

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 THREE)

Identification of customary international law

Mr. Chairman,

I would like to start by addressing the topic “Identification of customary international law.” First of all, the delegation of Japan would like to extend its appreciation to the Special Rapporteur, Sir Michael Wood, for his contribution to the deliberation of this topic. His second report is a particularly useful tool to deepen our understanding on the development of customary international law and its identification. The delegation of Japan takes the same position of the Commission regarding the goal of this topic; namely the outcome of the work should be a practical tool, of particular value to practitioners who are not specialists in international law.

In general, the delegation of Japan supports the basic two-element approach to the identification of rules of customary international law. We note that some members of the Commission pointed out that there appeared to be different approaches to identification in different fields of international law. However, the Japanese delegation is not sure whether such alternative methods could be applied in certain areas. We are also aware that the question whether acts of entities other than the state could constitute “a general practice” was discussed in the Commission. At this juncture, the delegation of Japan would like to stress that the Commission should deliberate this matter in a prudent manner with concrete basis. We deem that the acts of non-state actors should not be necessarily considered as “a general practice” constituting the elements of customary international law. Therefore, the delegation of Japan hopes that the discussion on this point should be continued in the next session, and any

conclusion has to be based on existing practice.

With regard to the second element of the customary international law, the delegation of Japan supports those members who pointed out that acceptance of a practice as compelled by law could not be proven by mere reference to the evidence of the practice itself. It is expected that the Commission will address this matter in order to propose a clearer guidance. Incidentally, the Japanese delegation is in favor to use "*opinio juris*" rather than "accepted as law" in this regard.

The delegation of Japan understands that the draft conclusions included in the second report are under consideration in the drafting committee, and the deliberation will be continued in the next session. We hope that fruitful discussion will take place there and look forward to seeing the set of draft conclusions next year.

Protection of the environment in relation to armed conflict

Mr. Chairman,

Now, I would like to briefly touch upon the topic "Protection of the environment in relation to armed conflicts". The delegation of Japan welcomes the submission of the preliminary report by the Special Rapporteur, Ms. Marie Jacobsson, as it revealed multiple points of discussion to be deliberated in the Commission.

At this early stage, it would be premature to go through substantive issues of this topic, which relates to legal norms largely regulated by international environmental law and humanitarian law. Rather, we would like to present our thoughts on the general approach. According to the ILC Report, discussion took place on the scope and methodology of the topic. Concerning this point, although the Special Rapporteur's temporal three-phased approach attained some support, we believe that the certain weight of the project should

be accorded to phase II because the topic approved is about rules relating to the protection of the environment during an armed conflict, not about peacetime international environmental law in general as several members correctly argued.

The delegation of Japan would like to stress that the Commission should be careful not to place emphasis on a particular phase. On the one hand, we note that some members pointed out that the Commission should not focus its work on phase II, as the law of armed conflict was *lex specialis* and already contained sufficient rules relating to the protection of the environment. Certainly, several international instruments of international humanitarian law such as the Environmental Modification Convention stipulate specific rules on environmental protection in armed conflicts. On the other hand, we deem that inter-relationship between international environmental law and humanitarian law in the period of armed conflict, which will be covered in the deliberation of phase II should be one of the major points to be discussed under this topic, so deliberation of phase II should not be disregarded.

The delegation of Japan hopes that the Commission will carefully consider the method of work in this topic. We look forward to seeing fruitful discussion taking place in the next session much like this year.

Thank you, Mr. Chairman.