

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

Protection of the environment in relation to armed conflicts

Thank you, Madam Chairperson / Mr. Chairman,

I would like to address the topic "Protection of the environment in relation to armed conflicts". The Japanese delegation welcomes the submission of the first report by the Special Rapporteur, Ms. Marja Lehto, who made a smooth transition of this topic in an admirable manner from her predecessor, Ms. Marie Jacobsson.

The Japanese delegation recognizes that the first report presented by the Special Rapporteur deals with the protection of the environment in situations of occupation and the complementarity between the law of occupation, international human rights law and international environmental law. We appreciate that the Commission carefully considers this latter point, taking into account its own previous works such as the articles on the law of transboundary aquifers to which Ambassador Chusei Yamada contributed as Special Rapporteur.

However, we would like to raise a doubt concerning some terms in draft principle 19 paragraph 2 and draft principle 21, provisionally adopted at the Drafting Committee, which states, respectively, "take appropriate measures" in the former and "exercise due diligence" in the latter to prevent significant harm to the environment. We would like to express our concern that the use of these two different terms in the similar context might cause confusion for readers. We would also like to remind that a term "exercise due diligence" is not used in articles on the law of transboundary aquifers while "take all appropriate

measures” is used in articles 6, 10 and 11 of the same project. Thus, Japan hopes that the Commission would, while referring to the project of the law of transboundary aquifers as well as its own previous works, carefully examine the terminology and explain the difference of the terms in the commentaries at the next session.

Succession of States in respect of State responsibility

Madam Chairperson / Mr. Chairman,

Now, let me turn to the topic of “Succession of States in respect of State responsibility”. Japan commends the Special Rapporteur, Pavel Šturma, for his second report and also congratulates him on the provisional adoption of the draft articles. We pay close attention to the draft articles provisionally adopted by the Commission.

Japan acknowledges the importance of the current work initiated by the Special Rapporteur in filling the absence of established law regarding succession of States. Although this topic contains potential difficulties because of the limited number of relevant State practices in this area, the outcome of discussions on this topic could be beneficial. In this regard, Japan would like to request the Commission to collect and analyze a wide range of State practices from principal legal systems around the world.

Japan notes that the draft article 5, provisionally adopted by the Drafting Committee this year, made clear that the present draft articles apply only to the effects of a succession of States occurring in conformity with international law. Japan appreciates this approach which is in conformity with the Vienna Convention on Succession of States in respect of Treaties and the Vienna Convention on Succession of States in respect of State Property, Archives and Debts.

Japan also appreciates the draft article 6 provisionally adopted by the Drafting Committee this year. This article states that a succession of States has no effect upon the attribution to a State of an internationally wrongful act committed by that State before the date of succession. The general rule of

non-succession to State responsibility seems to be widely accepted among the members of the Commission, and stipulating this rule would be meaningful in order to clarify the legal basis of this topic.

Finally Japan would like to request the Commission to continue its cautious approach, considering previous outcomes of the Commission and paying attention to the scarcity of State practices.

Immunity of State officials from foreign criminal jurisdiction

Madam Chairperson / Mr. Chairman,

Turning to the topic of “immunity of States officials from foreign criminal jurisdiction”, allow me to first express our warm appreciation to the Special Rapporteur, Ms. Concepción Escobar Hernández, for her dedicated work on this important and challenging subject. Although the sixth report for this topic became accessible in all official UN languages just three days before the plenary, the plenary nonetheless produced a number of valuable comments. Following the report and the discussion, Japan would like to make some comments.

Firstly, as Japan pointed out the previous year, a proper balance between State sovereignty and the fight against impunity is essential on this topic, and a consideration of the procedural aspects of immunity would be beneficial to ensure such balance. In this regard, it has not been made clear yet how the procedural aspects of immunity would mitigate the risk of abusive use of the exception of immunity. We must pursue the practical measures which will effectively prevent the law enforcement authorities from abusing the exception of the immunity and would not impair the stable interstate relationship.

Secondly, it is necessary to recognize that State practices have not been sufficiently accumulated. Japan finds it meaningful to collect State practices from a variety of regions. Also, since each State has different domestic laws regarding criminal procedures, State practices should be analyzed with due consideration to each domestic system.

Lastly, in the future work on this topic, it would be desirable to further address draft article 7 based on the discussion of the procedural aspects of immunity. Unfortunately, last year, the members of the Commission could not reach a consensus about this article. Japan hopes that all of the draft articles, including draft article 7, will be adopted by consensus with adequate discussion.

Thank you, Madam Chairperson / Mr. Chairman.