

STATEMENT BY MR. *****
REPRESENTATIVE OF JAPAN
AT THE MEETING OF THE SIXTH COMMITTEE
ON THE REPORT OF THE INTERNATIONAL LAW COMMISSION
ON THE WORK OF ITS SIXTY-SEVENTH SESSION (PART ONE)

Introduction Parts/Other Decisions and Conclusions

Thank you, Mr. Chairman.

At the outset, the delegation of Japan would like to extend our wholehearted congratulations on your assumption of the position as Chairman of the Sixth Committee. Since the commencement of ^{the} current session of the Sixth Committee, you have successfully presided over each meeting by taking a balanced and fair attitude, which is very much appreciated. My delegation will continue to support you and your bureau members, and I am sure we can continue to develop a smooth and constructive discussion toward the end of the current session of the General Assembly.

Taking this opportunity, the Japanese delegation would like to welcome the attendance of Mr. Narinder Singh in the capacity as Chairman of the International Law Commission on its Sixty-Seventh session. Your introductory remarks were a good chance for us to deepen the understanding on the work of the Commission. I should also note that, at the beginning of the session, the Commission elected Mr. Roman Kolodkin to fill the casual vacancy occasioned by the resignation of Mr. Kirill Gevorgian. ^{ゲヴォルギヤン} I would like to congratulate his election as a member of the Commission, and wish him success. In every session, my delegation has expressed the deepest gratitude to the members of the Secretariat for their dedicated work, but this year, I should put further words of appreciation to the Secretary of the Commission, Mr. Korontzis who retired this year. Without his dedication, the Commission could not have effectively undertaken its duty, so we are thankful for his professionalism and extend our best wishes to him in his future.

Mr. Chairman,

The year 2015 marks the 70th anniversary of the establishment of the United Nations. Since its inception, the UN has tackled on uncountable number of serious challenges of the international community, and by its tireless effort, contributed to the stability of international order. In order to carry out its mission, the UN has maintained the “rule of law” as one of the pillars of principles to be pursued. As Article 13 of the UN Charter stipulates, the General Assembly is mandated to encourage the progressive development of international law and its codification, which is a foundation of the role of the Sixth Committee and the International Law Commission. For the past seven decades, both bodies have achieved the said objective under the Charter in many fields through drafting articles and concluding major conventions based on them. At this historic moment, the delegation of Japan would like to offer its congratulations on the commemoration of the 70th anniversary of the UN and its great achievements in the field of public international law. Japan, as a responsible member of the UN, will continue to strive for peace and security of the international community by promoting the rule of law at the national and international levels.

We, however, are facing emerging challenges concerning the mission of the Commission. It has been pointed out that the Commission has gradually been losing its influence over international law-making partly because the Commission has exhausted major fields of international law in its deliberations and because multilateral forums play a much more important role in law-making in late years. The Sixth Committee thereby is no longer treated as a central forum for international law-making. Furthermore, judicial institutions such as the International Court of Justice have been playing a critical role for consolidating norms by rendering their judgments. It is true that the Commission is facing new circumstances and it has to be changed in many ways including its working methods or selection of topics. Nevertheless, I don't think the Commission is marking the end of its golden age. Rather, it still maintains a unique and important role because, other than the Commission, there is no institution consisting of prominent international lawyers from academics and practitioners who represent the main forms of civilization and the principal legal

systems of the world. One role that we deem important is the clarification of the basic principles of international law in order to avoid the fragmentation of it. In the modern international community, rules are created almost every day, which accelerate the fragmentation of international law. In order to avoid this trend and maintain consistency of the international legal framework, the Commission should continue to be committed to identify and codify established and emerging principles of international law for overarching individual norms. The delegation of Japan extends its sincere hope that the Commission will undertake such a role in order to contribute to the development of international law.

As I have mentioned, the Sixth Committee and the International Law Commission are the central bodies to carry out the progressive development of international law and its codification in the UN system. In this sense, it is quite obvious that close cooperation between the two is crucial. Because of this, my delegation takes an interest in the Commission's consideration to the possibility of having some part of its session in New York. We note that the Commission expressed its wish that consideration be given to the possibility of having one half session in the next ^{91-92/93} quinquennium in New York, and requested the Secretariat to proceed to make the necessary arrangements for convening the first segment of its Seventieth session in the city. The Japanese delegation considers that, as long as changing the venue does not generate any additional resources, holding sessions in New York can increase the chance for the Commission to interact with member states. We will continue to pay attention to this matter.

Mr. Chairman,

In the Sixty-Seventh session, the Commission decided to include the topic "*jus cogens*" in its programme of work and appointed Mr. (Dire) Tladi as the Special Rapporteur. The delegation of Japan would like to welcome the decision and express its interest ~~to~~ ⁱⁿ this topic, and looks forward to seeing the Special Rapporteur's first report in the next session. As ~~I have~~ ^{I have} pointed out last year, the peremptory norm of "*jus cogens*" is founded under the Vienna Convention on the Law of Treaties. Nevertheless, concrete substance of this norm is still unclear. Thus, elucidating the conception of "*jus cogens*" by ^{this delegation} ~~is~~

identifying its nature and scope would be beneficial for all countries. We expect that the Commission will set out the concrete rules of "*jus cogens*" based on widely shared understanding of this norm among member states and precedent cases of international courts. We sincerely hope the Commission will carry out its deliberation on this topic in a prudent manner in order to receive a wide range of support from members of this Committee.

Most-Favoured-Nation clause

Mr. Chairman,

Now, let me turn to specific topics on the programme of work held in the Sixty-Seventh session of the Commission. I would like to congratulate the completion of the work of the Study Group on the "Most-Favoured-Nation clause". The delegation of Japan acknowledges the long-term efforts of the Study Group co-chaired by Mr. Donald M. ²⁰¹¹McRae and Mr. Rohan Perera with support from Mr. Mathias ²⁰¹²Forteau ²⁰¹² since the Sixty-First session of the Commission, which are much appreciated.

After the adoption of the 1978 Draft Articles on MFN clause, the multilateral framework attempting unification of the application and interpretation of MFN clauses has failed to be embodied. Despite this, state practice on the application and interpretation of MFN clause has developed in a variety of forms by GATT/WTO, bilateral investment treaties and regional economic integration agreements.

Since there is no unified rule on the implementation of MFN clause, fragmentation of the interpretation and application of MFN provisions has been accelerated by judicial and arbitral decisions rendered by different kinds of bodies with different standards of judgments or arbitrators. This trend, in some cases, may bring about uncertainty of arbitral awards in the field of international economic law. In such circumstances, I would expect that the present final report including accumulated analysis of judicial decisions concerning MFN clauses will provide us a practical guidance especially in the aspect of

negotiation of investment treaties and regional economic partnership agreements as well as judicial proceedings before the WTO and other investment arbitrations. Particularly, the delegation of Japan welcomes the ILC's efforts by reviewing interpretative techniques of MFN clauses in order to assist in the interpretation and application of MFN provisions.

It should be stressed that provisions of MFN clauses under investment treaties or regional economic partnership agreements are respectively elaborated as a reflection of specific circumstances so as to extend the interests of each party to those instruments. In that sense, the delegation of Japan highly values the conclusion of the Commission that the interpretation of MFN clauses is to be undertaken on the basis of the rules for the interpretation of treaties as set out in Articles 31 through 33 of the Vienna Convention on Law of ^{the} Treaties. The delegation of Japan also welcomes the conclusion of the Commission that whether MFN clauses are to encompass dispute settlement provisions is ultimately up to the parties taking into account the rules of interpretation of treaties.

The delegation of Japan reaffirms that, as the Commission acknowledges, this report is a research outcome in which the Commission consolidates its analysis of existing practices concerning MFN clauses, and therefore it is not directly binding on parties to investment treaties and regional economic partnership agreements.

Protection of the atmosphere

Mr. Chairman,

Now, I would like to touch upon the topic of "Protection of the atmosphere". The delegation of Japan welcomes the submission of the second report by the Special Rapporteur, Mr. Shinya Murase, which analyzed several key notions of this topic including the common concern of humankind and international cooperation for the protection of the atmosphere. We understand that, as a result of deliberation by the Drafting Committee, Draft Guidelines 1, 2

and 5 and four preambular paragraphs were adopted at the present session. I would like to mention some points.

First, the Japanese delegation highly values the fact that the concept of common concern of humankind was included as part of preambular paragraphs of the draft guidelines. We consider this concept has a significant legal value for protection of the atmospheric environment as several related legal documents refer to this notion such as preamble of the UN Framework Convention on Climate Change. Stipulating the conception of common concern of humankind in the preambular paragraph would be appropriate because the concept does not necessarily entail substantive legal relationships among states but affords a certain legal value in a broad sense to objectives in question.

With regard to the Draft Guideline 5 stipulating an obligation of international cooperation, the delegation of Japan perceives this provision as one of the most important outcomes under this topic in the Sixty-Seventh session. In the modern industrial society, the wide range of economic and other activities could be elements for causing transboundary air pollution or global climate change. Therefore, protection of the atmosphere ought to be carried out by cooperation among states. In this sense, prescribing the general obligation of international cooperation reflects the reality regarding environmental problems in the international community. Thus, obligating states to cooperate with each other and with relevant international organizations for the protection of the atmosphere is a necessary rule to be included into the guidelines.

As a final point, the delegation of Japan recognizes there were different views among members of the Commission over the understanding in relation to the approach of its work which was agreed in the Sixty-Fifth session when this topic was included in the Commission's programme of work. We hope the Commission will continue to pay due regard to the understanding as it was placed as a condition to undertake deliberation of this topic. In this connection, we note that the third paragraph of the preamble and the Draft Guideline 2 reflect the language of the understanding. The delegation of Japan deems that, due to the nature of the understanding as working principle of this topic, it is

inappropriate to include its language in the preambular paragraph which provides a contextual framework of the draft guidelines. Furthermore, with regard to Draft Guideline 2 stipulating the scope of the guidelines, the text should not copy the verbatim language of the understanding which is exhaustive list of "not to do" in relation to the method of work, so the wording of them should be re-examined and simplified.

Lastly, the Japanese delegation welcomes that a dialogue session with scientists was held during the Sixty-Seventh session of the Commission. It is inevitable to deal with matters of natural science in discussing the topic of Protection of the atmosphere, therefore gaining input from scientific experts with technical knowledge is crucial. We hope a similar event will be arranged in the next session for further deliberation.

Thank you, Mr. Chairman.