



STATEMENT BY MR. IQBAL AHMED SARADGI, MEMBER OF PARLIAMENT AND MEMBER OF THE INDIAN DELEGATION, ON AGENDA ITGEM 78: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WRK OF ITS 58TH SESSION CHAPTER X: EFFECTS OF ARMED CONFLICTS ON TREATIES, CHAPTER XI: THE OBLIGATION TO EXTRADITE OR PROSECUTE, CHATPER XII: FRAGMENTATION OF INTERNATIONAL LAW AT THE SIXTH COMMITTEE OF UN GENERAL ASSEMBLY ON NOVEMBER 03, 2006

Mr. Chairman,

I thank the Chairman of the International Law Commission for his detailed introduction of the Report of the ILC on the present cluster of topics.

On the topic “Effects of armed conflicts on treaties”, we commend the Special Rapporteur, Prof. Ian Brownlie, for his second report.

While the topic is generally part of the law of treaties and not that on the use of force, the topic is also closely related to other domains of international law, therefore, it is not possible to maintain a strict separation between the law of treaties and other branches of international law which may also be relevant to the topic.

The scope of the topic should be limited to treaties concluded between States and not include treaties concluded by international organizations.

The definition of “armed conflict” in Draft Article 2 should be considered independently of its effects on treaties. In particular, the present definition would appear to make the existence of an armed conflict contingent on its likely effect on the operation on treaties between the parties to the conflict.

The scope of an “armed conflict” should be limited to conflicts between States and not deal with internal conflicts, as treaties are entered into by States, and internal conflicts do not directly affect treaty relations. Where internal conflicts give rise to circumstances which indirectly affect the operation of a

treaty, the effects could be dealt with within the framework of the 1969 Vienna Convention on the Law of Treaties.

While the intention of the parties is relevant for interpretation of a treaty, such intention is to be determined from the text of the treaty, including its context, and it is highly unlikely that at the time of its conclusion, the parties would have contemplated and provided for the likelihood of a situation of armed conflict arising between them.

All relevant circumstances, including the object and purpose of the treaty, the nature of the conflict or the situation that arises therefrom and the nature of the treaty obligation itself, and subsequent actions of the parties in relation to the treaty, should be taken into account for determining whether the treaty or some of its provisions could continue in force, in the context of armed conflicts, as well as the legality of the actions of each of the parties to the conflict.

Mr. Chairman,

Draft Article 7 provides a listing of treaties which, on the basis of necessary implication from their object and purpose, are considered as continuing in operation during an armed conflict. A listing of such treaties would raise the presumption that treaties not covered by those categories would automatically lapse. It may, accordingly, be preferable to identify some general criteria for determining the type of treaties that would continue to apply during an armed conflict. In particular, treaties which expressly apply in case of or during an armed conflict, and therefore, can in no circumstances be terminated by an armed conflict, should be identified and considered separately from other treaties. It would also be useful to identify categories of treaties which could be considered as suspended or terminated during an armed conflict. In particular, these would include treaties which operate through the cooperation and interaction between the States parties, whether at the governmental level, or through individuals and companies.

Mr. Chairman,

Turning now to the topic "the Obligation to extradite or prosecute", I thank the Special Rapporteur, Mr. Galicki, for his preliminary report on the subject, concerning the substance of the topic, highlighting the most important points for further consideration and including a preliminary plan of action for the future work on the topic. We look forward to receiving further reports from the Special Rapporteur formulating draft rules on the concept, structure and operation of the obligation to extradite or prosecute.

India is a State party to the international conventions against drug trafficking, as well as the United Nations Conventions against terrorism, and is

signatory to the Conventions on transnational organized crime and on corruption, all of which provide for the obligation to extradite or prosecute. While none of these conventions specifically permit reservations to this obligation, the absence of a bilateral extradition treaty may have such an effect in case the law of a State party does not allow extradition without an extradition treaty.

Under Indian law, extradition may take place on the basis of a bilateral treaty or arrangement, or on the basis of a multilateral convention which provides for extradition, and also on an ad-hoc case by case basis. All our extradition treaties provide for the obligation to extradite or prosecute. Extradition may be granted for all offences which are punishable with imprisonment for a minimum of one year. However, since extradition can be granted only when a *prima facie* case has been established, the obligation to prosecute would arise only if extradition is refused after it is established that all requirements for extradition have been met.

Mr. Chairman,

On the topic "Fragmentation of international law: difficulties arising from the diversification and expansion of international law", we commend the Study Group and its Chairman, Mr. Martti Koskeniemmi, on the conclusion of the consideration of the topic.

The ILC, in its Report, refers to the dramatic increase in the scope of international law, which from a tool for the regulation of formal diplomacy, has expanded to deal with the most varied kinds of international activity, from trade to environmental protection, from human rights to scientific and technological cooperation.

According to the ILC, this expansion has taken place in an uncoordinated fashion, within specific regional or functional groups of States, and has led to the fragmentation of international law, as the focus has been on solving specific problems through the emergence of specialized and autonomous rules or rule-complexes, legal institutions and spheres of legal practice.

The Commission also recognizes that while fragmentation does create the danger of conflicting and incompatible rules, principles, rule-systems and institutional practices, it also has a positive effect, as it accounts for the development and expansion and is a sign of the vitality of international law.

The "42 conclusions" identified by the ILC, based on application of the provisions of the Vienna Convention on the Law of Treaties, the hierarchy between norms of international law and the principle of harmonization, set out some of the principles that should be taken into account when dealing with

actual or potential conflicts between legal rules and principles, and should prove very useful to practitioners and legal advisers as guidelines in dealing with the practical consequences of the widening scope and expansion of international law.

Thank you, Mr. Chairman.

[BACK TO TABLE OF CONTENTS](#)