

Statement by Mr. Yuki Hirotani
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 Three)

Peremptory norms of general international law (*Jus cogens*)

Mr. Chairman,

I would like to start by addressing the topic of “Peremptory norms of general international law (*jus cogens*)”. Japan welcomes the submission of the second report by the Special Rapporteur, Mr. Dire Tradi, which analyzes the criteria and requirement for the recognition of *jus cogens*.

Based on past discussions on the topic in this Committee and considerations by the ILC, Japan supports the Special Rapporteur’s approach of treating the elements of Article 53 of the Vienna Convention on the Law of Treaties as the basis for the criteria for the identification of *jus cogens*. Japan also supports his approach of relying on State practice and the decisions of international courts and tribunals to give content and meaning to the Article.

However, because *jus cogens* is “a norm of general international law”, and is not a concept confined to the context of treaty law, the scope of this topic need not be limited to treaty law. Due consideration should thus be given to issues relating to other fields of law, such as State responsibility, not only in the context of effects or consequences of *jus cogens* but also with respect to its definition, criteria and content.

With regard to the question of whether the Commission should prepare an illustrative list of *jus cogens*, Japan is of the view that such a list could be quite useful in practice if it included the grounds and evidence based on which the ILC considers that the listed norms have acquired the status of *jus cogens*.

However, proper care should be taken in preparation of the list to avoid any misperceptions that the listed norms are given a special legal status distinct from other norms that may also be identified as *jus cogens* but are not included in the list. It is important to make it clear that the list is illustrative but not exhaustive, or that the list should not prejudice the legal status of norms not included in the list.

Regarding the consideration of regional *jus cogens*, Japan is not fully convinced of the need to study non-universal *jus cogens* under the current topic. If discussion continues on this issue, the purpose and significance of pursuing such discussion should be clarified, and the relationship between *jus cogens* norms and regional *jus cogens* norms should be considered in detail.

In closing, Japan would like to reiterate its appreciation for the dedicated work of the Special Rapporteur and the ILC on this important topic. The future work proposed by the Special Rapporteur includes considerations on the effect or consequences of *jus cogens* in general terms as well as in the context of treaty law and state responsibility. The outcomes of such discussions should add important insight to the analysis of *jus cogens*. Japan therefore looks forward to continued and constructive debate at the ILC, together with review, as appropriate, of the draft conclusions already discussed by the Commission.

Succession of States in respect of State responsibility

Mr. Chairman,

Now, let me turn to the topic of "Succession of States in respect of State responsibility", which was added to the Commission's programme of work this year. Japan welcomes the submission of the first report by the Special Rapporteur, Mr. Pavel Sturma in a very limited time. We understand that the analysis at the Commission was of a preliminary nature, as there was not sufficient time for all Commission members to study the report. Japan hopes that in-depth deliberations will continue during the next session on this topic.

Last year, Japan noted the potential difficulties surrounding this topic given the limited number of relevant cases and questions over whether there is sufficient state practice in this area. In this connection, I would like to note that there are several types of succession of States, such as the transfer of part of the territory of a State, the independence of a State, the unification of States, the separation of part or parts of the territory of a State, and the dissolution of a State. It is therefore crucial to study state practice in each of these areas.

The Special Rapporteur analyzes the relevance of the agreements to succession of States in respect of State responsibility in Draft Article 3, and the effect of a unilateral declaration by a successor State in Draft Article 4. However, these draft articles have a complex structure because of the lack of the clear orientation regarding the general principles of succession of States in respect of State responsibility. If we rely on the theory of non-succession, Draft Article 3 and 4 should focus on exceptional conditions where the agreements and a unilateral declaration may result in succession of responsibility.

The first report of the Special Rapporteur indicates that the theory of non-succession is no longer dominant. However, as pointed out by several members of the Commission, the cases presented in the report are not sufficient to support this argument. Therefore, Japan expects that there will be further analysis on the general principles guiding succession in respect of State responsibility.

Japan considers, at this stage, that the issues such as liability arising out of activities not prohibited by international law, responsibility of international organizations, as well as succession of governments should not be touched upon in order to avoid overburdening the present topic.

Thank you, Mr. Chairman.