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**Report of the International Law Commission
on the work of its seventieth session**

Part II

Agenda item 82

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 seventieth session envisaged for cluster two, that is the Protection of the atmosphere, Provisional application of treaties and Peremptory norms of general international law (*ius cogens*).

Protection of the atmosphere

Poland would like to thank the Special Rapporteur, Mr. Shinya Murase, for his fifth report. We take note of the adoption by the Commission on the first reading of 12 draft guidelines together with the preamble and commentaries on the Protection of the atmosphere. With regard to the new conclusions on Implementation, Compliance and Dispute Settlement, accepted by the ILC in 2018, we would like to stress the following.

International law allows States to freely choose their means of abiding by international obligations in accordance with their preferences and in a way that is most suitable for them. Thus, measures to be taken to meet those obligations are left to the broad discretion of States. In this context we are of the view that the abovementioned paradigm is not sufficiently articulated in draft guideline 10 concerning the implementation.

Draft guideline 11 raises significant concerns, as we find some inconsistency between the text and its title. As the first paragraph and the commentary indicate, the guideline refers to the principle of fulfillment of obligations in good faith irrespective of the source of international law from which they flow. The term "compliance", however, is used in paragraphs 1 and 2 of the draft guideline as referring only to respecting treaty obligations. Thus, the use of this term in the title suggests a narrower scope of the guideline than it is really meant to be. Furthermore, it is quite surprising that the Commission used the term "abide" rather than "fulfill" which is language from the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

Provisional application of treaties

Allow me now to turn to the topic “Provisional application of treaties”. Poland would like to thank the Special Rapporteur, Mr. Juan Manuel Gómez Robledo, for his fifth report. We welcome the adoption by the Commission on the first reading of the draft Guide to Provisional Application of Treaties, consisting of 12 guidelines together with commentaries. At this stage, we would like to share two specific comments on the Guide.

Firstly, we are of the view that for the sake of stability and predictability of treaty relations, some reasonable period of notice as to when the termination of provisional application takes effect should be introduced in guideline 9 paragraph 2.

And secondly, let me turn to draft guideline 6, which states: “The provisional application of a treaty (...) produces a legally binding obligation to apply the treaty (...) as if the treaty were in force”. In this context my delegation believes that there is a need to consider introducing into the Guide a provision equivalent to article 70 of the Vienna Convention on the Law of Treaties, a kind of formula whereby provisional application does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.

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 the Special Rapporteur, Mr. Dire Tladi, for his third report containing thirteen new conclusions. We thank the Commission’s Drafting Committee for streamlining seven of them. Regarding draft conclusion 8, we have noticed that the forms of evidence of acceptance that a norm of general international law is a peremptory norm, and the forms of *opinio iuris* required for the emergence of customary norm are treated there as being equal. Such an approach could be misleading and hardly helpful. Therefore, we would like to encourage some reflection on whether this provision is necessary in light of the aim of the Commission in this regard, which is to specify the “contours, content and effects of *ius cogens*”.

Regarding draft conclusion 14 related to the settlement of disputes, my delegation is of the view that there is no need for such a provision. As recently confirmed by the International Court of Justice in its judgement in the case of *Obligation to Negotiate Access to the Pacific Ocean*, States are free to choose the appropriate procedure for the resolution of their disputes.

With respect to the conclusions proposed by the Special Rapporteur, we are of the view that if the Commission accepts the inclusion of Security Council resolutions within this topic, a separate individual provision should be devoted to them. It is noticeable, however, that the sanction the Special Rapporteur has proposed with regard to the binding resolutions of international organizations if they conflict with *ius cogens* is different than the consequences provided for in the 1969 Vienna Convention with regard to the treaties.

Thank you Mr. Chairman.