

Comments and Observations of the Government of Japan on the
International Law Commission's Draft Articles on Immunity of State
Officials from Foreign Criminal Jurisdiction

27 November 2023

Japan extends its appreciation to the International Law Commission (ILC) for their important work on the topic of immunity of State officials from foreign criminal jurisdiction. Japan avails itself of the opportunity to submit the following comments and observations.

(General comments and observations)

- The draft articles appear not in all aspects to reflect current law or State practice and *opinio juris* of States. The ILC would benefit from a more detailed elaboration on identifying where it considers the draft articles to codify existing law and where it considers the draft articles to propose the progressive development of law or new law. From this perspective, Japan encourages the ILC in its further work to take the time to carefully and soundly consider the draft articles, bearing in mind that the draft articles seem not fully supported by State practice and *opinio juris* of States.
- The comments and observations here are not intended to be exhaustive. As such, this submission is without prejudice to Japan's position on specific articles.

(Specific comments and observations on draft article 7)

- Given an insufficiency of State practice, Japan remains cautious in recognizing that draft article 7 is grounded in State practice and considers it necessary for the ILC to redouble its efforts in analyzing such State practice to facilitate further in-depth discussion.
- When it comes to the fight against impunity, the promotion of the universality of the Rome Statute of the International Criminal Court (ICC) would be an optimal approach. At the same time, however, the Court's practice on immunity from prosecution before the Court is not convincing to be regarded as common practice

generally applicable among States.

- Japan hopes that the ILC will make further efforts to find an appropriate solution on this matter, taking into account views expressed by States.

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