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Statement of Japan

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Report of the International Law Commission on the work of its seventy-first
session (Agenda item 79), Cluster II

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Thank you, Mr/Madam Chairperson,

I have the honour to speak on behalf of Japan. I would like to comment on the substantial topics covered in Cluster 2.

Protection of the environment in relation to armed conflicts

Mr/Madam Chairperson,

Japan welcomes the adoption, on first reading by the Commission, of the draft principles with commentaries on the protection of the environment in relation to armed conflicts. Protection of the environment is an important topic in international law. Law governing armed conflicts is another important topic with its own dynamism. In order not to overload the task of the ILC, Japan considers it beneficial to emphasize the protection of the environment during armed conflict, as opposed to before or after an armed conflict.

Immunity of States officials from foreign criminal jurisdiction

Mr/Madam Chairperson,

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 seventh report which examined the procedural aspects of immunity.

Firstly, Japan recognizes that the only progress of this year is that the Drafting Committee provisionally adopted the draft article 8 ante. This is because the ILC reopened the debates on the draft article 7 on exceptions to immunity *ratione materiae*.

The ILC can reconsider the draft article 7 or decide not to reopen the debates on the draft article 7 until it finishes the first reading of this topic. Either way, it is important for the ILC to consider this topic carefully and soundly. Japan considers that the draft article 7 is a development of a new law (*lex ferenda*), but Japan expects that the draft article 7 will ultimately be built upon consensus with the necessary modifications.

As our previous statements on this topic pointed out, it is necessary to collect State practices on this issue from a variety of regions and analyze them comprehensively. The procedural aspects of immunity continue to require careful examination given that they relate to criminal procedures unique to each State.

In particular, it is important to conduct careful consideration not only on the trial phase but also on the investigation phase. For the purpose of comparison, the Vienna Convention on Diplomatic Relations distinguishes between the “inviolability” of a diplomatic agent and the “immunity from the criminal jurisdiction”. Japan is of the view that it is necessary to address the “inviolability of States Officials” at the stage of investigation.

Lastly, Japan appreciates the content of the draft article 8 ante provisionally adopted by the Drafting Committee this year. This draft article states that the procedural safeguards provided in Part Four are equally applicable to any article contained in Part Two and Part Three including the draft article 7.

Sea-level rise in relation to international law

Finally, I would like to refer to the topic of “Sea-level rise in relation to international law.” We appreciate that the ILC responded expeditiously to the requests of the Member States. The topic may entail a wide range of issues under international law. Sea level rise affects the base line and other legal points related to the Law of the Sea. It also raises issues pertaining to statehood and the protection of persons. Japan places confidence in the ILC to produce an outcome in close dialogue with States.

Thank you, Chair.

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