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Statement by the Republic of Korea

73rd General Assembly Sixth Committee

(Agenda Item 82) ILC Cluster 1: Subsequent agreements and subsequent practice in relation to interpretation of treaties / Identification of customary international law / Other decisions

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Thank you, Mr. Chairman,

First of all, my delegation would like to take this opportunity to express our warm congratulations on the 70th anniversary of the ILC. It is our sincere wish that the 70th anniversary events that took place in New York and Geneva this year will provide an important momentum for the Commission to promote the progressive development of international law and its codification.

Mr. Chairman,

With regard to the topic of "**Subsequent agreements and subsequent practice in relation to interpretation of treaties**," my delegation would like to express our deep gratitude to the ILC for finalizing the second reading and adopting 13 draft conclusions together with their commentaries. We also would like to appreciate Special Rapporteur Mr. Georg Nolte for his outstanding contributions. We are confident that the draft conclusions and their commentaries will contribute to achieving better understanding on this topic.

Now, let me make some comments on the text of the draft. My delegation supports the third paragraph of draft conclusion 7 (Possible effects of subsequent agreements and

subsequent practice in interpretation). Treaty interpretation should be distinguished from treaty amendment or modification. Any substantial modification made by subsequent agreements or subsequent practice is not regulated by Articles 31 and 32 but by Article 39 of the 1969 Vienna Convention.

Regarding draft conclusions 12 and 13, my delegation would like to emphasize that the intention of states parties is the most important part of treaty interpretation. Draft conclusions 12 and 13 deal with the effects of the conduct of international organizations and pronouncements of expert treaty bodies on treaty interpretation. But, these conducts may not qualify as subsequent practice under Article 31(3)(b) of the 1969 Vienna Convention. As the Commission also indicated, only practice that establishes agreement among parties regarding treaty interpretation constitutes subsequent practice under this provision. Nevertheless, my delegation agrees that the conduct of international organizations and pronouncements of expert treaty bodies may affect parties' subsequent agreements or subsequent practice in other ways.

Turning to the topic of the "**Identification of customary international law**", my delegation welcomes the adoption of the draft conclusions on the identification of customary international law at the second reading and the commentaries. My government expresses its deepest gratitude for the efforts made by Special Rapporteur Sir Michael Wood and ILC members to conduct the second reading of the draft at an appropriate time. The draft conclusions are expected to serve as practical guidelines on the identification and confirmation of customary international law for specialists in public international law and practitioners in various domestic legal fields.

My delegation takes note that the draft conclusions at the second reading are well organized overall, properly reflecting the current state of international law on the topic. Compared to the draft conclusions at the first reading, there are some changes made to the terms, but we would like to refrain from making any further comments on these changes as we believe that they had been fully discussed by the Commission during the

70th session of the ILC.

But we do have minor concerns about draft conclusion 6 and 10. It is only natural that the form of state practice listed in paragraph 2 of conclusion 6 and the evidence of acceptance as law listed in paragraph 2 of conclusion 10 overlap to a considerable degree, since in most cases acceptance as law should be identified through state behavior or relevant documentation. As my government already addressed in the previous comments, to avoid any possible confusion, it may be necessary to seek consistency in the use of terms as well as the order in which they are listed in both conclusions. An explanation may also be needed to clarify discrepancies, where they exist.

Draft conclusion 16 recognizes the existence of particular customary law other than "regional or local". My delegation agrees on using the expression "whether regional, local or other" in Paragraph 1 as it is. In the era of globalization, "other" forms such as common interest may be more important than geographic location in the formation of customary international law. However, my delegation is concerned that there is no case of recognizing the existence of "other" forms of customary law other than local customary law, and if "other" forms of customary law are recognized, the distinction between particular customary law and general customary law may be ambiguous. My delegation believes that there should be some more explanation in the commentary about "other" forms of customary law.

Mr. Chairman,

The Korean government takes note that the ILC decided to introduce a **new topic of "General principles of law"** and nominated Mr. Marcelo Vázquez-Bermúdez as Special Rapporteur. This topic is one of the sources of international law and was mentioned in Article 38(1)(c) of the ICJ Statute. Clarifying its role and characteristics and providing concrete examples might be useful not only for the academia but also for practitioners. My delegation welcomes the adoption of this topic and looks forward to the Special Rapporteur's first report at the next session of the Commission.

Regarding **"Sea-level rising in relation to international law",** which has been adopted as a long-term program of work, the Korean government notes that this topic reflects the current serious concerns of Small Island Developing States. My delegation is of the view that this topic reflects "new developments in international law and pressing concerns of the international community as a whole" mentioned in the ILC's 1998 recommendation concerning the categories for new topic selection.

In this point of view, my delegation would like to mention some points to consider when the ILC reviews this topic. First, sea level rise is an "inter-generation" issue: the current generation needs to accept that it is our obligation to make an effort to establish a legal system for sea-level rising. Second, in terms of the progressive development of international law, this issue should be dealt comprehensively from the perspectives of "*lex ferenda*", not limited to those of "*lex lata*". Third, the legal regimes of each area (environmental law, human rights law, humanitarian law, etc.) should be considered on an interdisciplinary basis.

Concerning the topic of **"universal criminal jurisdiction,"** my delegation has a mixed feeling. As a matter of fact, the Republic of Korea has already enacted a legislation to implement the Rome Statute of the International Criminal Court, and adopted the principle of universal jurisdiction in a limited sense. And I also believe that an international authoritative guideline would greatly enhance relevant legal understanding and facilitate future application of this jurisdictional principle. On the other hand, my delegation is not sure that this topic is mature enough to converge on some meaningful conclusions. It might also add more challenge to the current topics of *jus cogens* and immunity of State officials from foreign criminal jurisdiction. Still, my delegation will remain open-minded and listen to the various opinions of other delegates.

Thank you, Mr. Chairman.