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**Seventy – First session of the General Assembly**

**Agenda item 85 “The scope and application of the principle of universal jurisdiction”**

**S T A T E M E N T**

by

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New York, October 11<sup>th</sup>, 2016

Mr Chairman,

As this is the first time that the Polish delegation takes the floor in this Committee during 71<sup>st</sup> session, I would like to convey our congratulations on your election, as well as the election of other members of the Bureau.

On behalf of the Polish delegation, I would like to present some comments on the issue of the scope and application of the principle of universal jurisdiction.

First of all I would like to express our deep appreciation to the Secretary General of the United Nations for the great work performed by the Secretariat, which was reflected in annual reports prepared since 2010. They put together in a systematic way all information obtained in response to General Assembly's resolutions. May I also express our gratitude to all countries which transmitted information regarding the scope of their respective provisions of criminal law which could be qualified as examples of universal jurisdiction. We also owe our gratitude to international organizations, which provided their valuable comments on this subject.

We are satisfied that the topic of universal jurisdiction remained on the agenda of the Legal Committee. The considerable number of states participating in the discussion shows that the matter is of great importance. It is evident that states adopt different solutions as to the scope of their jurisdiction, including jurisdiction with respect to acts committed abroad by foreigners.

Let me now, Mr. Chairman, draw the attention of the Legal Committee to the provisions of the Polish Criminal Code which relate to acts of foreigners committed outside the territory of Poland.

According to Article 113 of the Polish Criminal Code, the Polish criminal law applies to certain acts of Polish nationals or foreigners committed abroad. This responsibility is not dependent upon the act being punishable in the place of its commitment. It is however limited to two categories of acts. The first group comprises crimes which Poland is obliged to prosecute on the basis of international treaties. The second group covers crimes defined in the Statute of the International Criminal Court. A foreigner is prosecuted unless he is extradited.

The second provision to be mentioned is Article 112 of the Polish Criminal Code. It penalizes certain acts of Polish nationals or foreigners which were committed abroad. This responsibility is also not dependent upon the act being punishable in the place of its commitment. It is however limited to five categories of acts. They may be summarized as acts contrary to the interests of the Polish State and they include: crimes against the security of Poland, crimes against important economic interests of Poland, crimes giving rise to economic benefits on the Polish territory, as well as crimes against the Polish official agencies and crimes connected with false statements made to such Polish official agencies.

This solution can be qualified rather as an example of the so called protective jurisdiction than universal jurisdiction. The same qualification can be extended to Article 110 para. 1 of the Polish Criminal Code. According to it: *“The Polish penal law shall apply to the foreigner who committed abroad an offence against the interests of the Republic of Poland, the Polish national, Polish legal person or Polish organizational unit that is not a legal person, and to the foreigner who committed abroad a terrorist offence”*. This responsibility is however limited to acts which are crimes in the place of their commitment.

Last but not least to mention is paragraph 2 of Article 110. According to it: *“The Polish penal law shall apply in case of committing by a foreigner abroad of an offence other than set forth in paragraph 1, if the offence is penalized by Polish criminal law with a penalty exceeding 2 years of imprisonment, and the perpetrator is staying in the territory of the Republic of Poland and was not decided to be extradited.”* The precondition of the criminal accountability is that the act in question is also penalized in the place of its commitment. This provision could be qualified as an example of universal jurisdiction.

The ongoing debates of the Legal Committee reveal the concern of many delegations towards such provisions. Nevertheless, we should bear in mind that they are present in the regulations of many states.

Mr Chairman,

It can be stressed that the provisions on universal jurisdiction can be discussed on three levels. The first one is the legal foundation of jurisdictional rules or even the underlying legal philosophy of jurisdiction. The second one is the scope of the provisions of law of a given state. The third element has to do with practical enforcement of such provisions. The second element was already referred to. What must be discussed are the remaining two.

As to the first element, it must be stressed that the rules of international law are different with respect to different kinds of jurisdiction. They are very precise and strict as regards the executive jurisdiction. As was pronounced in the famous Lotus judgment of Permanent Court of International Justice, every state can exercise its executive power only within its own territory. On the other hand states have quite a wide margin of discretion with regard to passing law related to jurisdiction. This discretion entails enacting regulations, which attach legal consequences to acts committed by foreigners abroad.

As to the question of practical application, it must be said that Article 110 para. 2 of the Polish Criminal Code is applied very rarely. It forms rather a safety valve than the part of everyday work of the Polish judges or prosecutors. Nevertheless, Poland is of the opinion that such provisions have their positive role to play if applied in a balanced way, taking into account the interests of other states.

We highly appreciate the influence of international law on domestic criminal law. It should be stressed that the reverse process is also possible. All persons committing serious crimes should not escape from justice. This is often ensured due to the strict application of territorial and personal jurisdiction only.

Furthermore, it must be added that domestic provisions of universal jurisdiction are of great value as they allow states to respect international instruments referring to *aut dedere aut judicare* obligations.

Mr Chairman,

Universal jurisdiction holds out the promise of greater justice. Simultaneously, this process has to be in line with international law as applying crossing jurisdictional provisions can create tensions among states. Therefore, we find this discussion as very much needed and supportive for upholding international relations on the basis of the rule of law.

Thank you, Mr Chairman.