REPUBLIC OF POLAND

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STATEMENT BY THE REPUBLIC OF POLAND

78TH UNITED NATIONS GENERAL ASSEMBLY

SIXTH COMMITTEE
AGENDA ITEM 79:
"REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SEVENTY-THIRD AND SEVENTY-FOURTH SESSIONS"

CLUSTER 1

NEW YORK, 23RD OCTOBER 2023

Madame Chair,

At the outset, let me congratulate the Chair of the International Law Commission (ILC) Ms. Patrícia Galvão Teles, for her presentation of the Commission's Report from its seventy-fourth session. We would also like to express our appreciation to the Secretariat for publishing the advance version of the ILC Report in mid-August – thus giving states and international organizations much needed time to better apprehend and assess the Commission's work.

This year, the Commission's report touches upon an extraordinary number of new topics, as the ILC has just started work on "Settlement of disputes to which international organizations are parties", "Prevention and repression of piracy and armed robbery at sea", and "Subsidiary means for the determination of rules of international law". This is a unique situation when half of the Commission's agenda concerns utterly new issues. In this context, we hope discussions of these as well as more familiar topics by the ILC and the Sixth Committee will help advance the development of international law and its codification.

At this stage, we would like assure the Commission that Poland will present its comments and observations as required on the draft articles concerning "Immunity of State officials from foreign criminal jurisdiction". On this topic, we take the view that Article 7 of the Draft Articles adopted on the ILC's first reading in 2022 should include the crime of aggression in the list of the crimes to which immunity *ratione materiae* shall not apply.

General principles of law

Madame Chair,

Poland has followed very closely the ILC's work on "General principles of law". Our main regret is that States' comments presented last year were not discussed in the Special Rapporteur's report, as had been traditional in the Commission's practice.

We continue to hold the view that both Conclusion 7 and the commentary thereto concerning identification of general principles of law formed within the international legal system require particular reconsideration by the Commission. First, this provision contains a fundamental structural problem.

Its current wording is based on the premise that general principles of law may be formed within international legal system if they fulfil certain criteria described in paragraph 1. Conversely, in paragraph 2, the Commission envisages the existence of other general principles of law formed within the international legal system for which those criteria are not applicable. As a result, this provision appears to conclude that general principles of law can be formed within the international legal system, but that the Commission does not envisage any particular criteria for identifying them. This gives rise to a fundamental divergence on the sources of general principles of law. On one hand, the draft conclusions adopted by the Commission are very specific with respect to general principles that can be derived from national legal systems, especially in the detailed conclusions 4 and 5, while on the other as regards general principles of law formed within the international legal system, we are left with paragraph 11 to conclusion 7, which states that some other principles of law can be derived from the international legal system without providing any further explanation. Against this background, Poland is of the view that paragraph 2 of conclusion 7, which has not been in any significant way elucidated in the commentary, should be deleted from the text.

Another element of conclusion 7 which requires more in-depth analysis is the term “intrinsic”, which is explained by a single sentence in the commentary. Because this concept seems to be of fundamental importance and can be associated with the process of deduction from well-established rules of international law, it merits further elaboration.

This issue is also closely linked with the examples provided by the Commission in the commentary to conclusion 7. Taking into account that international law does not envisage compulsory jurisdiction of international courts and tribunals, it is entirely unclear what kind of rights and obligations for States can be derived from the Commission's proposed “principle of consent to jurisdiction”. As to the second example given, the principle of *uti possidetis*, there is certainly a need for more explication of the Commission’s position. While Chapter IV of the ILC's Report seems to qualify *uti possidetis* as a general principle of law, Chapter VIII of the same report on sea-level rise informs us that “several members disagreed with the view expressed in the additional paper that *uti possidetis juris* was considered a general principle of law”.

Just those two examples illustrate a more general problem. Like the ILC's work on customary law and peremptory norms of international law (*ius cogens*),

we consider its work on general principles of law as relating primarily to the construction and mechanics of these principles. Thus, we would be cautious about debating whether a particular substantive rule can be considered to have the nature of a general principle, deeming it unnecessary even in commentary.

As to the functions of general principles of law, Poland is of the view that they should be resorted to only when a particular issue cannot be resolved as a whole or in part by other rules of international law. Thus, the commentary to conclusion 10 should more expressly indicate that general principles should not replace customary or treaty norms in their regulatory function and may be applied as a basis for primary rights and obligations only in limited circumstances. Such an approach would be also applicable to other examples of general principles of law formed within the international legal system in the commentary to conclusion 7. For example, the International Court of Justice's reference in the Corfu Channel case to " the principle of the freedom of maritime communication; and every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States" need not lead to the conclusion that the ICJ considered those principles to derive their binding force from general principles of law.

Sea-level rise in relation to international law

Madame Chair,

With respect to the topic of sea-level rise in relation to international law, Poland would like to thank Mr. Bogdan Aurescu and Ms. Nilüfer Oral for their additional paper on issues related to the law of the sea.

We agree that one of the aims of this project is to interpret the United Nations Convention on the Law of the Sea in such a way as to effectively address sea-level rise and provide practical guidance to affected States. Against this background, we shall not forget that UNCLOS has no universal acceptance. In consequence, to ensure a legitimate outcome, there is certainly a pressing need for parallel analysis and discussion of customary rules applicable to the most pertinent emerging issues.

We agree with the Commission that the issue of intangibility of boundaries, whether of national territory or maritime areas, is of fundamental importance because it concerns the much broader question of maintaining international peace and security. We are of the view that both UNCLOS and corresponding

customary law, as well as general principles of international law, aim at ensuring the stability of such boundaries.

Simultaneously, Poland concurs with the position that there is no self-standing, overarching principle of equity in UNCLOS. Rather, references to equity are always concretized in specific rules of this convention. Thus, equity applies as an element of these specific rules.

Non-legally binding international agreements

As we stated last year, Poland supports the Commission's decision to include “Non-legally binding international agreements” as a topic in its work programme. At the same time, we hold the view that the term ‘international agreements’ is first of all used with reference to binding instruments. For this reason, we would prefer the topic's title be changed to “Non-legally binding international instruments”.

Method of the work

With respect to Commission's working methods, we notice a need for more clarity on what stage the ILC's work on specific provisions within particular topics has reached. Careful analysis of the Commission's work indicates that a provision or standard can be in one of several quasi-legislative phases that are not always clearly discernible. Thus, a provision might be proposed by the Special Rapporteur, pending in the drafting Committee, approved by the drafting Committee, approved by the plenary, or approved by the plenary together with the commentary. Within a given topic, situations typically arise where different provisions are at different stages of the process. In this context, it would be advisable to consider inserting into the report, with respect to each topic, a table providing a general scheme of the standard or rule-making process.

Thank you, Madame Chair.