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STATEMENT BY THE REPUBLIC OF POLAND

77TH UNITED NATIONS GENERAL ASSEMBLY

SIXTH COMMITTEE
AGENDA ITEM 77:
“REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK
OF ITS SEVENTY-THIRD SESSION”
CLUSTER 3

NEW YORK, 2ND NOVEMBER 2022

Mr. Chairman,

I wish to present the Republic of Poland's comments on two chapters of the International Law Commission's Report from its seventy third session – "Succession of States in respect of State responsibility" (Chapter VII) and "General principles of law" (Chapter VIII).

Mr. Chairman,

With regard to "**Succession of States in respect of State responsibility**", my delegation fully supports the ILC's decision to change the format of the Commission's completed work on this topic from draft articles to draft guidelines. Such an approach expresses in a more appropriate manner the nature of the ILC's work – i.e. a presumption of the subsidiary nature of the prepared provisions and the priority of agreements entered into between the States concerned. It is also justified by the scarcity of state practice on this topic.

Mr. Chairman,

As for "**General principles of law**", Poland continues to support the Commission's work on this topic as potentially of both theoretical and practical importance, in particular for domestic courts and other entities. In this context, we would like to thank the Special Rapporteur, Mr. Marcelo Vázquez-Bermúdez, for his third report.

We agree with the Special Rapporteur that the topic's scope should include the legal nature of general principles of law as a source of international law, the identification of general principles of law, and their relationship with other sources of international law.

As regards specific remarks, we are of the view that use of the term "community of nations" in draft conclusions 2 and 7 may not be coherent with the terminology used in general international law, as exemplified by the Vienna Convention on the Law of Treaties, International Court of Justice jurisprudence, and previous work by the International Law Commission. As the agreed term of art is "the international community of States as a whole" or possibly "the international community as a whole", there is no need to produce new terminology which may create additional problems of interpretation and interrelation with already well-established concepts.

Draft articles 6 and 7 provisionally adopted by the Commission refer to general principles of law which may be formed within the international legal system. This issue, however, is far from settled, and as the Commission itself discusses, there is a particular need for ensuring clarity and integrity regarding these sources of international law. Poland is of the view that the proposal that general principles be derived directly from the international legal system raises several fundamental questions. First, how does the international community of states as a whole recognize such general principles? Second, what precise methodology is to be used to ascertain the existence of these principles? This problem is particularly visible in the structure of the 11 draft conclusions already adopted by the Commission. The ILC proposed detailed provisions to identify general principles of law derived from national legal systems,

and conversely, rather short and vague conclusions on determining their transposition to the international legal system. A third issue is that accepting such an origin of general principles of law can conflate this source of international law with the general principles of international law contained, for example, in General Assembly Resolution 2625, "The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States". Conflating the two would be in contravention of the general principles of law provisionally adopted by the drafting Committee in conclusion 10. Thus, if we agree that "general principles of law are mainly resorted to when other rules of international law do not resolve a particular issue in whole or in part", as stated in draft conclusion 10, paragraph 1, it would be difficult to justify applying such an approach to the principles of international law.

We also wish to reiterate our comment from last year that there is some inconsistency between draft conclusion 8, paragraph 2, and draft conclusion 5, paragraph 3, with respect to the decisions of domestic courts. While the former considers such decisions as subsidiary means to determine general principles, the latter indicates that those decisions are part of national legal systems, whose analysis is crucial to any determination of a general principle of law.

Finally, we note two basic issues concerning general principles of law that still require explanation from the Commission. The first concerns how the term "general" should be understood. Does it relate to the norm's general character qualified as a general principle of law, or rather does it mean that the norm is obligatory to all states irrespective of its level of specificity? The second concerns the importance of the term "principle". Should it be understood a contrario to the term "rule", or perhaps as implicitly referring to domestic law?

Thank you, Mr. Chairman.