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

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

**Part I**

Agenda item 81

*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. Georg Nolte, on his presentation of the Report of the Commission from its sixty-ninth session. Forthcoming 70<sup>th</sup> anniversary session of the Commission reminds us of the paramount importance of this UN organ which promotes progressive development of international law and its codification. The theme of anniversary meeting, which will be held in Geneva in 2018 additionally brings into prominence another important aim of the ILC which is drawing a balance in the process of reconsideration of current and prospective international law.

Poland values highly the ILC's contribution to the strengthening of the rule of law in international relations through the 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 "Crimes against humanity" on first reading.

My delegation supports all initiatives, such as for example interactive dialogues or participation of the ILC Chairman in Committee of Legal Advisers on Public International Law meetings, which aim at reinforcing the interaction between states and other actors and the Commission.

### **Crimes against humanity**

With regard to the topic "Crimes against humanity" Poland welcomes adoption by the Commission the set of draft articles on first reading. As a victim of horrifying crimes against humanity perpetrated during the Second World War, Poland considers work on this topic, leading to a draft convention, as of vital importance. In this context we welcome the new draft article on victims and witnesses. We are of the view that this provision could be supplemented by a definition of victim, determination of the scope of reparations and guaranteeing the right to establish and participate freely in organizations and associations with the aim to assist victims and protect their rights. We support also the current formulation of article 13 paragraph 6 which allows particular state to apply its national law as ground for refusal of an extradition. Such an approach i.a. enables individual states to follow its specific human rights obligation, if applicable, in this process.

Additionally, we would like to recall our statements from previous years, when we said that it is worth to consider introducing to the draft a victim-oriented approach, with particular regard to the most vulnerable category of victims, notably children. We believe that this approach should be reflected in draft article 1 by adding that it applies also to “a remedy and reparation for victims” and draft article 2. In this context we are also of the view that there is need of adding separate provision regarding rights of children.

### **Provisional application of treaties**

*Mr. Chairman,*

Referring to the topic “Provisional application of treaties”, Polish delegation welcomes the efforts of the ILC in this regards and notes 11 draft guidelines with the commentary provisionally adopted by the Commission. We would like to thank the Secretariat for preparing a new memorandum, reviewing State practice in respect of treaties that provide for provisional application.

We noticed the introduction of an express reference in draft guideline 4 subparagraph (b) of the phrase “or a declaration by a State or an international organization that is accepted by the other States or international organizations”. Such an approach seems to be more suitable than former proposal relating to provisional application by means of unilateral declaration. Nevertheless, there is still a need for further elaboration in this regard as this draft guideline tries to grasp all possible sources of obligation of provisional application, other than a basic treaty. The commentary indicates that practice with regard to use of declaration as such source is “exceptional”. In this context it is difficult to acknowledge that acceptance of declaration of a state expressing desire of provisional application of the treaty can have other than written form.

Furthermore, Poland welcomes draft guideline 11, which acknowledges that the draft guidelines are without prejudice to the right of a state to agree to the provisional application of the treaty with limitations deriving from the internal law of the state.

Finally, we would like to repeat our appeal that we made during the discussion on this topic in 2016. There is a need for a comprehensive analysis of provisions of Vienna Convention on the Law of Treaties in the context of provisional application in order to gain a better understanding of the topic. Such an in-depth study could provide a clearer guidance as to which provisions of the Vienna Convention on the Law of Treaties apply to provisional application and which do not. In this respect we would like to point out two issues.

Firstly, we would seek additional explanation with regard to point of the commentary on the draft guideline 6 insofar it states that “As a matter of principle, provisional application is not intended to give rise to the whole range of rights and obligations that derive from the consent (...) to be bound by a treaty or a part of a treaty” vis-à-vis draft guideline 6 stating that “The provisional application of a treaty or a part of a treaty produces the same legal effects as if the treaty were in force (...)”.

Secondly, a related issue arises with regard to the subsequent part of the same section of the ILC’s commentary . Namely, the position of the Commission that “Provisional application of treaties remains different from their entry into force, insofar as it is not subject to the same rules of the law of treaties in situations such as termination or suspension of the operation of treaties provided for in Part V, section 3, of the 1969 Vienna Convention”. In our view this pronouncement needs to be elaborated more thoroughly.

### **Other decisions and conclusions of the Commission**

With regard to future work programme of the Commission Poland notices that ILC plans to complete on the first reading in 2018 several topics i.e. Immunity of state officials from foreign criminal jurisdiction, Provisional application of treaties and the Protection of the atmosphere. Such situations require prudent and careful consideration relating to the choice of new topic for the work of the Commission. In this context Poland would like to reiterate its 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. Referring to other topics Poland supports inclusion in the work of Commission of the issue of “General principles of law” as until now regrettably this has been the only source of law applied by the International Court of Justice that was not subject of ILC studies.