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**AGENDA POINT 86 - "THE SCOPE AND APPLICATION OF THE PRINCIPLE
OF UNIVERSAL JURISDICTION"**

NEW YORK, 19TH OCTOBER 2015

Mr Chairman,

On behalf of the Polish delegation, I would like to present our delegation's view concerning the scope and application of the principle of universal jurisdiction.

My delegation would like to express our deep appreciation to the Secretary General for a great work performed by the Secretariat in the form of annual reports prepared since 2010, putting together in a systematic way all information obtained in response to General Assembly's resolutions. These reports reflect accurately the approach of States to the principle of universal jurisdiction. Please allow me to express our gratitude to all States which transmitted information on their respective provisions of criminal law which could be qualified as examples of universal jurisdiction. We also owe gratitude to the international organizations for their valuable comments.

The vivid exchange of views is the best illustration of the need to deeply analyse the topic of universal jurisdiction. It has been discussed in the United Nations already for many years in various organs and in many substantial contexts. Since 2009 it has been included into agenda of subsequent sessions of the General Assembly and allocated to the Sixth Committee. In the opinion of the Polish delegation this very Committee is the best place to deal with it. We hope that it will be continued.

Mr. Chairman,

We can see that States adopt different approaches with regard to the scope of their legislative or judicial jurisdiction. It is in line with the famous Lotus judgment of the Permanent Court of International Justice. It differentiated those two kinds of jurisdiction from the administrative one – limited to the territory of a given state. That is why different solutions adopted by States should not be considered as contrary to international law.

Apart from obvious territorial and personal jurisdiction we can distinguish also passive nationality jurisdiction and protective jurisdiction. According to them a State can exercise its jurisdiction in cases of acts committed by foreigners outside its territory. At the same time they presuppose a strong relationship between an act in question and a given state. Many states recognized the need to establish provisions dealing with responsibility of foreigners for acts committed abroad and not directed against that state nor its nationals.

We used to call this this type of jurisdiction as universal jurisdiction. On the other hand there is tendency to reserve the notion of universal jurisdiction to instances where it is mandatory under international law.

In fact this choice of terminology is very important. We can think about limiting the notion of universal jurisdiction only to the one exercised when implementing international agreements. The basic question would be how to call the analogous jurisdiction which is often autonomously adopted by states. According to the Lotus judgment states preserve a wide margin of discretion in this respect. The reports sent by various states indicate that they

make use of it and rightly identify the scope of powers resulting from their provisions as universal jurisdiction.

In fact, speaking about universal jurisdiction as one uniform phenomenon would be too simplistic. States seem to apply different types of such a jurisdiction.

Several basic models can be distinguished in this regard: Firstly, jurisdiction may depend whether a given act is punishable under the law of the place of its commitment. Secondly, jurisdiction may depend on the entry of a person on the State territory. Thirdly, jurisdiction may be framed in the context of principle *aut dedere aut iudicare*. Universal jurisdiction could be considered as an extremely wide basis of state competence allowing states to decide on issues not so much attached to them than to other states. Thus, the topic covers a very delicate matter of reconciling the competence of each state to decide on its jurisdiction and the obligation to respect jurisdiction of other states.

The universal jurisdiction understood in this way may be seen as source of doubts and anxiety but also as a chance. This is related particularly to combating impunity for the most heinous crimes such as killing of human beings, rapes and other crimes against humanity as recognized in Statute of International Criminal Court.

Poland belongs to a group of states which opt for a wide scope of jurisdiction. In particular article 110 of the Polish Criminal Code provides that the Polish criminal law applies to foreigner who committed abroad an offence against the interests of the Republic of Poland or of the Polish nationals.

The same Article indicates that the Polish criminal law shall apply to foreigners who committed abroad another offence. Four conditions must be present for such responsibility to take place. Firstly, a given offence must be penalized by the Polish criminal law with a penalty exceeding 2 years of imprisonment. Secondly, it must be penalized in the state in which it was committed. The third condition is that the perpetrator remains in the territory of the Republic of Poland. The last condition is that the perpetrator is not to be extradited.

The famous judgment of the International Court of Justice of 20 July 2012 points out that the most proper way of giving effect to the principle "*aut dedere aut iudicare*" is to prescribe universal jurisdiction in the domestic law of a given state. The works of the International Law Commission on the principle "*aut dedere aut iudicare*" evidenced that almost entire international criminal law is based both on the principle "*aut dedere aut iudicare*" and consequently universal jurisdiction is the most secure way of giving effect to them.

The universal jurisdiction has a great potential of doing good service for the rule of law in international relations. That is why the exchange of views on it is necessary. We fully support the ongoing works of the VIth Committee on the topic.

Thank you, Mr Chairman.