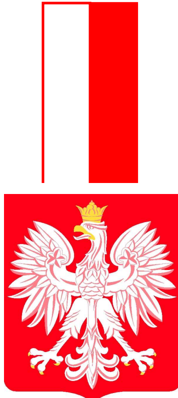

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STATEMENT BY

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79TH UNITED NATIONS GENERAL ASSEMBLY

SIXTH COMMITTEE
AGENDA ITEM 79:
"REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SEVENTY-FIFTH SESSION"
CLUSTER 2

NEW YORK, 24TH OCTOBER 2024

Mr. Chairman,

In this intervention, I present the Republic of Poland's comments on the International Law Commission's Report from its seventy fifth session, specifically, on Chapter IV, "Settlement of disputes to which international organizations are parties", and Chapter V, "Subsidiary means for the determination of rules of international law".

Settlement of disputes to which international organizations are parties

Mr. Chairman,

With respect to the topic "Settlement of disputes to which international organizations are parties", we would like to thank Special Rapporteur Mr. August Reinisch for his second report and the Secretariat for the memorandum. We note the Commission's decisions provisionally adopt draft guidelines 3, 4, 5 and 6 with the commentary.

Poland believes that further reflection is needed on draft guideline 3 and the accompanying commentary, as they may contradict each other on the delimitation of the ratione personae scope of Part 2 of the draft guidelines. Draft guideline 3 refers only to disputes between international organizations or those between States and international organizations. Conversely, the commentary emphasizes, without any substantiation for this thesis in the text of draft guideline, that it could be also applicable to disputes arising between international organizations and sui generis subjects of international law such as the Sovereign Order of Malta or insurgents. This issue is of fundamental importance and should be more clearly explained. Using the label "state" to encompass the above-mentioned entities is highly unusual. In this context, we support Special Rapporteur's initial

proposal, which explicitly referred to “States or other subjects of international law arising under international law.”

As to draft guideline 4, Poland supports the principle of free choice of dispute settlement means referred to in the commentary. Still, we consider that this principle's importance requires that it be explicitly mentioned in the draft guideline, as it is inter alia in paragraph 3 of the Manila Declaration on the Peaceful Settlement of International Disputes.

Finally, on draft guideline 5, taking into account that the peaceful settlement of international disputes is one of the most fundamental principles of international law, it is unclear what is entailed by the recommendation to make means of dispute settlement more widely accessible.

Subsidiary means for the determination of rules of international law

Mr. Chairman,

On the topic “Subsidiary means for the determination of rules of international law”, we thank Special Rapporteur Mr. Charles Jalloh for his second report and the Secretariat for the memorandum. We note that based on the Special Rapporteur's proposal, the Commission adopted five draft conclusions.

With respect to draft conclusion 4 concerning ‘Decisions of courts and tribunals’, we note that the provision is drawn from conclusions on the identification of customary international law. Still, we are of the view that there is no need in this project to maintain a formal distinction between the decisions of international courts and tribunals and the decisions of national courts.

Several reasons justify such an approach. First, this distinction is not present in Article 38 of the ICJ Statute. Thus, when the Commission states in the commentary that unlike national court judgments,

"decisions of international courts and tribunals (…) are therefore an authoritative means for identifying the existence of and determining the scope and content of rules of international law", it seems to be going against the text of the Statue. Second, draft conclusion 3 already indicated general criteria for assessing subsidiary means, which are equally applicable to decisions of international courts and tribunals as well as domestic courts. Third, decisions of international courts and tribunals can in many circumstances also be overturned. This can happen, for example, through appeals in the WTO, the ICC or the Court of Justice of the European Union, through referral to the Grand Chamber of the European Court of Human Rights, or through annulment procedures in investment arbitration. Here domestic courts will often be competent to decide. This issue is also linked with draft conclusion 7. Despite acknowledging in draft conclusion 4, para 2 the importance of national court decisions, draft conclusion 7, para 1 indicates that only decisions of international courts or tribunals may be followed on points of law.

As for Conclusion 5 on "Teachings", we would advise deleting the second sentence of the Conclusion. As it is impossible to list all of the factors that could decide the criterion of representativeness, it would seem reasonable to refrain from listing only a few arbitrarily.

Thank you, Mr. Chairman.