

STATEMENT BY \*\*\*\*\*  
REPRESENTATIVE OF JAPAN  
AT THE MEETING OF THE SIXTH COMMITTEE  
ON THE REPORT OF THE INTERNATIONAL LAW COMMISSION  
ON THE WORK OF ITS SIXTY-NINTH SESSION (CLUSTER TWO)

Protection of the atmosphere

Thank you, Mr. Chairman.

Now, I would like to touch upon the topic of "Protection of the atmosphere". Japan welcomes the submission of the forth report by the Special Rapporteur, Dr. Shinya Murase, which analyzed several key aspects of this topic.

First, Japan welcomes the comprehensive approach of the Special Rapporteur in dealing with this topic. The atmosphere is the envelope of gases surrounding the Earth and it never stays in the same place. In this sense, it is important to extract general norms of the international law, where individual treaties constitute only fragmented norms.

Japan welcomes the Commission's provisional adoption of the Draft Guideline 9, which stipulates "Interrelationship among relevant rules", as a means to avoid this fragmentation.

Paragraph 1 of the draft guidelines notes that the rules of international law relating to the protection of the atmosphere and other relevant rules of international law should, to the extent possible, be identified, interpreted and applied in order to give rise to a single set of compatible obligations, in line with the principles of harmonization and systemic integration, and with a view to avoiding conflicts. We appreciate this approach's focus on the importance of conformity with relevant rules of international law, including the Vienna Convention on the Law of Treaties of 1969, and the principles and rules of

customary international law, in the context of the protection of the atmosphere.

Japan also appreciate paragraph 2, which covers situations in which States wish to develop new rules, and which would avoid future fragmentation of international law.

Paragraph 3 highlights the plight of those who are particularly vulnerable to atmospheric pollution and atmospheric degradation. Atmospheric pollution, atmospheric degradation, and climate change are expected to have a significant impact on the people listed here. Therefore, Japan appreciates this paragraph's stipulation on the obligations of special care for such people based on a human rights perspective.

As our final point, Japan is pleased that the third dialogue session with scientists was held during the sixty-ninth session of the Commission. We believe that this dialogue greatly helped to facilitate discussions on scientific topics. This approach can serve as a good practice when the Commission deals with legal aspects of scientific topics.

## Immunity of State officials from foreign criminal jurisdiction

Mr. Chairman,

Turning to the topic of "Immunity of State officials from foreign criminal jurisdiction", I express my gratitude to the efforts of the Special Rapporteur. It should be noted that the draft article 7 was provisionally adopted by a recorded vote in the Commission. This indicates that there was a fundamental division of opinions on certain issues among members, reflecting the difficulty and sensitivity of the topic. Based on the conclusion drawn from discussion in the Commission, I would like to make some preliminary comments.

First, there was debate on whether "limitations and exceptions to the immunity of State officials from foreign criminal jurisdiction" is an established customary international law (*lex lata*) or development of a new law (*lex ferenda*).

The Commission could not reach common ground on this matter. Although the Commission does not necessarily determine the legal status of draft provisions, the divergent views could be due to the fact that the fifth report did not provide convincing evidence to support its conclusion.

Second, concerning the list of crimes to which immunity does not apply, more explanation is needed on the reason for the selection of these crimes as opposed to other crimes not on the list. It is still unclear in particular whether limitations and exceptions of immunity would be restricted to the listed crimes or not. For these reasons, although draft article 7 was provisionally adopted by the Commission, clarification is needed on the aforementioned aspects. It is also necessary to continue observing state practice in order to determine whether the draft article reflects the actual view of international society.

Lastly, in the future work on this topic, the proper balance between State sovereignty and the fight against impunity requires great attention. In this regard, the responsibility of States should not be confused with that of individuals; at the same time, it is also important to respect the international legal order which is based upon the sovereign equality of States. During the current session, there were some discussions on procedural aspects of immunity and safeguards. However, it was not clear what the procedural aspects and safeguards would mean. Japan hopes that the sixth report of the Special Rapporteur will provide a rich explanation and references on these issues.

Thank you, Mr. Chairman.