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**STATEMENT BY THE REPUBLIC OF POLAND**

**77<sup>TH</sup> UNITED NATIONS GENERAL ASSEMBLY**

**SIXTH COMMITTEE**

**AGENDA ITEM 77:**

**“REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK  
OF ITS SEVENTY-THIRD SESSION”**

**CLUSTER 1**

**NEW YORK, 25<sup>TH</sup> OCTOBER 2022**

*Mr. Chairman,*

At the outset, let me congratulate the Chairman of the International Law Commission (ILC), Professor Dire Tladi, for his presentation of the ILC's Report from its seventy-third session. We would also like to express our appreciation to the Secretariat for publishing an advance version of the report in August – thus giving states and international organizations much-needed time to fully grasp and assess the Commission's work.

This year, the report is particularly significant as it documents the completion of work on two separate topics – Peremptory Norms of General International Law (*jus cogens*) and Protection of the Environment in Relation to Armed Conflicts. These topics are covered by 23 draft conclusions and an annex, as well as 27 draft principles, respectively.

*Mr. Chairman,*

Poland has followed very closely the ILC's work on Peremptory norms of general international law (*jus cogens*). We have commented on the process as well as the merits of this topic both orally and in written form, and we have also engaged directly with Commission members. We acknowledge the value of the ILC Conclusions. In line with the provisions of the Vienna Convention on the Law of Treaties, we consider that peremptory norms of general international law are of fundamental importance to the international legal order. It is for these reasons that in discussions of ILC reports since 2014, Poland has urged the Commission to pursue the issue of specific consequences for serious breaches of peremptory norms of general international law. Because we have directly witnessed serious and continuing violations in Eastern Europe since 2014 of an obligation arising under peremptory norms of general international law, we held and still hold the view that more detailed standards in this respect need to be developed. Thus, we regret that on this particular issue, the ILC Conclusions only reproduce appropriate provisions from the 2001 ILC Articles on the responsibility of states, without any further elaboration. The customary rules contained in Conclusion 19 are still very broad. Unfortunately, the Commission has missed an opportunity to explain how a State's obligation should be implemented, among other things with respect to its conduct within international organisations. Even so, the Republic of Poland believes it is crystal clear that providing weapons to a state which breaches the prohibition of aggression violates the international customary obligation described in this conclusion.

At the same time, we would like to thank the Special Rapporteur, Professor Tladi, as well as the entire Commission for inserting into the commentary to this Conclusion the current practice of states and international organisations, including citations such as General Assembly Resolution ES-11/1 of 2 March 2022, which "deplores in the strongest terms the aggression by the Russian Federation against Ukraine in violation of Article 2 (4) of the Charter".

*Mr. Chairman,*

With respect to the Commission's working method, we note the need for clearer indications of the ILC's progress on specific provisions within a particular topic. Careful analysis of the Commission's work indicates that a provision or a standard can go through several quasi-legislative phases that are not always clearly discernible. Thus, a provision may be proposed by the Special Rapporteur, pending in the drafting Committee, approved by the drafting Committee, approved by the plenary session, or approved by the plenary session with commentary. Within a particular topic, it is typical for different provisions to be at different stages of the process. In this context, it would be advisable to consider inserting into the report a table for each topic, giving an overall picture or snapshot of where we are in the standard or rule-making process.

As regards the Commission's long term work programme, we support including Non-binding agreements on the list of topics. This issue is certainly closely linked to the topic Definition of a treaty as proposed by Poland last year for the Commission's consideration. We remain convinced that caution should be exercised not to equate this topic with the whole very complex and broad issue of soft law.

I thank you.