

STATEMENT BY MR. GOPINATH MUNDE, MEMBER OF PARLIAMENT, ON AGENDA ITEM 79 – REPORT OF THE INTERNATIONAL LAW COMMISSION, CHAPTER VIII: OBLIGATION TO EXTRADITE OR PROSECUTE, CHAPTER X : TREATIES OVERTIME, CHAPTER XI: THE MOST FAVORED NATIONS CLAUSE, CHAPTER XII: SHARED NATURAL RESOURCES AT THE SIXTH COMMITTEE OF THE 65<sup>TH</sup> SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY ON NOVEMBER 01, 2010

Let me at the outset thank the President of the International Law Commission for his lucid and detailed presentation on Part III of the Report of the ILC.



We support the objective of the topic '**extradite or prosecute**', that an offender should not go unpunished for any reason, such as, due to the lack of jurisdiction, or state cooperation or because of other technicalities. Ensuring prosecution of offenders in any jurisdiction would work as a deterrent and would strengthen the cause of the administration of international criminal justice and the rule of law.

At the sixty-first session in 2009, an open ended Working Group was setup by the Commission under the chairmanship of Mr. Alain Pellet of France, and based on discussion, and with the aim of specifying the issues to be addressed, a general framework was drawn up for consideration of the topic in the Commission.

At its sixty-second session, the Commission reconstituted the Working Group, which, had before it a Survey of multilateral conventions, together with the general framework prepared by the Working Group in 2009.

The Working Group also had before it a working paper prepared by the Special Rapporteur, on the topic 'the obligation to extradite or prosecute'. The paper drew attention to questions concerning: (a) the legal basis of the obligation to extradite or prosecute; (b) the material scope of the obligation to extradite or prosecute; (c) the content of the obligation to extradite or prosecute; (d) relationship between the obligation to extradite or prosecute and other principles (e) the conditions for the triggering of the obligation to extradite or prosecute (f) the implementation of the obligation to extradite or prosecute, and the relationship between this obligation and the surrender of an offender to an international criminal tribunal.

The Working Group expressed the view that the general orientation of future reports of the Special Rapporteur should be towards presenting draft articles for consideration by the Commission, based on the general framework agreed in 2009.

### **Madam Chairperson,**

Regarding the Indian position on the principle of extradite or prosecute, we would like to mention that India is a firm supporter of the suppression of crime and upholding of the rule of law. A person who has committed a crime must be tried and punished no matter by which State - the State of territory or by the State of his nationality or by the State of the nationality of the victim or by the State in whose territory he may be present.

In India, the Extradition Act of 1962, bilateral extradition treaties, together with relevant international conventions containing provisions for extradition, govern matters relating to extradition from India to other countries and vice-versa.

The Extradition Act contains provisions concerning the duty to extradite or prosecute. All bilateral extradition treaties that India has concluded with other countries contain provision concerning the obligation to extradite or prosecute. In practice, these provisions are implemented in letter and spirit in respect of all extradition offences.

India is a party to several international conventions dealing with international crimes in different fields. These conventions oblige State Parties to extradite persons

accused of offences defined therein. In the event that an extradition request is refused, such persons must be considered for prosecution. In the absence of a bilateral extradition treaty, the Convention itself could be considered as the legal basis for considering extradition.

No reservation is made by India under any of these conventions concerning the duty to extradite or prosecute.

**Madam Chairperson,**

In relation to the topic "The Most-favoured-nation clause", we welcome the work of the Study Group, co-chaired by Mr. Donald M. McRae and Mr. A. Rohan Perera, the Study Group has considered and agreed on a framework to serve as a road map of future work, in the light of issues highlighted in the syllabus on the topic. In particular, the Study Group made a preliminary assessment of the 1978 draft articles and decided on eight papers to be dealt with under the topics identified and assigned primary responsibility to its members for the preparation of the papers (chap. XI). The MFN clauses are important. I hope that the ILC would study and add clarity to the use of MFN Clauses and better understanding of the implications of its use.

**Madam Chairperson,**

We also welcome the establishment of a Study Group chaired by Professor Nolte on the topic "Treaties over Time", which considered the question of the scope of the work of the Study Group and agreed on a course of action to begin the consideration of the topic.

On the topic of shared natural resources we are pleased to note that having finalized its recommendations on the transboundary aquifers in 2009, the Commission at its meeting on 28 May 2010, decided once more to establish a Working Group on Shared natural resources, chaired by Mr. Enrique Candioti. The Working Group had before it a working paper on oil and gas prepared by Mr. Shinya Murase.

The working paper noted that a majority of States were of the view that the transboundary oil and gas issues were essentially bilateral in nature, as well as highly political and technical, involving diverse situations. Doubts were expressed as to the need for the Commission to proceed with any codification exercise on the issue, including the development of universal rules. It was feared that an attempt at generalization would inadvertently lead to additional complexity in an area that may have been adequately addressed through bilateral efforts.

Given that oil and gas reserves were often located on the continental shelf, there was also a concern that the subject had a bearing on maritime delimitation issues. Maritime delimitation, which, in political terms, was a very delicate issue for the States,

would be a prerequisite for the consideration of this as a sub-topic, unless the parties had mutually agreed not to deal with delimitation.

Furthermore, it was considered that the option of collecting and analyzing information about State practice concerning transboundary oil and gas or elaborating a model agreement on the subject would not lead to a fruitful exercise for the Commission, precisely because of the specificities of each case involving oil and gas. The sensitive nature of certain relevant cases could well be expected to hamper any attempt at a sufficiently comprehensive and useful analysis of the issues involved.

The Working Group having considered all aspects of the matter and taking into account the views of Governments, recommended that the Commission should not take up the consideration of the transboundary oil and gas aspects of the topic "Shared natural resources".

**Madam Chairperson,**

We fully subscribe to the views and concerns expressed in the Working Group and its recommendations that the Commission should not take up for consideration the "transboundary oil and gas aspects" of shared and natural resources. We would like to point out that transboundary oil and gas issues are best dealt with at the bilateral level bearing in mind the geological features, needs of the region, capacity and the efforts of neighbouring countries. Attempting any sort of codification may affect the established bilateral treaty obligations, as well as sometimes, the assiduously arrived agreement at the political level.

**Thank you, Madam Chairperson.**

**BACK TO TABLE OF CONTENTS**