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Agenda Item 81, Report of the International Law Commission (Cluster II)

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Mr. Chairman,

My delegation welcomes the fourth report prepared by the Special Rapporteur, Mr. Shinya Murase, and would like to thank him for his efforts. We would also like to extend our sincere appreciation to the ILC members, and in particular the Drafting Committee, for their work in adopting draft guideline 9, together with three preambular paragraphs. My delegation will comment on the draft preambular material and draft guideline 9 provisionally adopted by the Commission at the present session.

The Korean government supports the insertion of three preambular paragraphs for three reasons. First, the preamble reflects consideration for the close relationship between the atmosphere and oceans. Second, the preamble focuses on the special situation of low-lying coastal areas and Small Island Developing States due to rising sea levels. Third, in the context of sustainable development, the preamble points out that we should bear in mind the interests of future generations in the long-term conservation of the quality of the atmosphere.

My delegation also supports Guideline 9, which embodies the idea that the three legal processes, namely the identification, interpretation and application of the rules of international law relating to the protection of the atmosphere, should be considered in a harmonious and integrated manner in line with other relevant rules of international law. In this regard, my delegation welcomes the reference to specific areas, such as international trade and investment law, law of the sea, as well as international human rights law, while at the same time recalling that this is not an exhaustive list.

My delegation believes that, as noted in section 2, the principle of harmonization and systemic integration with other rules of international law needs to be considered in developing new rules of international law relating on the protection of the atmosphere.

Regarding section 3 of Guideline 9, my delegation also believes that, as noted in paragraph 16 of the Commentary, this is consistent with the Sustainable Development Goal adopted by the General Assembly.

My delegation expects to review the first reading of the draft guidelines in the next year, as indicated by the Special Rapporteur in his fourth report. I would like to conclude by expressing my sincere appreciation to the Commission for their efforts and the fruitful discussion on this topic.

Mr. Chairman,

Turning to the topic of Immunity of State officials from foreign criminal jurisdiction, My delegation welcomes the fifth report prepared by the Special Rapporteur, Ms. Concepción Escobar Hernández and would like to thank her for her efforts. We would also like to extend our sincere appreciation to the ILC members, and in particular the Drafting Committee, for their work in adopting draft article 7.

The Scope of possible limitations and exceptions to State officials' immunity from foreign criminal jurisdiction is one of the most important issues on this topic. However, last year the Commission did not have enough opportunities to deal with this issue due to a delay in the translation of the Special Rapporteur's report into other UN official languages. Thus our government considers it appropriate that the Commission continues to discuss exceptions to immunity this year.

My delegation takes note of the fact that the Commission adopted draft article 7 provisionally by recorded vote (vote by roll call) on July 20, 2017. This voting method is an exception to the ordinary process for adoption of the draft articles by consensus in the Commission. The fact that draft article 7 was provisionally adopted with twenty-one votes in favour, eight votes against and one abstention reveals that there was substantial disagreement on limitations and exceptions to immunity within the Commission.

My delegation basically agrees with the position taken by the Special Rapporteur and the Commission that there exist neither limitations nor exceptions with respect to immunity *ratione personae*. Meanwhile, our government would like to point out the divergence of opinions regarding limitations or exceptions in respect to immunity *ratione materiae* such as the rule of *lex lata* or *lex ferenda*.

My delegation fully supports global efforts to combat impunity, but it is necessary to pay attention to the jurisprudence of the ICJ on this issue. In the case of the *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, ICJ confirmed that the nature and gravity of crimes in question belonging to substantive matters do not constitute a bar to immunity, which is a procedural matter.

In this regard, my delegation requests that the Commission and the Special Rapporteur collect and examine relevant practices in a thorough manner. Meanwhile, the Special rapporteur is expected to present its next report concerning the procedural aspect of immunity. This issue is directly related to application of draft article 7 provisionally adopted this year. However, given the fact that criminal proceedings vary depending on States' criminal juridical structures (for example, the division of power between prosecutor and police, and preliminary examination of the judicial organ), thorough comparative study about this issue is required.

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