



IRELAND

Statement by

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on the work of its 59th session

Chapter IX

The Obligation to Extradite or Prosecute
(Aut Dedere Aut Judicare)

CHECK AGAINST DELIVERY

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The obligation to extradite or prosecute (*aut dedere aut judicare*)

Mr Chairman,

1. On behalf of Ireland, I would like to express appreciation for the efforts of the Commission in addressing the topic of the obligation to extradite or prosecute in international law. We especially wish to commend the work of the Special Rapporteur in formulating a second report.
2. Ireland is of the view that the obligation of a State to extradite or prosecute is a very deserving topic for consideration by the Commission and the international community. In an era of globalisation, the increasing transborder dimension of many crimes demands co-operation among States to ensure “no safe haven” for offenders.
3. The second report of the Special Rapporteur usefully identifies several aspects of the obligation to extradite or prosecute which require careful analysis. Ireland welcomes the general consensus among Commission members that this topic should be addressed in a precise fashion, with its scope limited to the main issues and the principal elements of the obligation, *aut dedere aut judicare*.
4. We further welcome the Special Rapporteur’s acknowledgment of the need for a very careful treatment of the relationship between the obligation to prosecute or extradite and the principle of universal jurisdiction. While there is much common ground between the two principles, both in terms of their material scope and their shared objective of ending impunity, they serve different functions in the international legal order. We agree with the Special Rapporteur’s call for a careful debate on the definitions of “universal jurisdiction” and “*aut dedere aut judicare*”, and we welcome his intention to formulate a second draft article containing a definition of terms used.
5. A related issue acknowledged by the Special Rapporteur as requiring careful treatment is the impact of surrender to an international criminal tribunal on the obligation to extradite or prosecute. With the welcome establishment of a permanent International Criminal Court, traditional understandings of *aut dedere aut judicare* may be affected.

The relationship between this obligation and the possibility of surrender to an international tribunal is not yet entirely clear. This issue is complicated by the fact that not all States are parties to the Rome Statute, and by the complementary nature of the Court's jurisdiction, meaning that primary responsibility for bringing offenders to justice rests in the hands of States.

Mr Chairman,

6. Ireland is convinced that the nature of the obligation *aut dedere aut judicare* is such that State practice and the implementation of the duty in domestic legal systems are of critical importance to a thorough understanding of this obligation. We greatly welcome the intention of the Special Rapporteur to conduct a systematic review of State practice, including national legislation and the decisions of national courts. We call on participating States to offer the Special Rapporteur the utmost assistance in this task in responding to his written request.
7. Ireland looks forward to discussions on the first draft article on the scope of application of any draft articles on this topic.¹ It is particularly important that the relationship between the two elements of the obligation, extradition and prosecution, and the circumstances in which one or the other is the most appropriate, is clearly delineated.
8. Finally, we agree with the need for caution in determining the appropriate result of the Commission's work on this topic. Ireland is of the view that a thorough analysis of relevant international treaties and State practice is necessary before a detailed understanding of the *aut dedere aut judicare* obligation in international law will emerge. Once achieved, it will be possible to determine whether the adoption of draft articles, guidelines or recommendations is more appropriate to the current topic.
9. In closing, Mr Chairman, Ireland reiterates its appreciation for the important work of the Commission and the Special Rapporteur on this challenging topic and looks forward to future discussions on the matter.

¹ Draft article 1:

Scope of application

The present draft articles shall apply to the establishment, content, operation and effects of the alternative obligation of States to extradite or prosecute persons under their jurisdiction.