



## UNITED STATES MISSION TO THE UNITED NATIONS

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**United States Statement**  
**63rd UN General Assembly Sixth Committee – Agenda Item 75**  
**Report of the International Law Commission on the Work of its 60th Session:**  
**Protection of Persons (Chapter IX), Immunity of State Officials (Chapter X),**  
**Obligation to Extradite or Prosecute (Chapter XI)**  
**November 3, 2008**

Mr. Chairman, once again, I would like to thank the Chairman of the Commission, Mr. Edmundo Vargas Carreño for his introduction of the Commission's report. I would also like to thank the Special Rapporteurs for their important contributions to the Commission's study of these important topics. As noted in my earlier remarks on the Commission's report, the United States thanks the International Law Commission for its significant contributions to the progressive development and codification of international law and commends the Commission on the quality of the report on its most recent work. I appreciate the opportunity to comment on the topics that are currently before the Committee.

### **Protection of Persons**

We welcome the Commission's decision to consider this important topic. We appreciate the efforts of the Special Rapporteur and believe and hope that the Commission will be able to contribute significantly to advancements in this field. We find the Preliminary Report of the Special Rapporteur (SR) of the ILC on this topic and the preparatory reports of the UN Secretariat to contain a number of extremely useful elements for consideration – which we are currently studying. We welcome the SR's request for comments and intend to submit comments during the coming year.

We wish to note our reservations about taking a rights-based approach to the topic as has been preliminarily suggested by the Special Rapporteur, as well as our objections to incorporating the responsibility to protect concept into the consideration of this topic.

Instead, we hope the Commission will focus its study on areas of the law that will have the most significant practical impact on mitigating the effects of such disasters, including, for example, developing practical tools that could be used to facilitate coordination among providers of necessary disaster assistance or drafting model bilateral agreements that could be used to facilitate access of people and equipment to affected areas in a country.

## **Immunity of State officials from Foreign Criminal Jurisdiction**

We commend the outstanding work of Commission Member Roman Kolodkin as the ILC's Special Rapporteur for this topic. His Preliminary Report offers a comprehensive overview of the topic and an excellent outline for the work of the International Law Commission. We also commend the UN Secretariat and, in particular, the Office of Legal Affairs for the exhaustive memorandum they are finalizing to help the Commission in this important effort. This compendium of State and international practice will prove an invaluable resource to the Commission as it moves forward with this project. Finally, we commend the Commission for its work on this topic during its Sixtieth Session.

The assertion of criminal jurisdiction over the officials of other States implicates some of the most basic principles of international law, notably the sovereign equality of States. A clear and comprehensive set of rules to govern the immunity of State officials from foreign criminal jurisdiction could prove of enormous benefit to the international community. It must be born in mind, however, that a set of such rules that does not strike the right balance between one State's interest in having its officials fulfill their duties free from fear of subsequent prosecution for doing so and another State's interest in prosecuting those whose unlawful conduct causes harm to itself, its citizens, or its territory, or, in the case of properly asserted universal jurisdiction, the international community as a whole, is unlikely to receive wide support. We urge the Commission to continue in this endeavor with caution and great care.

## **Obligation to Extradite or Prosecute**

We appreciate the contribution that the Special Rapporteur, Zdzislaw Galicki, has made to this topic. The United States is a party to a number of international conventions that contain an obligation to extradite or submit a matter for prosecution. We consider such provisions to be an integral and vital aspect of collective efforts to deny terrorists and other criminals a safe haven.

The United States believes, however, that its practice, as well as the practice of other States, reinforces the view that there is not a sufficient basis in customary international law or State practice to formulate draft articles that would extend an obligation to extradite or prosecute beyond binding international legal instruments that contain such obligations. Instead, States only undertake such obligations by joining binding international legal instruments that contain relevant provisions, and the obligations extend only to other States that are parties to such instruments and only to the extent of the terms of such instruments. Otherwise, States could be required to extradite or prosecute an individual under circumstances where the States lacked the necessary legal authority to do so, such as the necessary bilateral extradition relationship or jurisdiction over the alleged offense.

Last year, the Commission reiterated the importance of ascertaining State practice in this area before proceeding to any conclusions. General Assembly resolution 62/66,

highlighting a request from the Commission, invited Governments to provide information on legislation and practice regarding the topic. The Special Rapporteur has similarly indicated in his third report to the Commission that there was still insufficient information that has been provided in response to these requests. The United States has provided the requested information and looks forward to receiving the relevant information from States that have not yet provided it.

The United States believes that a comprehensive view of State practice in this area is essential to any consideration of whether there is a basis for inferring a customary international legal norm to extradite or prosecute. This is particularly the case where, as here, the State practice reported to date is largely confined to implementing treaty-based obligations. While the lack of consistent and sustained State practice to extradite or prosecute in the absence of a treaty-based obligation might suffice to determine that there is not yet such a customary international law norm, any consideration that there might in fact be such a norm would necessitate a broader range of reporting.

The United States understands that there is a concern by some that this work has been progressing too slowly. We continue to think, however, that an analysis of State practice is crucial in determining how the Commission should proceed. As has been noted by the Commission ever since its first report on this topic, if the obligation to extradite or prosecute exists only under international treaties, draft articles on the topic may not be appropriate. We urge the Commission, if it continues to believe that consideration of a customary norm in this area might be warranted, to allow sufficient time to receive and evaluate information provided by States.