



78th Session of the General Assembly

Sixth Committee

Item 80: Crimes against humanity

Thematic Cluster 04 – International Measures

Draft Articles 13 (Extradition), 14 (Mutual legal assistance) and 15 (Settlement of disputes) and the Annex*

Statement by the Permanent Representative of Sri Lanka, H.E. Ambassador Mohan Pieris

03rd April 2024

Mr. Chairman,

On a perusal of articles in cluster four, I couldn't help but remind myself of the quote from the Secretary General of the United Nations who said that "*criminal groups have wasted no time racing towards globalized economy and sophisticated technology that goes with it. But if it is to combat them, have remained up to now very fragmented, and our weapons almost obsolete. The Convention* (he was discussing the Convention at that time) *gives us a new tool to address the scourge of crime as a global problem with enhanced international cooperation*". We can have, he said "a negative impact on the ability of international criminals to operate successfully and can help citizens everywhere in their constant struggle for safety and dignity in their homes and communities". How true that is.

Mr. Chairman,

This discord clearly brings out the challenges facing all nations today. It seeks to crystallize in these articles. Criminals have embraced the breakdown of traditional barriers of nation states, readily. Then have the governments that promoted and embraced such barriers in the first

place. We must remember those who operate outside the law do so because they do not know the bounds of the law. Instead, they capitalize on the new international state of affairs, which allows them a new found flexibility and areas of operation in which they enforce their own, which is well funded and brutal in its price.

States that are called upon to deal with this problem, "have a major role" he said, to play in the process as their flexibility interpreting is their own loss, along with the ability and desire to advise the requesting state on substantive and procedural requirements in their own country and have a major impact on the success or failure of any extradition or mutually legal assistance requests.

Now, the challenges to international cooperation are many and it is against this backdrop that we have to examine the categories of the fourth cluster, and articles that we are examining today. The formulation of the article seems to be a bold attempt, I must say, to respond to the crimes against humanity. However, we must appreciate that the cornerstone in the law of international extradition of the future is from a policy of cooperation between nations.

Now this cooperation has to take into account the difference in the domestic legal systems. Today, we see that the modern day transportation and communication has made it easier for a criminal to seek asylum in foreign nations, which presents a very real danger with the control and suppression of international crime.

My delegation wishes to focus on a few matters that arise out of the present formulation that we see in the articles, for example, the expression - political offenses; we know that there is uncertainty about the definition of political offenses, and that there is no universally acceptable definition of what constitutes political offenses. However, there is generally an accepted rule, which states that the political offences are not subject to international extradition. It is now considered by one authority that political offenses can be broadly defined as an offense against

the security of the state so we must appreciate that the concept of prohibiting the extradition of political offenders is a recent development in international law.

Historically, there existed a divergence of opinions as to whether a state was under a duty to extradite fugitives from justice to another state. Now, this finally gave rise to bilateral treaties for extradition between friendly states. Then, I also did observe, again, the reference to '*aut dedere aut jujicare*' – '*extradite or surrender*'. Now, I presume that all these procedures that are set out in the article, is subject to the procedures established by law that one, and that one recognizes the possibility that none of these procedures might bear fruit for good reason.

Now, the underlying principle in this cluster of articles appears to be the object of ensuring that crimes against humanity constitute offenses to preclude certain defenses or any statute of limitation and to provide for penalties that are proportionate with the crime. Now, it is noted that states are required to establish jurisdiction over the offenses covered and when crime occurs in any territory under its jurisdiction. It is also noteworthy that the articles seek to address a situation where there is reasonable grounds to believe that crimes against humanity have been committed, that an investigation be commenced to find out whether the crime has in fact been committed. And if so, government forces under its control, for example, if you take a complaint against the government forces committed the crime or whether the forces under another state or whether if it was a non-state actors who committed such a crime.

So it is clear, that the burden that is cast on the state in these circumstances is no different to the burden casts on established criminal procedure of a democratic state of investigating a transaction where we can rise to a reasonable suspicion of an offense being committed. The provision to take a person within jurisdiction into custody to enable extradition or surrender proceedings is of course indeed a salutary provision. More particularly, as it addresses the possibility of further criminal acts being committed at the risk of flight and to prevent any interference with the investigation. This again, I presume, would be in terms of the procedures established by law, in a particular jurisdiction. And finally, we have the principle of traditional surrender or the submission to countries competent authorities for the purpose of the prosecution, which sends

a clear message to those engaging in crimes against humanity, that they will not be permitted to be fugitives from justice.

So to that extent, the articles are very relevant. There's one article I thought that should be looked into and that is giving the competent authority, the space to directly provide information about offenders. Now, I am not too sure how salutary the provision is, I think it may be good and perhaps it may be prudent to still have some kind of judicial control, some judicial oversight, over that whole mechanism of providing information outside the judicial system, because we know that the judicial authorities will apply more stringent procedures, more stringent safeguards, that a competent authority in the administration, perhaps may not.

Those are the few observations that I wish to make and I can also say that as far as Sri Lanka is concerned, we have a very robust extradition jurisdiction. The jurisdiction is vested in the High Court exclusively, and that is a jurisdiction that is very jealously exercised for the reason that the courts do appreciate the fact that unless it is completely satisfied, that there is good reason for extradition, and the offenses are well made out in the jurisdiction in which the offense is said to have committed, the Courts would perhaps be restrained in making an order for extradition.

I, thank you Mr. Chairman.