



# REPUBLIC OF POLAND

PERMANENT MISSION TO THE UNITED NATIONS

750 THIRD AVENUE, NEW YORK, NY 10017

TEL. (212) 744-2506

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*STATEMENT BY*

***MR. ANDRZEJ MISZTAL***

***DIRECTOR OF THE LEGAL AND TREATY DEPARTMENT***

***MINISTRY OF FOREIGN AFFAIRS***

***OF THE REPUBLIC OF POLAND***

SIXTH COMMITTEE OF THE UN GENERAL ASSEMBLY

*Report of the International Law Commission  
on the work of its sixty-seventh session  
cluster I*

NOVEMBER 2<sup>ND</sup>, 2015

Mr. Chairman,

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

Several of the topics discussed by the ILC during this year session go to the core of international law i.a. identification of customary law, crimes against humanity and *ius cogens*. On immunity of state officials from foreign criminal jurisdiction Commission is striving to find a proper balance between ensuring impunity from the one side and protecting jurisdictional rights of states from the other.

And on some other topics that could be considered technical – provisional application of treaties, the Most-Favoured-Nation clause and subsequent agreements and subsequent practice in relation to the interpretation of treaties ILC makes a good job of evaluating volumes of international practice with a concise and thought provoking results.

#### **ILC Long-term Programme of Work and inclusion of new topics**

Poland is highly interested in the activities of ILC and we actively engage in cooperation with the Commission. Last year during the debate in the Legal Committee of the General Assembly we have made a proposal for new topic of work for the ILC “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” and this year we have sent to the Commission the Opinion of the Legal Advisory Committee to the Polish Minister of Foreign Affairs on immunities of State officials from foreign criminal jurisdiction.

We continue to hold the view that it would be in the interest of both the international community and the international law to initiate consideration of the topic of non-recognition of illegal situation caused by a serious breach of fundamental norms of international law as it might be practical and useful for states and produce feasible and concrete guidelines.

In this context Poland attaches great importance to the activities of Working Group on the Long-term Programme of Work of ILC and we thank Secretariat for the Working Paper reviewing the list of topics. We hope that this process will ensure that ILC’s future work will be not only of great theoretical but also of practical importance.

Furthermore, my delegation would like to express deep appreciation to the Secretariat for the creation of new website of the International Law Commission. We would like to also express our gratitude for initiation of practice of publication of unedited version of the ILC report, which is very helpful and give States more time to adequately evaluate work of the Commission when preparing for the meeting of General Assembly Sixth Committee.

**The Most-Favoured-Nation clause**

Mr. Chairman,

Poland takes note of the Final Report of the Study Group on The Most-Favoured-Nation (MFN) clause and its summary conclusion adopted by the ILC. We share the view of the Commission that the interpretative techniques reviewed in the report of the Study Group can significantly assist in the interpretation and application of MFN provision. In particular we agree that the key question of *eiusdem generis* i.e. what is the scope of the treatment that can be claimed has to be determined on a case-by-case basis. Consequently, there is no basis for concluding that there will be a single interpretation of an MFN provision applicable across all investment agreements. Moreover, we consider that several general statements relating to international investment law made by ILC are of utmost importance, in particular when taking into account investment jurisprudence of arbitral tribunals. In particular, Polish delegation also noticed the danger of adopting interpretations of one investment agreement as applicable automatically to other agreements.

**Protection of atmosphere**

Mr. Chairman,

On the topic "Protection of the atmosphere" Poland takes note of three draft guidelines together with preambular paragraphs, provisionally adopted so far by the Commission. While evaluating these provisions we noticed particularly the lack of guideline covering general obligation of States to protect atmosphere from pollution. This principle is of fundamental importance. In this context, the obligation of international cooperation, which is included in draft guideline 5 is the natural consequence of the general obligation, which should also be covered by the set of guidelines.

Thank you Mr. Chairman.