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STATEMENT BY

THE REPUBLIC OF POLAND

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 3

NEW YORK, 29TH OCTOBER 2024

Mr. Chairman,

I am pleased to present the Republic of Poland's comments on Chapter VIII, “Non-legally binding international agreements”, and Chapter IX, “Succession of States in respect of State responsibility” of the Report of the International Law Commission from its 75th session.

Non-legally binding international agreements

Mr. Chairman,

With respect to the topic “Non-legally binding international agreements”, my delegation wishes to thank Special Rapporteur Mr. Mathias Forteau for his first report. We consider this topic to be of great practical value, and we intend to present our written contribution in keeping with the deadline envisaged in the report.

Last year, we presented our preference for using the term “instruments” instead of “agreements”. This approach is based on our internal treaty practice, which does not apply the term “agreements” to non-binding documents.

As to the scope of the topic, in Poland's view it should in principle cover only international instruments entered into between States, between States and international organizations, and between international organizations. Such an approach would take both Vienna Conventions on The Law of Treaties as a general point of reference. In this context, we would caution against the inclusion of inter-institutional agreements or administrative arrangements into the topic. Due to the significant variety of forms and practices related to such documents, presenting coherent guidelines on their use could present considerable difficulties.

On the criteria for distinguishing treaties from non-legally binding agreements, we agree that one of the most important would be States' intentions as indicated in the text of the agreement. In particular, we consider the presence of final clauses - including the need for ratification, or dispute settlement mechanisms to be of significant value in distinguishing treaties from non-legally binding international instruments. The inclusion of a specific clause expressly excluding the binding character of such documents should also be viewed as fundamentally important.

As to the potential legal effects of non-legally binding international instruments, we wish to recall that this issue was at least partially covered in the Commission's previous work. Thus, in conclusion 10 of the ILC's "Conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties", it is explicitly stated that "Such an agreement may, but need not, be legally binding for it to be taken into account". At the same time, in conclusion 10 of the "Conclusions on identification of customary international law", the Commission stated that "Evidence of acceptance as law (opinio juris) may take a wide range of forms."

Succession of States in respect of State responsibility

Mr. Chairman,

Let me turn to the topic "Succession of States in respect of State responsibility". We welcome Commission's decision, which is fully in line with the Polish position presented last year, to prepare its final report through a Working Group-driven process. In this context, we wish to thank the Working Group Chair, Mr. August Reinisch, for his working paper on the subject.

As a general matter, we agree with an approach highlighting the specific nature of the ILC's work – i.e., its presumption of the priority of agreements entered into between the States concerned, especially taking into account the scarcity of state practice on the topic.

Thank you, Mr. Chairman.