

STATEMENT BY MR. Tomoyuki Hanami
REPRESENTATIVE OF JAPAN
AT THE MEETING OF THE SIXTH COMMITTEE
ON THE REPORT OF THE INTERNATIONAL LAW COMMISSION
ON THE WORK OF ITS SIXTY-SIXTH SESSION (PART ONE)

Introduction Parts/Other Decisions and Conclusions

Thank you, Mr. Chairman.

At the outset, the delegation of Japan would like to extend our wholehearted congratulations on your assumption as the Chairman of the Sixth Committee. This year, our agenda includes several important subjects that have been and will be discussed in the Sixth Committee, and there is no doubt that consideration of the Report of the International Law Commission is particularly important. We very much appreciate your prudent and balanced chairmanship, and would like to express our willingness that Japan will fully support you and actively contribute to the discussion regarding the Report of the International Law Commission on the work of its sixty-sixth session.

Taking this opportunity, the delegation of Japan welcomes the attendance of Mr. Kirill Gevorgian as the Chairman of the Commission this year. Your introductory remarks helped us to deepen our understanding on the deliberation of the Commission. The delegation of Japan also extends its gratitude to the members of the Secretariat who dedicated themselves to the facilitation of the debate in the Commission. The Codification Division of the Office of Legal Affairs has been playing a critical role in order to fulfill the mandate of the Commission as described in its statute, so we much appreciate them.

Mr. Chairman,

For the past few years, we have witnessed the emergence of new situations, which changed the political landscape of the international community. Dynamics of this change have caused friction, unrest and confrontation around the world. With that in mind, Japan strongly believes that the “Rule of law” must be placed as the foremost principle of international community in order to maintain stable international order. I should stress that the rule of law at national and international levels can be achieved through consistent efforts by every stakeholder, including ourselves. In that sense, the role of the International Law Commission has been and will be indispensable precisely because of its object; namely the promotion of the progressive development of international law and its codification. The delegation of Japan would like to reiterate its firm commitment to support the activity of the Commission.

In order to strengthen the rule of law, it is critically important to provide young lawyers and scholars with an opportunity to deepen their understanding of current development of international law. Therefore, the Japanese delegation welcomes the fiftieth anniversary of the International Law Seminar, which has been held concurrently with the session of the Commission in Geneva. Since its inception in 1965, 1,193 participants from 171 countries have participated in the Seminar. Taking this opportunity, the delegation of Japan would like to express its deepest appreciation to the secretariat of the Seminar for its dedicated work.

Mr. Chairman,

In the last session, our delegation pointed out that conventional way of selecting new topics of the Commission should be re-examined so that member states have more time for reflection, and proposed the ILC to consider a possibility of gathering ideas and opinions from member states. The delegation of Japan welcomes the decision by the Commission to review the 1996 list and prepare a list of potential topics by the end of present quinquennium. This process would enhance the transparency which is particularly important for assuring the legitimacy of the Commission. The delegation of Japan hopes that many member states express their views on potential topics.

The Japanese delegation notes that the Commission considered the possibility of holding a part of its future sessions in New York. Even though the condition should be applied that such a change will not generate any additional resources, in our view, convening sessions in New York could increase the chance for the Commission to interact with member states. We will continue to pay attention to this matter.

Mr. Chairman,

In the sixty-sixth session, the Commission decided to include the topic “Crimes against humanity” in its programme of work and appointed Mr. Sean Murphy as the Special Rapporteur. The delegation of Japan would like to congratulate the Special Rapporteur on his appointment. Japan, as a member of the International Criminal Court, shares the view that the “fight against impunity” is one of the major goals to be pursued in the modern international society, and expects that this topic will greatly contribute to the development of the international criminal law. We look forward to seeing the discussion on this topic starting from the next session.

Mr. Chairman,

The delegation of Japan notes that the topic of “*Jus cogens*” proposed by Mr. Dire Tladi was included in the long-term programme of work. The legal status of the notion “*Jus cogens*” is well founded under the Vienna Convention on the Law of Treaties and some other instruments. However, its substantial elements are still very unclear and there is little understanding shared among member states. Therefore, the deliberation in the Commission has to take place in a prudent manner with concrete basis. The Japanese delegation has strong interest in this topic, and will pay close attention.

Expulsion of aliens

Mr. Chairman,

Now, let me turn to the specific topics on the programme of work held in the sixty-sixth session of the International Law Commission. Firstly, with regard to the topic of “Expulsion of aliens”, the delegation of Japan would like to compliment the Special Rapporteur, Mr. Maurice Kamto, on his earnest efforts to finalize the elaboration of the draft articles and the commentaries thereto. We would also like to extend the appreciation and respect to all members of the Commission for their contributions on this topic.

As stated in the ninth report submitted by the Special Rapporteur, both the comments and observations expressed during the discussions in the Sixth Committee in 2012 and those made subsequently in writing contain certain criticisms and concerns. Views pronounced by the members during the deliberation in the sixty-sixth session of the Commission echoed these criticism. Furthermore, some of them questioned whether the final form of the topic should be draft articles, though eventually the Commission adopted the draft articles with the recommendation to the General Assembly to consider the elaboration of a convention on the basis of the draft articles.

It should be noted that many states have their own legislations regulating immigration policies and rights of foreign immigrants subject to expulsion. Needless to say, state practice concerning the implementation of such rules and regulations are very diverse. These diverse national and regional practices bring about the question if it is appropriate for the Commission to adopt generalized international norms like the draft articles in this particular area. Furthermore, some ILC members doubt that some of the draft articles could be deviating from state practice and introducing a new principle. It is also pointed out that the draft articles, in part, could be inconsistent with the existing international law related to the topic, including the UN Convention relating to the Status of Refugees.

Mr. Chairman,

Taking into consideration the aforementioned critical observations manifested by a number of states and thoughtful exchange of views among the members of the Commission, the delegation of Japan cannot but take a cautious position on how to deal with the draft articles on the expulsion of aliens in the General Assembly. Also, I would like to make it clear that we share the concern that some of the draft articles are not based on sufficient state practice but introducing new rules, such as the Articles 19, 26, 27 and 29.

Besides, the delegation of Japan considers it noteworthy that through the discussion on the topic in the Commission, the traditional questions on the mandate of the Commission again came to the fore; the relationship between the codification and the progressive development of international law and, especially, what constitutes the latter. In response to the concerns that some of the draft articles could be introducing a new principle, the Commission, especially the Special Rapporteur, explains that some provisions of the draft articles amounted to the progressive development rather than the codification *stricto sensu*.

The Sixth Committee and the ILC have to work together to find out the answer to the fundamental question on the ideal balance between codification and progressive development. "Expulsion of aliens" is an interesting topic in this context.

The delegation of Japan hopes that our discussion on this topic promotes common understanding among member states on this matter.

Protection of persons in the event of disasters

Mr. Chairman,

Now, I would like to turn to the topic of "Protection of persons in the event of disasters." The delegation of Japan would like to commend the Special Rapporteur, Mr. Eduardo Valencia-Ospina, for his seventh report and

also congratulates the Special Rapporteur and the Commission on the adoption of the draft articles on the first reading.

In recent years, a growing concern about the human security has become one of the major issues for the world, and in this context, large-scale natural disasters have been increasingly drawing attention from the international community. Against this background, and evolution of technology such as communication through the internet, disaster relief assistance has made rapid progress in its system, quality and speed. We frequently see official rescue teams from foreign governments, NGO aid workers and staffs of international organizations being quickly dispatched, and a huge amount of equipment and goods being sent to affected areas and the people in need.

Disaster relief assistance is a large scale international operation, where human and other resources are to be concentrated in a very short period of time and, therefore, is required to be in accordance with the rules of national and international law. In reality, however, the legal aspect of the practices concerning international disaster relief operations is prone to be overlooked in the name of “emergency”, and the status of relief personnel and materials tend to be determined on case-by-case basis.

When the northeast region of Japan was hit by the great earthquake and tsunami in March 2011, Japan, as the affected state, received assistance from overseas. Throughout the operation, we recognized various issues coming to light such as immigration procedure for members of foreign rescue units, on-site quarantine inspection of rescue dogs, and status of troops from those countries with which we had no Status of Forces Agreement.

Mr. Chairman,

The delegation of Japan highly values the draft articles on this topic adopted by the Commission after its longstanding deliberation, as it contributes to the progressive development of the international law in the field of protection of persons in the event of disasters. The draft articles uphold the humanitarian principles and the principle of respect for sovereignty of the affected state, by virtue of which the consent of the affected state is required for

facilitation of external assistance. On the other hand, the draft articles stipulate that each state including the affected state has the duty to reduce the risk of disaster and ensure the protection of persons and provision of disaster relief and assistance as well as the primary role in direction and coordination of such relief and assistance. In this respect, the Japanese delegation considers that the structure of the draft articles is well balanced. In addition, we have a positive slant on the flexible way in which the Special Rapporteur elaborated these draft articles taking into account advice and observations of the states concerned and realities on the ground of disaster relief assistance.

The delegation of Japan would like to stress that relief personnel should be granted certain legal status in order to facilitate their rescue and support operations. Without such protection, assisting states inevitably have to consider whether they should send their team to the affected state with the risk to be accountable for their acts during the operation. In this sense, the delegation of Japan is positively viewing Article 17 which stipulates the duty of affected states to take necessary measures for facilitating external assistance including in the field of privileges and immunities for civilian and military relief personnel.

Finally, the delegation of Japan would like to reiterate our appreciation to the Special Rapporteur and the Commission for the adoption of the draft articles and expect fruitful discussion on this topic in the General Assembly.

Thank you, Mr. Chairman.