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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 3

NEW YORK, 1ST NOVEMBER 2023

Madame Chair,

I wish to present the Republic of Poland's comments on two chapters of the International Law Commission's report from its seventy-fourth session – Chapter VII, “Subsidiary means for the determination of rules of international law”, and Chapter IX, “Succession of States in respect of State responsibility”.

Subsidiary means for the determination of rules of international law

Madame Chair,

With respect to the topic “Subsidiary means for the determination of rules of international law”, my delegation would like to thank Special Rapporteur Mr. Charles Chernor Jalloh for his first report and the Secretariat for preparing the memorandum. Poland notices that the Commission provisionally adopted draft conclusions 1 to 3, together with the commentaries, while the Drafting Committee provisionally adopted draft conclusions 4 and 5.

We agree on the need to define what determination of rules means. One approach that could be applied is that determination lies somewhere between interpretation and formation of international law. In this respect, the commentary to draft conclusion 1 could elaborate on the distinction between interpretation and determination.

With respect to draft conclusion 2, although *prima facie* the first two categories listed in this provision are rooted in Article 38, paragraph 1 (d) of the Statute of the International Court of Justice, Poland notices that in practice they have different roles and different value is ascribed to them. This is perfectly demonstrated by the ILC's own approach. For example, considerations presented by the Commission in its commentary to 2018 Draft conclusions on identification of customary international law are almost entirely based on decisions of the International Court of Justice. The ICJ itself predominantly cites its own jurisprudence and permanent courts in general seem more prone to refer to decisions of other international courts and tribunals than to teachings. Thus, it would be useful to explain this practice in commentary, as without such clarification, readers of conclusion 2 may assign an unreal value to categories of subsidiary means for determining rules of international law.

As to the distinction between the role of international and national courts, we consider conclusion 13 of the 2018 Draft conclusions on identification of customary international law as a good starting point for making such a distinction, also in the context of work on subsidiary means for determining rules of international law.

Finally, Poland favours changing the order of criteria mentioned in draft conclusion 3. Particularly, we think that “the reception by States and other entities”, currently listed as point (e), should be listed first.

Succession of States in respect of State responsibility

Madame Chair,

Now, let me turn to the topic “Succession of States in respect of State responsibility”. My delegation carefully examined the possible ways to take this topic forward, taking into account that the Special Rapporteur was no longer with the Commission. Poland is in favor of a Working Group-driven process aimed at preparing a final report to be adopted by the Commission. Such an approach has already succeeded with respect to the topic “Obligation to extradite or prosecute (*aut dedere aut judicare*)” and could be successfully repeated with the topic in question.

Thank you, Madame Chair.