

STATEMENT BY MR. YUSUKE NAKAYAMA
REPRESENTATIVE OF JAPAN
AT THE MEETING OF THE SIXTH COMMITTEE
ON THE REPORT OF THE INTERNATIONAL LAW COMMISSION
ON THE WORK OF ITS SEVENTIETH SESSION (CLUSTER TWO)

Protection of the atmosphere

Thank you, Mr. Chairman,

I would like to start by addressing the topic of the “protection of the atmosphere” led by the Special Rapporteur Dr. Shinya Murase. Japan acknowledges the importance of the topic to find the common legal principles arising from the existing treaties related to the environment. Japan would like to congratulate the Commission and the Special Rapporteur on the successful completion of the first reading of the topic and the adoption of the Preamble and 12 Draft Guidelines, and makes three observations.

First, Japan recalls that the 4th Preambular Paragraph of Draft Guidelines states that “the protection of the atmosphere from atmospheric pollution and atmospheric degradation is a pressing concern of the international community as a whole.” Taking into consideration the fact that the Paris Agreement in 2015 recalled the concept of “the common concern of humankind” in its preambular paragraph, Japan considers it appropriate for the ILC to reconsider this paragraph in the second reading and to update the discussions on this concept.

Second, Japan recalls that Draft Guideline 1 (b) states that ““Atmospheric pollution” means the introduction or release by humans, directly or indirectly, into the atmosphere of substances contributing to deleterious effects extending beyond the State of origin of such a nature as to endanger human life and health and the Earth’s natural environment.” Taking into consideration the fact that both the 1979 Convention on Long-range Transboundary Air Pollution (LRTAP) and the 1982 United Nations Convention on the Law of the Sea (UNCLOS) adopt “substances or energy,” Japan considers it appropriate for the ILC to reconsider this subparagraph in the second reading and to update the discussions on this concept.

Third, Japan respects the Commission which upholds the 2013 Understanding that was established as a condition and guiding principle for its consideration of the topic. Japan notes that the Commission and the Special Rapporteur have faithfully respected the 2013 Understanding in completing the first reading of the topic. A question may be raised whether it is necessary to repeat the content of the 2013 Understanding in the Guideline. Therefore, Japan considers it appropriate for the ILC to discuss in the second reading all possible formulas including the deletion of the 8th Preambular Paragraph as well as in Paragraphs 2 and 3 of the Draft Guideline 2 on “Scope of the guidelines.”

Peremptory norms of general international law (jus cogens)

Mr. Chairman,

Now, I would like to address the topic of “Peremptory norms of general international law (jus cogens)”. Japan welcomes the submission of the third report by the Special Rapporteur, Mr. Dire Tladi, which analyzes the consequences and legal effects of peremptory norms of general international law (jus cogens).

Based on the 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.

Japan appreciates that the Special Rapporteur made progress on the consideration of this topic this year, taking into account of not only the law of treaties but also of other fields of international law, such as State responsibility.

However, Japan would like to note that only five draft conclusions were provisionally adopted at the Drafting Committee, even though as many as 13 draft conclusions were proposed in the third report. It is doubtful whether the Commission had enough time to discuss this topic. Japan deems that this important topic should be carefully examined with sufficient time. In this sense, Japan welcomes the Special Rapporteur’s suggestion that he would prepare commentaries next year. Japan hopes that the Commission further deepens its discussion with relevant commentaries in a prudent manner.

Finally, 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, and that the list should not prejudice the legal status of norms not included in the list.

Thank you, Mr. Chairman.