

Chapter X

THE OBLIGATION TO EXTRADITE OR PROSECUTE (*AUT DEDERE AUT JUDICARE*)

A. Introduction

145. The Commission, at its fifty-seventh session (2005), decided to include the topic “The obligation to extradite or prosecute (*aut dedere aut judicare*)” in its programme of work and appointed Mr. Zdzislaw Galicki as Special Rapporteur.³⁸⁸

146. The Special Rapporteur submitted four reports. The Commission received and considered the preliminary report at its fifty-eighth session (2006), the second report at its fifty-ninth session (2007), the third report at its sixtieth session (2008) and the fourth report at its sixty-third session (2011).³⁸⁹

147. At the sixty-first session (2009), an open-ended Working Group was established under the chairpersonship of Mr. Alain Pellet,³⁹⁰ and from its discussions, a proposed general framework for consideration of the topic, specifying the issues to be addressed by the Special Rapporteur, was prepared.³⁹¹ At the sixty-second

³⁸⁸ At its 2865th meeting, on 4 August 2005 (see *Yearbook ... 2005*, vol. II (Part Two), para. 500). The General Assembly, in paragraph 5 of resolution 60/22 of 23 November 2005, endorsed the decision of the Commission to include the topic in its programme of work. The topic had been included in the long-term programme of work of the Commission at its fifty-sixth session (2004), on the basis of the proposal annexed to that year’s report (*Yearbook ... 2004*, vol. II (Part Two), paras. 362–363).

³⁸⁹ *Yearbook ... 2006*, vol. II (Part One), document A/CN.4/571 (preliminary report); *Yearbook ... 2007*, vol. II (Part One), document A/CN.4/585 (second report); *Yearbook ... 2008*, vol. II (Part One), document A/CN.4/603 (third report); and *Yearbook ... 2011*, vol. II (Part One), document A/CN.4/648 (fourth report).

³⁹⁰ During its sixtieth session, at its 2988th meeting, on 31 July 2008, the Commission decided to establish a working group on the topic under the chairpersonship of Mr. Alain Pellet, with a mandate and membership to be determined at the sixty-first session (see *Yearbook ... 2008*, vol. II (Part Two), para. 315, and *Yearbook ... 2009*, vol. II (Part Two), para. 198).

³⁹¹ For the proposed general framework prepared by the Working Group, see *Yearbook ... 2009*, vol. II (Part Two), para. 204.

session (2010), the Working Group was reconstituted and, in the absence of its Chairperson, was chaired by Mr. Enrique Candioti.³⁹² The Working Group had before it a survey of multilateral conventions that might be of relevance to the topic, prepared by the Secretariat.³⁹³ At the sixty-fourth session (2012), the Commission established an open-ended Working Group on the obligation to extradite or prosecute (*aut dedere aut judicare*), under the chairpersonship of Mr. Kriangsak Kittichaisaree, to evaluate progress in the Commission’s work on the topic and to explore possible future options to be taken by the Commission.³⁹⁴

B. Consideration of the topic at the present session

148. At the present session, the Commission reconstituted the open-ended Working Group on the obligation to extradite or prosecute (*aut dedere aut judicare*) under the chairpersonship of Mr. Kriangsak Kittichaisaree. The Working Group continued to evaluate work on this topic, particularly in the light of the judgment of the International Court of Justice in the *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* case,³⁹⁵ of 20 July 2012. The Working Group held seven meetings, on 8, 14, 16 and 28 May, 5 June and 18 and 24 July 2013.

149. At its 3189th meeting, on 31 July 2013, the Commission took note of the report of the Working Group, which appears as annex I to the present report.

³⁹² At its 3071st meeting, on 30 July 2010, the Commission took note of the oral report of the temporary Chairperson of the Working Group (*Yearbook ... 2010*, vol. II (Part Two), paras. 336–340).

³⁹³ *Ibid.*, vol. II (Part One), document A/CN.4/630.

³⁹⁴ At its 3152nd meeting, on 30 July 2012, the Commission took note of the oral report of the Chairperson of the Working Group (*Yearbook ... 2012*, vol. II (Part Two), paras. 207–221).

³⁹⁵ *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, p. 422.