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Statement by the Republic of Poland
at the Sixth Committee
on the Agenda Item 82:
“Report of the International Law Commission on
the work of its seventy-second session”
CLUSTER II

New York, 29th October 2021

Madam Chair, Distinguished Delegates,

I will present the Republic of Poland's comments concerning two chapters of the International Law Commission's Report from its seventy-second session – "Immunity of State officials from foreign criminal jurisdiction" (Chapter VI) and "Sea-level rise in relation to international law" (Chapter IX).

With respect to "Immunity of State officials from foreign criminal jurisdiction," my delegation would like to thank the Special Rapporteur, Ms. Concepción Escobar Hernández, for her eighth report.

We take note of Articles 8 ante, 8, 9, 10, 11 and 12 provisionally adopted by the Commission, and we welcome the fact that the Commission streamlined proposals of the Special Rapporteur contained in her seventh report on this subject, which were in line with the suggestions presented by Poland in 2019 discussions of the ILC report. In this context, my delegation considers Part Four of the draft articles as providing an important procedural guarantee and safeguards to help ensure genuine, good-faith consultation and cooperation between the State of the official and the forum State.

We also take note of the draft articles 17 and 18 proposed by the Special Rapporteur in her eighth report and the Commission's discussion of this topic. Poland is of the view that both provisions proposed by the Special Rapporteur are useful and have merit. Certainly, acknowledging the connection between the immunity of State officials from foreign criminal jurisdiction and the rules governing the functioning of international criminal tribunals need not be prejudicial to the topic *per se*. In this case, declaring the autonomy of the applicable legal regimes seems reasonable. In reference to draft article 17 dedicated to dispute settlement, Poland is of the view that such a proposal is

useful, notwithstanding the outcome of the Commission's work on this topic. In our view, the draft provision need not repeat all means of peaceful dispute settlement contained in Article 33 of the UN Charter. The minimalism and straightforwardness of the proposed approach can be considered rather as a virtue of the projected process.

Madam Chair, Distinguished Delegates,

Now, allow me to turn to the topic "Sea-level rise in relation to international law". As a preliminary remark, Poland notes the experimental method of the ILC's work on this topic. The decision to use a deliberately tailored Study Group with two Co-Chairs resulted in, what can be considered, a hybrid between the special rapporteur format and traditional study groups. We will continue to observe with interest whether such a process proves to be beneficial and can be used as a model for future work by the Commission. The topic of sea-level rise is certainly a rather broad one that encompasses issues from different areas of international law. At the same time, we agree that there is no need at this point to prepare draft articles on this topic and that the upgraded Study Group's report is an optimal outcome of the Commission's work.

My delegation is of the view that unavoidable sea-level rise and the necessity of understanding its consequences raise a number of questions relevant to international law, in particular interpretation of several provisions of the United Nations Convention on the Law of the Sea and possible identification of customary law in this respect. Furthermore, we are of the view that the purpose of Article 62 § 2 of the Vienna Convention, which is to ensure the certainty and stability of treaties delimiting areas under some kind of state authority, speaks for application of this provision also to maritime boundaries.

Finally, as the Study Group's report can have very practical implications for state practice, there is need for transparency in the Commission's work, in particular by distinguishing between *lex lata*, *lex ferenda* and policy options.

Thank you, Madam Chair.