



(NEW YORK, 29 OCTOBER 2014)

Mr. Chairman,

At the outset, please allow me to express my congratulations to you and to the other members of the Bureau on your election and on the admirable way in which

Having regard to the possible effects of subsequent practice on treaty modification in Draft conclusion 7, paragraph 3, we would propose deletion, or rephrasing of the sentence

the ILC decision is now to focus specifically on interpretation, it may not be appropriate, at least at this stage, to take a conclusive stand on the issue of treaty modification. Besides, as recognized by the Commission, the distinction between interpretation and modification persists. This is so also against the background of the authoritative case law of the International Court of Justice

(paragraph 33 of the Commentary to Draft conclusion 7).

Mr Chairman,

I now turn to

Special Rapporteur, Professor Conception Escobar Hernandez, for her third report which included two draft Articles presented to the Commission. We also wish to reiterate the importance that we attach to a comprehensive and in-depth analysis of

and judicial practice. At this stage, we intend to submit a number of comments mainly focused on the two articles provisionally adopted by the Commission.

The third report by Mrs. Escobar Hernandez deals especially with the subjective element of the notion of immunity *ratione materiae*. The general concept

of immunity from foreign criminal jurisdiction are examined. Draft articles 2 (e) and 5 are the results of the discussion contained in the report.

Mr. Chairman,

In the commentary, this definition is to be intended as common to both categories of persons who enjoy immunity *ratione personae* and immunity *ratione materiae*. However, whereas the persons who enjoy immunity *ratione personae* are then listed in the subsequent article 4 of the draft articles, the Commission did not consider it either possible nor suitable to draw up an exhaustive or an indicative list of the positions of those individuals to whom immunity *ratione materiae* may apply. In

jurisdiction is particularly helpful in providing guidance with regard to the existence of the said link.

included among the categories of persons widely acknowledged as falling within jurisdiction. Military personnel while performing official duties exercise by definition State functions and, in this case, the necessary link between the State and

The report elaborates on a number of important aspects. It emphasizes the role played by the obligation to extradite and prosecute, contained in numerous conventions, in combating impunity in respect of a wide range of serious crimes. It provides an articulate discussion of the different types of provisions in multilateral

also highlights the distinction (suggested in the separate opinion of Judge Yusuf to the ICJ judgment of 2012 in *Belgium v. Senegal*) into two broad categories: clauses imposing an obligation to extradite, and in which prosecution becomes an obligation only after the refusal of extradition; and clauses imposing a duty to prosecute, with extradition being an option (or becoming an obligation if the State fails to prosecute). The report correctly concludes that when drafting treaties States can decide for themselves which formula best suits their objective in a particular circumstance.

Other points are discussed in the report, which appear to be of special interest in relation to present and future State practice. I may refer to the elements of the obligation to extradite or prosecute to be included in national legislations (paras. 17 to 20 of the report); to the so-surrendering of the suspect to a competent international criminal tribunal, such as the ICC (paras. 27 to 30); to the gaps in the existing conventional regimes, which relate essentially to crimes against humanity, war crimes other than grave breaches and war crimes in non-international armed conflicts (paras.31 to 36).

Against this background, I would like to conclude by praising again the work of the Commission, which concerns a crucial normative mechanism made available to the international community to avoid that those responsible for the most serious crimes may escape prosecution and punishment.

Mr Chairman,

Let me briefly address also Chapter VII on the Protection of the atmosphere. The Commission has engaged in discussion on the first Report of the Special Rapporteur, Professor Murase, whom we thank for his work on such an important issue. There still seem to be different approaches within the Commission on the topic and on its treatment. We believe that the understanding reached by the Commission last year should be considered sufficient for the work to proceed within those limits, conscious of the constraints deriving from negotiations in other fora and their dynamics. Clearly, this is a work in its initial phases and we would constructive spirit. We look forward to the discussion in the coming year.

be the outcome of this exercise. We look forward to witness steady progress in the ILC work of the next sessions, as indicated by the same Special Rapporteur.

Mr Chairman

Special Rapporteur Sean Murphy and look forward to the work of the Commission in this area. It is important to discuss this topic. However, it must be clear that Article 7 of the Rome Statute of the International Criminal Court is in no way under discussion. The focus of the work of the Commission should be on mechanisms to fill any jurisdictional gaps and on the implementation at the national level of international norms relating to this category of crimes. Moreover, in so doing the Commission should be mindful of initiatives focusing on fostering interstate judicial cooperation on ICC crimes.

Secondly, we agree that the issue of *jus cogens* is a subject matter that deserves deeper and careful analysis and we look forward to more elaboration on this topic, which admittedly has many complex facets.

Mr Chairman,

Finally, and