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on the work of its sixty-ninth session**

Part II and III

Agenda item 81

S T A T E M E N T

BY

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Mr. Chairman,

In my statement, I will address chapters of the ILC Report from its sixty night session envisaged for cluster two and additionally issues of “Peremptory norms of general international law (jus cogens)” and “Succession of States in respect of State responsibility”.

Protection of the atmosphere

With regard to the topic of “Protection of the atmosphere”, Poland would like to thank Special Rapporteur Mr. Shinya Murase for his fourth report discussing interrelationship of international law on the protection of the atmosphere with other relevant fields of international law, most notably international trade and investment law, the law of the sea and human rights law. We notice the adoption by the Commission of preambular paragraphs and draft guideline 9 with the commentary.

With regard to draft guideline 9 paragraph 1, a question arises what would be the relation between this provision and the Commission’s Study Group conclusions on fragmentation, which are cited in the commentary as a source of inspiration. It is our view that these conclusions, particularly in the context of principle of systemic interpretation, enshrined in article 31 paragraph 3 letter (c) of the Vienna Convention of the Law of Treaties are generally applied.

Taking that into account, we are not sure whether it is absolutely necessary to repeat them. Our doubt is additionally strengthened by the fact that commentary to draft guideline 9 paragraph 1 resembles typical commentaries to article 31 paragraph 3 letter (c) of the Vienna Convention. Referring now to draft guidelines 10 to 12 proposed by the Special Rapporteur, on which the work of the ILC has not been concluded yet, two important observations have to be made already at this stage.

Firstly, my delegation has difficulty with the point that general international law actually contains the principle of mutual supportiveness. Secondly, providing for separate guidelines that refer to the trade and investment law, the law of the sea and the human rights law may create significant danger of moving beyond the scope of the topic, which, as draft guideline 2 clearly states, is dealing with legal norms related to the protection of the atmosphere from atmospheric pollution and atmospheric degradation.

Immunity of State officials from foreign criminal jurisdiction

Allow me now to turn to the topic “Immunity of State officials from foreign criminal jurisdiction”.

We have noticed that the Commission adopted by recorded vote the draft article 7 relating to crimes in respect of which immunity does not apply. This is quite unusual, taking into account the practice of the Commission. But apart from this procedural observation, in our view this provision can be considered as an effort, which tries to strike a balance between the law related to immunities, rooted in the principle of sovereign equality on the one side, and the need for combating impunity for the most heinous crimes under international law on the other side.

We agree that this issue goes to the heart of the understanding of international law as a system. In this context we have to remember that despite the important developments in international criminal justice in the last three decades, it is unquestionable, that still it is a state and its organs, who are tasked with ensuring observance of international law. Implementing prevention and punishment with regard to the most serious crimes under international law is without doubt in the interest of the international community as a whole. Nonetheless, whether draft article 7 indeed draws balance between codification and progressive development needs further evaluation, particularly after assessing draft articles on procedural character of the immunity, that are to be discussed by the Commission in future.

Peremptory norms of general international law (ius cogens)

Mr. Chairman,

With respect to the topic “Peremptory norms of general international law (ius cogens)” my delegation would like to thank Special Rapporteur Dire Tladi for his second report containing six draft conclusions. We would like also to congratulate the Commission for streamlining these conclusions.

At the beginning of our comment in this regard we would like to recall our statement from the previous year, as this issue seems to come back in the debates of the Commission. Poland is of the view that the concept of regional *ius cogens* is in contravention, by definition, with the notion of *ius cogens* norm itself and therefore should not be accepted. It cannot be reconciled with paramount prerequisite of *ius cogens*, namely: acceptance and recognition by the international community of States – as a whole.

Furthermore, we are also of the view that endeavors on this topic should not focus on developing an illustrative list of norms that had acquired status of *ius cogens*, as this has been already done in other past works of the Commission.

Referring to the draft conclusions adopted by the ILC this year we find it quite controversial to insert into draft conclusion 7 paragraph 2, the notion of a “very large majority of States”, whose acceptance and recognition is required for the identification of a certain norm, as peremptory. It is our view that not only number of states is significant, but also their representative character. We believe that the Commission could consider in this regard conclusion 8 paragraph 1 of the topic “Identification of customary international law”, as an important source of inspiration. In the commentary to this conclusion it was indicated that “It is important that such States are representatives of the various geographical regions and/or various interests at stake”. This logic, which applies to norms of customary law, could also be applied to peremptory norms of general international law.

Succession of States in respect of State responsibility

With regard to “Succession of States in respect of State responsibility”, Poland would like to congratulate Mr. Pavel Šturma on his appointment as a Special Rapporteur for this topic. We would like to also thank him for the preparation of his first report.

Let me make some general comments first. The issue of state succession as the practice of states shows is complex and very difficult from the perspective of the successful codification and progressive development of international law. This is due to the rarity of succession cases, and results from different political and historical contexts in which state succession occurs.

As a result, treaties relating to state succession enjoy relatively narrow support. The 1978 Vienna Convention on Succession of States in Respect of Treaties counts only with 22 states-parties and entered into force 18 years after its signature. The 1983 Vienna Convention on Succession of States in Respect of States Property, Archives and Debts has not entered into force yet.

In our view the Commission should take into account these circumstances to achieve significant outcome on this topic. My delegation believes that it would be more efficient to follow the method of work that has been applied to “Most-favoured-nation clause“ in 2015 or to “Obligation to extradite or prosecute (aut dedere aut judicare)” in 2014 – that is summary conclusions or the report on the topic as a final outcome.

Thank you Mr. Chairman.