

**Statement by Mr. Kengo Otsuka**  
**Representative of Japan**  
**At the Meeting of the Sixth Committee**  
**On Agenda Item 79: Report of the International Law Commission on the Work of**  
**Its Sixty-fourth Session (Part I – Chapters I-III, IV, V and XII)**

Thank you, Mr. Chairman.

At the outset, the delegation of Japan wishes to congratulate you most warmly for your election as Chair of the Sixth Committee. We are confident that we will have a most successful session this year under your excellent guidance. My delegation will cooperate with you on working towards a smooth and effective term of work. Our thanks and congratulations go to all the other members of the bureau as well. We also would like to extend our appreciation to the members of the Secretariat working under the outstanding leadership of Mr. Mikulka. We are well aware of the importance and, at the same time, the difficulties, of the work of the Codification Division of the Office of Legal Affairs, which is essential for the success of this Committee.

Mr. Chairman,

The delegation of Japan would like to address sad news regarding two former members of the International Law Commission. First, we all were shocked by the news that Mr. Carlos Calero Rodrigues, former member of Brazil from 1982 to 1996, passed away last year. Mr. Rodrigues, a prominent international legal scholar in his country and South America as a whole, had greatly contributed to the work of the Commission. Particularly, his dedication for undertaking the role of the Special Rapporteur on the topic of “Jurisdictional Immunities of States and Their Properties,” had greatly contributed to the conclusion of the United Nations Convention on Jurisdictional Immunities of States and Their Properties, which was adopted on 2 December 2004. His tireless efforts prove the importance of the Commission under its objective of encouraging the progressive development of international law and its codification. In this regard, he left a vast and significant heritage to us, which will never be forgotten. The delegation of Japan would like to express our deepest condolences to his loved ones and the delegation of Brazil.

Secondly, we have learnt this May that Mr. Choung Il Chee from the Republic of Korea, a member of the Commission from 2002 to 2006, passed away. Anyone who witnessed the actual discussion at the International Law Commission in Geneva must know how honest and passionate he was during the discussions. In 2003, Mr. Chee served as the second vice-chairman of the Commission and greatly contributed towards facilitation of the session in his capacity. We are sure that he will be greatly missed by members of the Commission. The delegation of Japan would like to express our deepest condolences to his family and the delegation of the Republic of Korea.

The delegation of Japan would like to point out that we have witnessed a new forward-looking dynamism of the Commission, which was caused by the work of active members in the Sixty-fourth session. The fact that Ms. Concepcion Escobar Hernandez from Spain was appointed the first-ever female Special Rapporteur on the topic of "Immunity of State Officials From Foreign Criminal Jurisdiction" this year, is an historic development in the Commission. Japan is looking forward to seeing further discussion take place in the next session with her outstanding participation. We have also seen that newly elected members of the Commission have vigorously participated in the discussions in Geneva, which gives significant support towards the self-renewal of the Commission and, as a consequence, development of international law. At the same time, the delegation of Japan is deeply grateful to all the officers for the Sixty-fourth session.

Mr. Chairman,

Now we would like to turn to the work of the International Law Commission. At the very beginning, the delegation of Japan reiterates its strong commitment for supporting the activity of the Commission as an organ charged with codification and progressive development of international law. In the world today, the principle of "rule of law" is important as ever for the peaceful settlement of conflicts and disputes. Prime Minister Yoshihiko Noda pointed out in his speech at the General Discussion of the General Assembly held in this September, that, I quote, "The "rule of law" is essential to preventing and resolving conflicts in a peaceful manner, and it plays a critical role in maintaining a stable and predictable society; thus it must be further enhanced." We reaffirm that the work of the International Law Commission has been providing the basis of the peaceful settlement of conflicts, and contributing to realize the principle of rule of law in our society.

To that end, the delegation of Japan has to point out again, as at the past sessions, that recent practice of the International Law Commission should be reconsidered. In particular, the tendency of the Commission to set up study groups has only limited effect for the development of international law. Taking this opportunity, we should stress that the mainstream function of the Commission should remain elaboration of draft articles for possible codification of general international law, and contributing to its progressive development. Needless to say, we firmly support the idea that the Commission should be allowed a number of forms for deliberation, and a study group for a specific topic could be seen as one of them. Nevertheless, the delegation of Japan has to emphasize that the outcomes of study groups are inherently limited by the nature of its work, which does not aim to draft articles of possible international treaty. Therefore, members of the Sixth Committee, including my delegation, should seriously consider what areas of international law would urgently require an elucidation and/or elaboration of concrete rules by the Commission and should decide to refer an appropriate task to the Commission.

Mr. Chairman,

The delegation of Japan recalls that the topic of "Protection of Atmosphere" was endorsed by the Commission to be included in the long-term programme of work as the result of its sixty-third session, and was taken note by the General Assembly resolution last year. We note that this topic was not included in the programme of work this year as the result of the discussion in the Commission. The delegation of Japan recognizes the importance of the work of the Commission on the protection of the environment. It also requires coordinated actions by the international community. The delegation of Japan expresses its hope that any concern will be addressed so as to allow the Commission to work on the legal aspects of the issue in an appropriate manner.

Mr. Chairman,

It is obvious that close collaboration between the International Law Commission and the Sixth Committee is crucial for building stronger and more effective work of the Commission. In that sense, the delegation of Japan wishes to draw the attention of every member state to propose concrete and constructive ideas and suggestions for the sake of helping the work of the Commission. We will address our

deliberation of the Guide to Practice on Reservation to Treaties with article based comments, in order to make the Guide a more sophisticated rule in the area of law of treaty. We truly hope that the discussion in this Committee will benefit the Commission for their next opportunity of deliberation in 2013.

### **Expulsion of Aliens**

Mr. Chairman,

Let me turn now to the topic of the programme of work held in the Sixty-fourth session.

With regard to the topic of “Expulsion of Aliens,” the delegation of Japan would like to express its gratitude to the Special Rapporteur, Mr. Maurice Kamto, for his eighth report, and to all the members of the Commission, for their discussion on this topic.

We appreciate that in the eighth report the Special Rapporteur provided an analysis to various comments on this topic made by States and the EU during the discussion at the Sixth Committee last year, which clarify the issues on this topic and will contribute to further discussion. At the same time, there still has been much debate in the 64<sup>th</sup> session of the Commission with regard to many issues, including the final form of output of this work.

We also appreciate that the draft article and the commentaries to the draft articles were adopted in the 64<sup>th</sup> session and transmitted them to Governments for comments and observations. The Japanese delegation would like to encourage the Commission to continue to discuss the issues to reach a conclusion, especially concerning a desirable form of output of this topic, and to seek Member States to submit useful comments and observations for future discussion at the Commission and the Sixth Committee.

### **Protection of Persons in the Event of Disasters**

The delegation of Japan would like to commend the Special Rapporteur, Mr.

Eduardo Valencia-Ospina for his fifth report and also congratulate the Special Rapporteur and the Commission on the adoption of draft articles up to Article 11 provisionally adopted so far by the Commission and draft articles 5 bis, 12, 13, 14 and 15, provisionally adopted by the Drafting Committee in July.

Japan is a disaster-prone country, and based on our expertise we have been providing assistance in the event of disasters in other countries. But after receiving much assistance in the wake of the Great East Japan Earthquake and tsunami and the TEPCO nuclear accident in 2011, we came to further understand the multiple aspects of providing and receiving assistance. We regard highly, efforts of the Commission to make its work as practical as possible. Since natural disasters could trigger other unexpected disasters, the deliberation of the Commission to consider the forms of cooperation (Article 5 bis) very broadly matches the reality. We also commend the articulate work of striking a balance between Article 13 and Article 14. Since primary responsibility to protect the victims of a disaster lies with the affected state, the affected state should be able to maintain overall control of the assistance it receives and ensure compliance of domestic laws, but domestic procedures should not impede the facilitation of external assistance.

The Special Rapporteur has indicated his intention to focus on disaster risk reduction in his next report. Disaster risk reduction needs multilateral cooperation on a normal daily basis and involves longer-term efforts, as opposed to acts required as immediate response to actual disasters. It is also closely linked with development assistance. The delegation of Japan looks forward to the next report and the discussions at the Commission.

Thank you, Mr. Chairman.