise), in particular such strict determination with regard to [illegible] necessary developments of international law.

Even though developing principles on the [illegible] rules might be less controversial, it should be kept in mind that a great degree of flexibility should be left to the interpreter in this area. It is the reasoning and the materials identified that attest to the credibility of the statement and not any protocol [illegible] may end up obfuscating the strength of realities.

The problem is [redacted]
elements that [redacted] identify [redacted]
more wheth[redacted]
elements or their balance may [redacted]
[redacted]
embodied [redacted]
may be stronger (and more [redacted]
practice which lacks [redacted]
easy, and the results may be less satisfy[redacted]
to contribute to the efforts of the [redacted]
our reflections to this end.

Thank you.