



REPUBLIC OF POLAND
PERMANENT MISSION TO THE UNITED NATIONS

750 THIRD AVENUE, NEW YORK, NY 10017

TEL. (212) 744-2506

Check against delivery

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 III

New York, 3rd November 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 – "Succession of States in respect of State responsibility" (Chapter VII) and "General principles of law" (Chapter VIII).

On the topic "Succession of States in respect of State responsibility", my delegation would like to thank the Special Rapporteur for his fourth report. We take note of the draft articles this report proposed. Poland agrees with some general observations made by the Special Rapporteur, such as those on the subsidiary nature of the draft articles, the priority of agreements entered into between concerned States, and the importance of preserving consistency with the Commission's previous work, particularly its articles on the responsibility of States for internationally wrongful acts.

Still, we reiterate our view that draft articles seem not to be the most appropriate outcome for this topic. Poland believes that following the model applied by the Commission in its work on Provisional application of treaties – *i.e.*, preparing a draft conclusion with an annex containing some model clauses – would be more beneficial and practical.

Madam Chair, Distinguished Delegates,

Allow me now to turn to Chapter VIII, "General principles of law". Poland continues to support the Commission's work on this topic because of its potential importance not only in theoretical but also in practical terms, especially for domestic courts and other entities. Thus, we would like to thank the Special Rapporteur, Mr. Marcelo Vázquez-Bermúdez, for his second report and the Secretariat for its memorandum on this subject.

We agree with the Special Rapporteur that the scope of the topic should include the legal nature of general principles of law as a source of international law, the identification of general principles of law, and an examination of their relationship with other sources of international law.

We take note of draft articles 4-8 proposed by the Special Rapporteur in his second report and would like to make some preliminary observations. Firstly, draft conclusion 5 does not explain the correlation between the terms “principal legal systems of the world” and “legal families”. Certainly, the use of the latter term should be reconsidered. The purpose of paragraph 2 of this conclusion is imprecise, as it is difficult to ascertain the relationship between the abstract evaluation of “legal families” and “national legislation” mentioned in paragraph 3. In our delegation’s view, primary importance should be ascribed to the latter.

With respect to draft conclusion 6, it should be noted that the issue of transposition of principles to the international legal system is not mentioned expressly in Article 38 paragraph (c) of the Statute of the International Court of Justice. Therefore, more consideration should be given to whether it can be treated as requirement for recognition of general principles of law. Furthermore, the abstract notion of “fundamental principles of international law” used in this provision should be supplemented by formulae “as contained in United Nations Charter”. Without such clarification, the draft conclusion moves in the direction of subordinating general principles of law to other sources of international law.

To some extent, this problem is also discernible in draft conclusion 7 letters (a) and (b). Considering provisions widely recognized in treaties as general principles of law blurs the distinction between those two sources of international law. Simultaneously, simply treating treaties as a source of general principles of law could ultimately lower the threshold for treaty norms, primarily through custom,

to become generally binding. Moreover, the fact that some norms of international law, particularly those derived from treaties and custom, can exist in parallel does not explain the significance of stating that some customary norms can also be considered as general principles of law.

Finally, we are of the view that there is some inconsistency between draft conclusion 8 paragraph 2, and draft conclusion 5 paragraph 3, with respect to decisions of domestic courts. While the former considers national court decisions to be subsidiary means for determining general principles, the latter indicates that those decisions are part of national legal systems, the analysis of which is crucial for any determination of a general principle of law.

Thank you, Madam Chair.