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Agenda item 81

S T A T E M E N T

BY

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Mr Chairman,

Thank you for the opportunity to comment on the topics that are currently before the Sixth Committee. In this intervention I would like to present position of Polish delegation on Protection of persons in the event of disasters and Formation and evidence of customary international law. Let me also confirm that Poland aligns itself with the statement made by the European Union on this agenda item.

Protection of persons in the event of disasters

With regard to Chapter VI of ILC Report - Protection of persons in the event of disasters, Polish delegation welcomes with great satisfaction the Commission's conclusion that the topic *ratione temporis* of the topic should comprise not only the disaster response phase but also pre- and post-disaster phases. The scope of the topic for which the Polish delegation has unhesitatingly opted from the very beginning of the debate.

It is worth to stress that the Commission's conclusion on the scope fully reflects general trend that can be identified in international documents concerning the international community activities connected with catastrophes. Good illustration of this might be the Fourth Global Platform for Disaster Risk Reduction held last May in Geneva. This largest and most diverse to date forum of activities on the issue has been the best confirmation that the concept of disaster risk reduction has become the predominant tendency that has brought sizable results. Broadening scope of the topic

must obviously be reflected in the relevant wording of the draft articles, in order to avoid such potential inconsistency as we discern in the text of draft article 6 on humanitarian principles in disaster response and article 7 on human dignity, that are currently formulated only in terms of disaster response, and not of prevention.

Poland welcomes adoption of articles 12 to 16 by the Commission. Particularly we would like to express our support for article 12 as an expression of principle of international solidarity. Simultaneously, we suggest removing phrase “privileges and immunities” entailed in article 14 paragraph 1 letter a. As the list of measures presented in this provision is not exhaustive it seems undesirable to put at the front of the issue of external assistance granting privileges and immunities for relief personnel.

There is still another important issue that, in the opinion of the Polish delegation, requires further reflection, namely relevance of the principle responsibility to protect. Although the application of the principle has generally been accepted as relating to protection of civilian population against genocide, crimes against humanity, ethnic cleansing and war crimes undisputedly it deserves to be thoroughly discussed by the International Law Commission and the Sixth Committee.

Such examination of this issue would be in line with the Commission’s criterion with which it is guided in its selection of topics for its considerations, namely that it should not restrict itself to traditional topics, but should also consider those that reflect new developments in international law and constitute pressing concerns of the international community as a whole.

In conformity with its usual practice, the Commission's decision on the form to be recommended to the General Assembly for its final draft articles on Protection of persons in the event of disasters may, in principle, await the completion of work on the given topic. Nevertheless, the special characteristics of such novel undertaking- as it the case with the topic in question - might make it advisable to arrive at an early understanding of what the final form should be. Taking into account a large number and content of international legal regulations referred to in the comprehensive sixth report of the Special Rapporteur and the nature and character of the draft articles proposed by the Commission the most possible objective proposal for the topic would be elaboration of the set of provisions (principles, rules, norms). These provisions could serve as a legal framework for the conduct of international disaster activities, being at the same time a basic point of reference and interpretation for all international agreements and other instruments that have already existed. These provisions could also be adopted in the future, especially if such a form as for example guidelines, rather than convention, might make the final draft more acceptable for States.

Formation and evidence of customary international law

Mr Chairman,

Poland welcomes with great interest the inclusion of the topic: Formation and evidence of customary international law into a program of current work of the ILC. We fully support all efforts of the Commission, and in particular of Michael Wood as Special Rapporteur, towards better understanding

and making easier the identification and application of customary rules by all subjects of international law.

Although it is difficult at a present stage to evaluate the work of the Commission, Poland would like to make some suggestions. We agree that the study should be useful for the practice, and therefore it should focus on means of identification of custom, and possibly on some guidelines on its interpretation and application. In this regard we support proposal of Special Rapporteur to change the title of the topic to "Identification of international customary law".

We accept a perspective of unity of international law, and therefore we consider as inappropriate the view that there are different methods governing formation and identification of customary rules under self-contained regimes. We also support the opinion that *ius cogens* issues should be excluded from the scope of future outcome of the work of the ILC on customary law, mostly because of its still controversial nature and lack of agreement as to its identification. My delegation aligns itself with those who suggest that peremptory norms can also be derived from treaties.

Poland concurs also with the expressed need for drawing a distinction (or rather clarifying a relationship) between different sources of international law. The relationship between treaties and custom was object of numerous theoretical studies, and it was considered in many judicial decisions including the ICJ judgements (like i.a. North Sea Continental Shelf and Nicaragua cases). The situation is different with respect to other sources, including in particular general principles of law (e.g. because of problems with the definition) and acts of international organizations

(because of their unclear status as a source of international law). Formulation of guidelines in that respect would be highly useful and desirable.

Looking at materials that should be considered as an object for methodology of identifying customary rules, my delegation would like to underline the importance of the state practice. We realize how difficult a gathering of practice can be, and we declare our readiness to support all the efforts of the Commission in that field. We also suggest that the practice regarding non-state actors should also be considered, taking into account their growing role in international relations. That would make future studies more complete.

Finally, we would be cautious in evaluating the practice of international courts and tribunals, taking into account excesses of creativity and imagination applied occasionally in some cases.

Thank you, Mr. Chairman.