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Agenda Item 79, Report of the International Law Commission (Cluster II)

**Statement by Ms. Ju Yeong, Jang, Second Secretary for International legal
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Mr/Mrs. Chairperson,

On behalf of the delegation of the Republic of Korea, I would like to express my deep gratitude to the ILC for adopting the draft principles on the topic of “**Protection of the environment in relation to armed conflicts**”. We would also like to express our deep appreciation to Special Rapporteur Ms. Maria Letho and to ILC members for enabling the Commission to reach a successful conclusion at its first reading of the draft principles.

The Korean government takes notes that the Commission has adopted a temporal approach on this topic as it covers three temporal phases. This approach makes it possible to take a comprehensive view on the protection of the environment in relation to armed conflicts, while identifying concrete legal issues relating to the topic that may arise at different stages of an armed conflict. In the meantime, we also take notes that the three temporal phases are not clearly delineated and are interlinked in achieving the ultimate goal of protecting the environment in relation to armed conflicts.

The Korean government supports the final outcome of the work taking the form of “draft principles”. As noted in the Introduction of the Commentary, the present set of draft principles contains provisions of different normative value, some of which can be seen as reflecting customary international law,

while others have a more recommendatory nature. In this sense, my delegation agrees that “draft principles” are the appropriate form for this topic, and through the draft principles, the ILC will provide guidance to States and mainly contribute to the progressive development of international law.

My delegation recognizes that the second report of the Special Rapporteur has dealt with the protection of the environment in non-international armed conflicts as well as matters related to the responsibility and liability of non-state actors and that it has led to drawing up Draft Principle 10 on corporate due diligence and Draft Principle 11 on corporate liability. Considering the asymmetric nature of armed conflicts, I would like to recommend that the Commission also deal with the international obligations of organized armed groups to hold them accountable for their conducts under international law for the progressive development of international law.

Mr/Mrs. Chairperson,

The Korean government has taken great interest in “**Immunity of State officials from foreign criminal jurisdiction**” since the ILC decided to include this topic in its work in 2007.

My delegation welcomes that the ILC finished its plenary session discussions on the Special Rapporteur’s 6th report, which were not completed in the 70th session, and the discussions on her 7th report. I understands that the 7th report deals with the consideration of immunity by the forum State, determination of immunity, invocation of immunity, waiver of immunity, procedural safeguards for the State of the official, and the official’s procedural rights. These are all crucial elements in deciding whether to grant immunity or

not. Therefore, the Korean government suggests that it is important for the Commission to provide appropriate outcomes to address States' concerns and aspirations about this topic with sufficient time for discussion. The Commission should not attempt to conclude this work in haste.

Regarding draft article 8, the Korean government is of the position that procedural provisions and safeguards should be applied to both immunity *personae* and immunity *materiae*. We also agree with a number of members of the Commission on the need to consider immunity "at an early stage of the proceedings." However, the Commission needs to clarify the meaning of "at an early stage."

The Korean government believes that communications concerning immunity between the forum State and the State of the official are important as many members of the Commission pointed out. However, my delegation wants to emphasize that diplomatic channels would be more preferable for this purpose and that the States concerned should have freedom to choose the means of communication.

Concerning the future work of the ILC, the Korean government looks forward to the next report about the relationship between the immunity of State officials from foreign criminal jurisdiction and the obligation of States to cooperate with international criminal courts or tribunals. It would be appropriate for the Commission to deal with this issue to the extent necessary for completing the current work. The Korean government also looks forward to the Special Rapporteur's work concerning the settlement of disputes between the forum State and the State of the official in the draft articles.

Mr/Mrs. Chairperson,

As the Korean government mentioned already in last year's general comments, **sea-level rise** is an "inter-generation" issue. In other words, the current generation needs to accept that it is our obligation to establish an effective and viable legal system for the future generation. In this perspective, we should pay more attention to this issue to make the works of the Study Group by the Commission more meaningful.

I would also like to emphasize again some points to consider when the ILC reviews this topic. To achieve the progressive development of international law, this topic should be dealt with comprehensively from the perspective of "*lex ferenda*" and not limited to that of "*lex lata*". And the legal regimes of each area (environmental law, human rights law, humanitarian law, etc.) should be considered on an interdisciplinary basis.

The Korean government hopes that the work of the Study Group on "Sea-level rise in relation to international law" will bear fruitful results and that the ILC can find effective and viable legal measures for States in the near future.

Thank you, Mr/Mrs. Chairperson.