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**Report of the International Law Commission
on the work of its sixty-sixth session**

Part I

Agenda item 78

S T A T E M E N T

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Mr. Chairman,

At the outset, let me congratulate the Chairman of the International Law Commission (ILC), Mr. Kirill Gevorgian, on his presentation of the Report of the Commission from its sixty-sixth session.

The Commission plays a valuable role in, on the one hand, evaluating and, on the other, also influencing the State practice. Hence, its work continues to contribute to the strengthening of the rule of law in international relations.

“Duty of non-recognition as lawful a situation created by a serious breach by a State of an obligation arising under a peremptory norm of general international law”

In accordance with article 18 of ILC Statute “The Commission shall survey the whole field of international law with a view to selecting topics for codification...”. In this regard Poland would like to draw Commission’s attention to the topic ***“Duty of non-recognition as lawful a situation created by a serious breach by State of an obligation arising under a peremptory norm of general international law”***.

The duty of non-recognition was expressly indicated in the article 41 of Articles on State Responsibility adopted by the ILC in 2001. As the ILC stated in the commentary to this article “The existence of an obligation of non-recognition in response to serious breaches of obligations arising under peremptory norms already finds support in international practice and in decisions of ICJ”. This conclusion is supported by recent international practice, including the ICJ opinions on Namibia and Wall in the occupied Palestinian territories, numerous resolutions by the UN Security Council, and recently i. a. by the General Assembly resolution 68/262 on “Territorial integrity of Ukraine” of from 24th March 2014. Even though the Articles on International Responsibility of States refer to the obligation of non-recognition mostly in the context of violations of jus cogens, the issue can be considered also in a broader framework, as it could concern every internationally wrongful act.

Polish delegation is of the view that the duty of non-recognition should be considered as an essential legal instrument of international community in preserving the rule of law. It can and should promote compliance in particular with peremptory norms and, hence, envisage clear consequences in cases of their breaches particularly when the Security Council is unable to take decision in the disputable matter.

However, despite the fact that the duty of non-recognition is, as a principle, widely accepted, it is sometimes difficult to pinpoint precise legal consequences of its application. In particular, there is a need for more detailed legal guidelines as regards its scope, influence on the application of bilateral and multilateral treaties, means of providing consular and humanitarian assistance or relation between this duty and protection of human rights of individuals concerned. Even if most measures are governed by domestic law of the States concerned, there is an urgent need to coordinate efforts of the international community to enforce international law.

Undoubtedly, the proposed topic is not just of great theoretical but also practical importance. It would be useful to investigate basis of the obligation, its scope and structure as well as possible enforcement mechanism.

Because of those reasons, we consider that duty of non-recognition as lawful a situation created by a serious breach by a State of an obligation arising under a peremptory norm of general international law to meet the requirements set by the Commission for selection of new topics. It reflects the needs of states in respect of codification and progressive development of international law and, at the same time, it seems to be advanced in terms of practice (taking into account practice of political organ of United Nations), as well as jurisprudence of the International Court of Justice and other international and regional courts, to allow for a fruitful work of the Commission, in line with its mandate.

Recognizing the presence of the topic included already in the Commission's long term programme of work, namely that of "*Jus cogens*", our delegation is strongly convinced that the topic concerning the "*Non-recognition...*" should be treated separately and as a matter of priority. Therefore we would like to encourage the International Law Commission to consider

including in the programme of work the topic "Duty of non-recognition as lawful a situation created by a serious breach by a State of an obligation arising under a peremptory norm of general international law".

Work on this precise topic could bring shortly much more feasible and concrete guidelines for states without striking out from the ILC agenda very broad and partially theoretical topic of "*Jus cogens*", included already by the Commission in its long term programme of work.

Expulsion of aliens

Mr. Chairman,

Poland takes note of ninth report of the Special Rapporteur to the topic on "Expulsion of aliens", Mr Maurice Kamto and set of draft articles on that topic adopted by the Commission on second reading.

On 12 December 2013 Poland enacted new Act on Aliens, which adequately reconciles the right of States to expel aliens with limits imposed on that right by international law, particularly human rights law. In this context Poland has problems with accepting several provisions of the draft , in particular:

- Article 7 as it seems, according to the Commentary, to impose obligations stemming from the Convention relating to the Status of Stateless Persons despite the fact that Poland and several other states are not a party to this treaty and
- Article 27 which indicates suspensive effect of appeal against expulsion decision while in accordance with the Polish law decision on expulsion may be immediately enforceable, if the continuation of residence of alien would constitute threat to the state security, defence, public order or if it would be contrary to the interests of the Republic of Poland

Polish delegation would like to draw the attention of the Commission that the topic of expulsion of aliens attempts to codify set of rules in an area which States already had well developed and have long-standing regulations. In the European context those detailed regulations come from regional organisations and practice of regional courts.

As a result the set of draft articles accepted by the ILC can create some confusion regarding obligations of states resulting from the international law, particularly in situations when the two regimes differ.

Other decisions and conclusions of the Commission (crimes against humanity)

Mr. Chairman,

Poland welcomes Commission's decision to include the topic "Crimes against humanity" in its programme of work. The topic is of fundamental character for international community particularly as regards combating impunity and ensuring the rule of law.

At this stage I would like to make few preliminary remarks regarding the topic. The first and crucial one is that the Commission should use definition of crimes against humanity as it is defined in article 7 of the Rome Statute. Such an approach is necessary for ensuring coherence and unity of international law in this regard. Furthermore, as it was indicated in an annex to ILC report of 2013 other key elements of the issue are: requirement to criminalize the offence in national legislation, imposition of *aut dedere aut judicare* obligation and necessity of international cooperation for investigation, prosecution, and punishment of the offence.

Finally, Polish delegation would like to suggest to take into consideration a victim oriented approach, with particular regard to the most vulnerable category of victims, namely children. It could draw from experience of drafting the latest human rights instruments, such as the International Convention for the Protection of All Persons from Enforced Disappearance.

Thank you Mr. Chairman,