

STATEMENT BY MR. TOMOYUKI HANAMI
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ON THE REPORT OF THE INTERNATIONAL LAW COMMISSION ON
THE WORK OF ITS SIXTY-THIRD AND SIXTY-FIFTH SESSIONS
SIXTH COMMITTEE
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(Check Against Delivery)

Introduction Parts/Other Decisions and Conclusions

Thank you, Mr. Chairman.

At the very beginning of my statement, the delegation of Japan wishes to extend its wholehearted congratulations for your election as the Chair of the Sixth Committee. We are very sure that discussions in this session have been, and will be, successful under your prudent chairmanship. As a member of the Asia-Pacific group, Japan will fully support you and contribute actively to the discussions regarding the Report of the International Law Commission on the work of its sixty-third and sixty-fifth sessions. The delegation of Japan also extends its deepest gratitude to the members of the Secretariat who dedicated themselves to the facilitation of the debate in the Commission. The work of the Codification Division of the Office of Legal Affairs is indispensable in order to fulfill the mandate of the ILC as described in its statute, so we much appreciate them.

Mr. Chairman,

Taking this opportunity, the delegation of Japan should note with deep sorrow that Ambassador Chusei Yamada, former member of the ILC, passed away this March. As a skilful diplomat and well qualified international lawyer, Ambassador Yamada had served as a Japanese member of the Commission

from 1992 to 2009 and left significant legacies through tireless efforts. During 17 years of service, Ambassador Yamada had assumed multiple duties in the Commission including its chairmanship during the 52nd session in the year 2000. In 2002, he was appointed as a Special Rapporteur on the topic of Shared Natural Resources. As the result of the deliberation under this topic, the ILC drafted the articles of the Law of Transboundary Aquifers. On 8th of May this year, a special session was held during the ILC for the purpose of commemorating Ambassador Yamada. As many as 16 members of the Commission delivered condolences, and praised Ambassador Yamada's contribution to the ILC. We are very sure that the dedication of Ambassador Yamada to the development of international law throughout his career will be remembered, and his efforts will be inherited by the members of the Commission and fellow international lawyers. The delegation of Japan would like to express its deepest condolences to his loved ones, and appreciation for his long-standing contributions as one of the prominent Japanese diplomats.

(In this context, the delegation of Japan would like to note that the session of the law of transboundary aquifers was held on 22nd of October, and views from the delegation regarding the draft articles were exchanged. As I mentioned earlier, these draft articles are the outcome of the deliberation of the ILC under the topic of Shared Natural Resources, in which Ambassador Yamada assumed the role of the Special Rapporteur. As the coordinator of this agenda, the delegation of Japan expresses deep appreciation to all delegations that have participated in the discussion regarding the draft resolution in a constructive manner. We look forward to having the resolution adopted by consensus in the Committee.)

Mr. Chairman,

“Rule of law” is one of the major themes of international relations these days, and Japan has actively worked to promote it. It is one of the most fundamental values in Japan's foreign policy making, and we believe that any dispute among states should be settled by law, not by power. In order to further expand and strengthen the rule of law, development of international norms is critically important. From that viewpoint, it is obvious that the role of the ILC is particularly crucial. The uniqueness of its functions; namely the promotion of the

progressive development of international law and its codification, has placed the Commission a special position in the United Nations system. The outcomes of the ILC have greatly contributed to the stability and prosperity of the international community, through its deliberation of draft articles. Taking this opportunity, the delegation of Japan would like to express its strong commitment to support the activity of the ILC for further development of the rule of law.

Mr. Chairman,

Now we would like to turn to the work of the International Law Commission. In the Sixty-fifth session, the ILC has discussed eight topics, including one which was newly included in the programme of work. New draft articles were provisionally adopted from these topics after serious consideration in the drafting committee. The delegation of Japan sincerely thanks all members of the ILC who participated in its deliberation process. At the same time, the Japanese delegation has a strong interest in the empowerment of the ILC in order for the Commission to assume on a larger responsibility. From this point of view, we think that the selection of topics is one of the most crucial issues. Currently, the topics of the Commission are included in the internal process of the ILC –from the Working Group on the Long-term Programme of Work to the Planning Group which is responsible for making recommendations to the Commission for possible inclusion of the proposed topics. New topics are usually proposed by the members of the Commission based on his or her interest, which means that the selection of topics to be included in the programme of work is heavily dependent on interests of the members of the Commission. The delegation of Japan would like to propose that the ILC consider a possibility of gathering ideas and opinions of the member states to determine what kinds of topics should be included in the programme of work, which would allow the ILC to better understand the expectations of the international community. Enhancement of the cooperation between the ILC and the Sixth Committee remains important and in this context, changing the way in which topics are selected in the proposed manner would be a good place to start.

Mr. Chairman,

The delegation of Japan recognizes the importance of the decision of

the ILC to include the topic “Protection of the atmosphere” in its programme of work and appoint Mr. Shinya Murase as Special Rapporteur for the topic. We note that this topic was included based on the several understandings. As we mentioned last year, protection of atmospheric environment requires coordinated action by the international community. From this point of view, the delegation of Japan hopes that the topic will be deliberated in the Commission in a constructive way. In full respect of existing efforts on environmental issues, we look forward to observing that fruitful outcome will be delivered by the ILC in this matter as a result of its professional work.

We should also note that, by the recommendation of the Working Group on the Long-term Programme of Work, the ILC included the topic of “Crimes against humanity” in the long-term programme of work. As a member of the International Criminal Court (ICC), Japan has made efforts to undertake its commitment to promote the notion of “fight against impunity” in order to achieve international justice. As a responsible member of the international community, we have borne financial contributions not only to the ICC but also to other international tribunals. In this context, the delegation of Japan has a particular interest in this topic, and is looking forward to seeing the course of discussion in the Commission.

Subsequent agreements and subsequent practice in relation to the interpretation of treaties

Mr. Chairman,

Let me turn now to the specific topics on the programme of work held in the Sixty-fifth session. Firstly, I will touch on the topic of “Subsequent agreements and subsequent practices in relation to the interpretation of treaties”.

The delegation of Japan noted that the Commission decided to change the format of the work on this topic at the last session. It is worthwhile to point out that it is new for the Commission to change the format of the topic which was

established as a “study group”. Because of this change, we had a chance to thoroughly follow the course of discussion. The topic is much more influential on the development of international law than it had been. We have observed that Mr. Nolte, the newly appointed Special Rapporteur, made efforts to develop the discussion in the Commission with the spirit of flexibility and fairness in order to reflect as many comments as possible.

At the outcome of the discussion, the ILC provisionally adopted five draft conclusions. I should not go into details one by one, but would like to point out several issues to be raised. First, the delegation of Japan stresses that the Commission should clearly explain the nature of draft “conclusions”. We are fully aware that the discussion is principally based on the provisions of the Vienna Convention on the Law of Treaties, particularly its articles 31 to 33. We understand that this project aims to provide useful materials for the better understanding of these articles, instead of drafting new articles. Nevertheless, what draft conclusions contribute to such a purpose remains unclear. Several points can be easily raised. What is the difference to commentaries? What is the legal nature of these conclusions? Do they constitute a binding tool for treaty interpretation? Answers should be given to these questions.

Japan fully endorses the decision of the ILC not to include the acts of non-State actors within the purview of the study.

The delegation of Japan wishes the Commission to further develop a discussion for this topic in order to strengthen the treaty system of the Vienna Convention.

Immunity of State officials from foreign criminal jurisdiction

Mr. Chairman,

Then, I would like to discuss the topic of “Immunity of State officials from foreign criminal jurisdiction”. The delegation of Japan understands that, as a result of the discussion of its plenary and drafting committee, the ILC

provisionally adopted three draft articles; namely “Scope of the present draft articles” for Article 1, “Persons enjoying immunity *ratione personae*” for Article 3, and “Scope of immunity *ratione personae*” for Article 4. This is the first time that the Commission produced draft articles under this topic since the commencement of its deliberation in 2007.

The delegation of Japan would like to point out that this topic raises a fundamental question regarding two underlying principles of international law; respect of state sovereignty and fight against impunity. Historically, the law of immunity has developed based on the notion of sovereign rights. This norm has been widely applied to several area of international law such as law of diplomatic relations and state immunity which are also the products of the ILC. Immunity of state officials has been widely admitted in the international community in order to observe this principle.

For the past few decades, however, we have witnessed new developments in international law which tend to limit such immunities for the sake of international justice. The “international criminal law” has developed since the end of World War II, and this trend was accelerated and reinforced in 1990s. The foundation of the International Criminal Court (ICC) was one of the symbolic events that the notion of “fight against impunity” became part of the main stream of the international relations. This should not be ignored in the deliberation of the ILC.

At the same time, the topic under the consideration does not directly cover international criminal law, but focuses on national jurisdiction. It is widely shared that the notion of jurisdictional immunity greatly contributes to the stability of international relations. In modern international society, leaders of their countries are travelling overseas more frequently than before, in order to facilitate their bilateral and multilateral relations. In that sense, striking a balance between the notion of “fight against impunity” and “state sovereignty” is necessary for the deliberation in the Commission.

The delegation of Japan recognizes that the ILC has not reached the conclusion regarding the article of definition which was proposed by the Special Rapporteur. As I mentioned, the ILC is expected to tackle the modern issue of

the law of immunity, and establishing the definition is highly important. The delegation of Japan is closely following the course of discussion on this topic.

Thank you, Mr. Chairman.