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AGENDA ITEM 78
REPORT OF THE INTERNATIONAL LAW COMMISSION
71ST SESSION OF THE GENERAL ASSEMBLY

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Statement by Mr. Seoung-ho Shin, Counsellor
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Protection of the environment in relation to armed conflicts

Mr. Chairman,

On the protection of the environment in relation to armed conflicts, the topic that gets increased awareness and international attention, my delegation welcomes the third report prepared by the Special Rapporteur, Ms. Marie G. Jacobsson, and would like to give special thanks for her tireless effort and initiative to elucidate the value of the environment and the essence of its protection in the context of armed conflicts during the last five years.

On the principles provisionally adopted by the Drafting Committee, my delegation will make brief comments.

First of all, my delegation appreciates the work of the Drafting Committee for structuring the text of draft principles in accordance with the three temporal phases of an armed conflict, including pre- and post-conflict phases. My delegation supports this comprehensive approach, and welcomes, in particular, the inclusion of preventive and remedial measures in the overall architecture countering environmental degradation relating to the situation of armed conflicts on a broader basis.

My delegation further supports the introduction of environmental impact assessments in draft principle 7 in describing an appropriate form of agreement to cope with the presence of military forces in relation to armed conflict. This principle reflects relatively recent developments in environmental law as the International Court of Justice stated in 2006 in its judgement in the well-known case concerning *Pulp Mills on the River Uruguay*.

My delegation also takes note of the Commission's effort to streamline terminologies for their uniform and coherent usage, and in this regard requests the clarification, in particular, of the subject of protection in relation to armed conflicts, whether it should be simply "environment" or with the modifier "natural environment."

Lastly, my delegation would like to draw the focused attention of the Commission to examine whether there are any principles or relevant practices applicable to both international or non-international armed conflicts.

Immunity of State officials from foreign criminal jurisdiction

Turning to the topic of the "immunity of State officials from foreign criminal jurisdiction," my Government would like to express its sincere appreciation to the ILC for its ongoing work and to its Special Rapporteur, Madame Concepción Escobar Hernández, for her fifth report developing this important topic. The study of the "immunity of State officials from foreign criminal jurisdiction" requires in-depth research on relevant State practices and my delegation welcomes that the report before us contains the outcome of a rich and systematic survey on various instances of State practices in this field as reflected in treaties and domestic legislation, as well as in international and national case laws.

With an aim to contributing to further discussion by the Commission, my delegation has a few brief comments to make.

The scope of immunity comprises the very essence of the definition and application of the “immunity of State officials from foreign criminal jurisdiction” and thus its limitations and exceptions have been so far a source of controversy beyond legal discourse. Thus, my delegation cautiously recommends that the Commission sufficiently examine the relevant issues with necessary prudence taking into account both their political sensitivity and their full implications in the realization of the relevant international legal regime on the ground.

My delegation welcomes the commentary attached to draft articles 2(f) and 6 that the Commission provisionally adopted at its sixty-seventh session. My delegation considers that those comments would serve to clarify the definition of the core terminologies contained in the aforementioned draft articles, which might otherwise remain hazy due to their highly sensitive and situational usage, and thereby allow Member States to have a better understanding of their meaning in the interpretation and application of relevant international legal instruments.

Provisional application of treaties

Mr. Chairman,

Finally, my delegation welcomes the fourth report on the “provisional application of treaties,” presented by the Special Rapporteur, Mr. Juan Manuel Gomez-Robledo, and appreciates all of his hard work providing valuable analyses on the views expressed by Member States as well as elaborating the relationship of provisional application of a treaty to the other provisions of the Vienna Convention on the Law of Treaties concluded in 1969.

In his report, the Special Rapporteur proposed draft guideline 10 on “internal law and the observation of provisional application of all or part of a treaty.” My delegation believes that the proposed draft guidelines may serve as a useful point of reference in domestic application of a treaty. Nonetheless, my delegation is of the view that the insertion of draft guideline 10 in the body of the final draft guidelines ought to be in line with the agreement reached on the choice of subtle language comprising the current articles 27 and 46 of the 1969 Vienna Convention and likewise checked against the will of the conference of participant States to conclude that historic convention.

My delegation also welcomes draft guidelines adopted provisionally by the Drafting Committee at the sixty-eighth sessions of the Commission. It does so, despite the opinion of my delegation that those guidelines might not be applicable to a treaty between States and international organizations or among international organizations. While acknowledging the paramount importance of the draft guidelines, it must be reiterated that another Vienna Convention concluded in 1986 on the Law of Treaties between States and International Organizations or between International Organizations has not been entered into force yet. My delegation believes therefore that the question of whether it is plausible and appropriate to juxtapose the provisional application of the 1986 Vienna Convention with the same terms of the aforementioned 1969 Vienna Convention may warrant careful consideration.

Mr. Chairman,

The Korean Government has contributed significantly to the goals of progressive development of international law declared by the Charter of the United Nations, and would like to express its sincere appreciation to the members of the ILC and Special Rapporteurs for their excellent work and tireless efforts in response to the current but

already long-standing challenges that the world is facing today. Taking this opportunity, my delegation offers assurances of our full cooperation regarding the work of the ILC, especially their future deliberations of the topics, which are being discussed among Member States in the current session of the General Assembly and for which my delegation has now expressed its views.

I thank you.