

Government of Japan's Intervention
for Cluster 3 on the 6th Committee Meetings
of the General Assembly at its seventy-seventh session
New York, 10-14 April 2023

Thank you, Mr. Chair,

- Japan would like to make a statement regarding Article 6, 7 and 10 for cluster 3.
- I would like to reiterate Japan's position.
- Japan believes that it is important to give appropriate consideration to the circumstances of each country in order to accommodate a greater number of countries.
- In this regard, in the ILC discussion on Article 6, the opinion was expressed that there is no customary international law that obliges States to penalize crimes, so the text should be written in an advisory way.
- In addition, the text of paragraph 2 of the article 16 of the UNCAC, to which 189 States and regions are Parties, States that each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, may be helpful.
- It is also possible that a government might wish to clarify that it is sufficient to ensure the criminalization of acts that fall under the laws of each country, rather than requiring that each crime be newly defined as an independent crime in the laws of the country where the crime is committed.
- Therefore, it is suggested that each country should consider adopting the necessary legislative or other measures to criminalize acts that constitute crimes against humanity, or 'Each State shall take the necessary measures to end impunity for crimes against humanity,' noting that 'the necessary measures' shall include the following: 'Each State shall take the necessary measures to ensure that a wide range of alternative measures to criminalization are recognized in each State.
- As an example, even if such acts are not criminalized under domestic criminal law in some cases, they should be included in the measures referred to here, provided that they are punished by extradition to the ICC
- Additionally, Japan sees the meaning of "under its Criminal law" as being not limited to the Penal Code, but rather criminal law with a broad range of penal provisions.
- With respect to paragraph 2 of the article 6, there are examples of multifaceted wording, and Japan believes that it is necessary to consider whether or not these are acceptable. We would like to hear from any other countries that have specific ideas on possible actions.
- With respect to paragraph 3 of the article 6, requires a cause and effect relationship between one's own acts or omissions in order to impose criminal liability. Therefore, Japan believes that "as a result of" should be added before "did not take all necessary and reasonable measures" to clarify the requirement of a cause and effect relationship.
- Furthermore, "where appropriate" should be added after "to punish the persons responsible" in order to allow for appropriate measures according to the

circumstances of each country.

- However, we would like to add that it may be acceptable if the phrase "to be held criminally responsible" were to be revised to "to end impunity," and "necessary measures" here should include a wide range of alternatives to criminalization in each country, including, as an example, "punishment by extradition to the ICC.
- Japan believes it is necessary to amend paragraph 3 of the article 6, Non-applicability of statutes of limitations, by referring to the provisions of the Convention for the protection of all persons from Enforced Disappearances and of the UNTOC.
- Lastly, with respect to Articles 7 and 10, since there can be a variety of views as to whether extradition or prosecution is obligatory under customary international law, Japan believes that careful consideration should be given to a uniform provision requiring the establishment of jurisdiction in the event of non-extradition in order to gain the approval of a greater number of countries.
- If these draft articles were to allow for a wide range of measures that would end impunity in lieu of the establishment of national jurisdiction in each country, and if it were to be clarified that, as one example, these articles allow for a response by extradition to the ICC, it would make it easier for States Parties to the Rome Statute to participate.

Thank you, Mr. Chair