

Mr. Chairman,

I would like to thank the Chairman of the International Law Commission, Mr. Georg Nolte for his detailed presentation of the Commission's report. We now focus on issues of Chapters VI and VII of the ILC Report which constitute Cluster 2 and include the topics 'Protection of the atmosphere' and 'Immunity of State Officials from foreign criminal jurisdiction'.

Mr. Chairman,

We commend Special Rapporteur Mr. Shinya Murase for submitting fourth Report on the topic 'Protection of the atmosphere' at the sixty-ninth session of the Commission. The Special Rapporteur has, while analyzing the relevant issues, suggested for further work on the topic by taking into account the inter-relationship of this topic with other fields of international law like: law of the sea; international trade; and international human rights law.

The Special Rapporteur has, for that purpose proposed four additional draft guidelines (which are in addition to the previous eight draft guidelines). The draft guideline 9 entitled 'the guiding principles on interrelationship' is general in nature. The others concern the interrelationship of the law on the protection of the atmosphere with: the international trade and investment law (draft guideline 10); law of the sea (draft guideline 11); and the human rights law (draft guideline 12).

We appreciate the efforts of the Special Rapporteur in organizing dialogue of the Commission members with the scientists preceding the debate on his Report and suggestions. As a result of the debate and consequent to Commission's consideration, the draft guideline 9 and three preambular paragraphs were provisionally adopted.

Mr. Chairman,

The draft guideline 9 essentially suggests that rules relevant to the protection of atmosphere in other fields of international law like law of the sea, human rights, and trade, should be identified, interpreted and applied in order to prepare a set of obligations, with a view to harmonize and integrate them to avoid conflict.

We are of the view that each field of international law has its own subject matter, scope, conditions, and the legal regime through treaties to regulate the activities in that field and the issues related thereto. Therefore, in-depth study is

required to find the relevant and common factors between the protection of atmosphere and such other fields of international law. In this process, remit of established treaty regimes in the other fields of international law including their core objective would have to be taken care and respected before linking to any other field.

Mr. Chairman,

Finally, as a general comment, there is no denying that the atmosphere we live in is a common resource which all states have a duty to protect for present and future generation, which is even more significant for the developing, less developed and especially the island states that face the risk due to continuing sea rise.

Mr. Chairman,

Now, turning to the topic 'Immunity of State Officials from foreign criminal jurisdiction', we commend the work of the Special Rapporteur, Professor Concepcion Escobar Hernandez for further elaboration of the fifth Report on the topic. We note that the Commission continued to consider the fifth Report which analyzed the question of limitations and exceptions to the immunity of State officials from foreign criminal jurisdiction. Draft article 7 proposed by the Special Rapporteur lists out the crimes under international law in respect of which immunity from foreign criminal jurisdiction *ratione materiae* shall not apply. The list includes: crime of genocide, crimes against humanity, war crimes, crime of apartheid, torture and enforced disappearance.

We appreciate the methodology adopted in the Report, however, it provides less treaty practice with regard to limitations and exceptions to immunity. It is relevant to note that the widely accepted - Vienna Conventions on Diplomatic, and Consular Relations which expressly contain provisions on immunity for certain categories of State officials in the context of allegations of criminal conduct, contain no such exceptions to immunity.

Mr. Chairman,

The issues involved in the draft Articles are highly complex and politically sensitive for the States and therefore, diligence, prudence and caution is needed to decide whether the Commission should focus on the codification aspect or progressive development of international law (*lex lata or lex ferenda*). This would be clear only when the Commission will be able to show consistent State and treaty practice to support the exceptions asserted in draft article 7. Any new system, if not agreed, would be likely to harm inter-State

relations and also undermine the very objective of ending impunity of most serious international crimes.

Mr. Chairman,

The status of and the nature of duty being performed by persons claiming immunity is a factor of core importance at the time of the commission of offence. There could be a situation where certain persons, who though technically belonging to the category of officials immune by domestic law of a country from acts done during the course of official duty as State officials, may undertake certain contractual assignment other than or in addition to the original State official duty. In such situations, factors such as status of such officials at the time of the commission of offence, nature of their functions, the gravity of offence, position of international law concerning immunity, victims' interests, and the totality of circumstances, should be taken into account in determining immunity.

We look forward to the next Session of the Commission, when the Special Rapporteur would introduce procedural aspects of immunity of State officials from foreign criminal jurisdiction.

Finally, Mr. Chairman, I take the liberty to revisit the area of Cluster 1 wherein we support the consideration by the Commission of the newly proposed topic 'Evidence before international courts and tribunals.'

I thank you.
