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

Part I

Agenda item 78

S T A T E M E N T

BY

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Mr. Chairman,

At the outset, let me congratulate the Chairman of the International Law Commission (ILC), Mr. Pedro Comissário Afonso, on his presentation of the Report of the Commission from its sixty-eighth session. Forthcoming 70th anniversary session of the Commission reminds us fundamental importance of this UN organ which promotes progressive development of international law and its codification.

We highly value ILC's contribution to the strengthening of the rule of law in international relations through preparation of draft articles, guidelines and conclusions on different topics. In this context we appreciate the adoption by the Commission of draft articles on the "Protection of persons in the event of disasters" on second reading and draft conclusion on "Identification of customary international law" and "Subsequent agreements and subsequent practice in relation to the interpretation of treaties" on first reading.

My delegation supports all initiatives, such as for example interactive dialogues, which aim at strengthening the interaction between the Sixth Committee and the Commission. We notice that during the Sixth Committee sessions Commission obtains variety of comments which very often go into opposing directions, and at least for this reasons not all of them can be implemented by the Special Rapporteurs. Nevertheless, we should continuously pursue efforts to make the process of interaction more transparent. In this regard, it would be useful in our view to consider supplementing the document "Topical summary of the discussion held in the Sixth Committee" prepared yearly by the Secretariat with the annex indicating what proposals have been made to specific discussed provision of the draft conclusion, guideline or article. Such a small adjustment could contribute to the enhancement of cooperation between the ILC and Sixth Committee.

Protection of persons in the event of disasters

Mr. Chairman,

Poland is of the view that ILC work on the topic of "Protection of persons in the event of disasters" rightly leads to a conclusion that sovereignty is not only the source of rights of states but also of their obligations. In this perspective sovereignty entails also responsibility of a state towards

its own population. We appreciate the draft articles in particular in the context of reminding the value of solidarity in international relations. Poland considers that draft articles contain elements of both statutory functions of the Commission that is codification and progressive development of international law.

With regard to the issue of the outcome of ILC work we are of the view that before deciding to initiate negotiations of the conventions it is useful to see how draft articles are used in international practice. This would help us to evaluate whether there is a need of such a treaty.

Identification of customary international law

With respect to the issue “Identification of customary international law” Poland welcomes valuable document adopted by the ILC containing a set of 16 draft conclusions. We agree with the commentary that it can offer practical guidance particularly for national courts, which are increasingly called upon to apply international law. Nevertheless, we find unfortunate that neither the guidelines nor the commentary explain the question of evolution of rules of customary international law. Furthermore, as we have stated last year we are of the opinion that draft conclusion 12 is too far-reaching in restraining the role of international organization in creating customary rules. Moreover, this provision does not differentiate between custom binding only within the international organization, on the one hand, and general customary rules, on the other.

Subsequent agreements and subsequent practice in relation to the interpretation of treaties

Mr. Chairman,

Allow me now to turn to the topic “Subsequent agreements and subsequent practice in relation to the interpretation of treaties” Poland welcomes the adoption by the ILC of new conclusion on pronouncements of expert treaty bodies. In this respect we agree with the approach taken by the Commission that “Silence by a party shall not be presumed to constitute subsequent practice (...) accepting an interpretation of a treaty as expressed in a pronouncement of an expert treaty body”.

Poland notes that ILC intends to request written comments. Thus, we will provide such an observation after careful examination of all set of conclusions, as appropriate.

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

With regards to the issue of ILC Long-term Programme of Work Poland would like to reiterate our 2014 proposal for new topic of work for the Commission that is “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”. We continue to hold the view that it fulfils the criteria of ILC for the selection of the new topics. The issue of the duty of non-recognition:

- a) reflects the needs of States;
- b) is sufficiently advanced in stage in terms of State practice; and
- c) is concrete and feasible for progressive development and codification;

Referring to other topics Poland supports inclusion in the long term programme of work of Commission the issue of “General principles of law” as proposed by the Secretariat in its memorandum. Until now the topic “General principles of law” has been the only source of law applied by the International Court of Justice that was not subject of ILC studies.

Thank you, Mr Chairman.