



REPUBLIC OF POLAND
PERMANENT MISSION TO THE UNITED NATIONS

750 THIRD AVENUE, NEW YORK, NY 10017

TEL. (212) 744-2506

Check against delivery

STATEMENT BY

HENRYKA MOSCICKA - DENDYS

DEPUTY MINISTER OF FOREIGN AFFAIRS
MINISTRY OF FOREIGN AFFAIRS OF THE REPUBLIC OF POLAND

80TH UNITED NATIONS GENERAL ASSEMBLY

SIXTH COMMITTEE
AGENDA ITEM 80:
"REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS
SEVENTY-SIXTH SESSION"
CLUSTER 1

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Mr Chairman,

Poland aligns itself with the statement delivered by the European Union. In addition I would like to make the following points in my national capacity.

To start, let me congratulate the Chair of the International Law Commission (ILC), Mr. Mārtiņš Paparinskis, for his presentation of the Commission's Report from its seventy-sixth session.

Unfortunately, due to the United Nations liquidity crisis, the Commission's session was again shortened, this time very significantly, from twelve to only five weeks.

We deeply regret this situation. Poland believes that strengthening the international legal order is essential at a time when it faces severe challenges from proliferating conflicts and egregious violations of international law.

Furthermore, the Commission was again unable to exchange views on international law with several bodies. As was the case last year, Poland regrets this situation and wishes to highlight the need for more profound dialogue between the ILC and certain UN organs, particularly those dealing with issues related to the use of information and communications technologies.

Sea-level rise in relation to international law

On the topic "Sea-level rise in relation to international law", Poland congratulates the Commission for adopting the Study Group's final report. The importance of this step was demonstrated in just few months since the report's adoption. In particular, it is to be noted that the International Court of Justice in its July 23rd advisory opinion on "Obligations of states in respect of climate change" referred to the report as proof of "a convergence of views among States across all regions in support of the absence of an obligation of States parties to UNCLOS to update charts or lists of geographical co-ordinates relating to their

maritime zones once they have been duly established, in conformity with UNCLOS” (para 361). Similarly to the Study Group report, the Court also formulated an opinion on the relation between the complete loss of a state’s territory and its statehood. The Commission’s work in this regard won praise at the September 2024 high-level plenary meeting in New York – that is, even before the report was adopted. This demonstrates that the Commission is not solely occupied with highly technical or subsidiary topics. Indeed, it has shown an ability to deliver results on issues that concern not just government lawyers but ordinary people and nations around the world.

Finally, we congratulate the Commission on its use of the new Study Group format instead of a Special Rapporteur. This change proved to be useful and is worth considering for future Commission deliberations on multifaceted topics.

General principles of law

Mr Chairman,

Poland has followed very closely the ILC’s work on “General principles of law”. Poland has supported the work of the Commission on this topic because of its potential practical as well as theoretical importance. In this context, we wish to thank Special Rapporteur Marcelo Vasquez-Bermudez for his fourth report.

Poland notes the Drafting Committee’s provisional adoption on its second reading of the consolidated text of draft conclusions 1 to 12. We welcome the streamlined text of the draft conclusions, in particular the deletion of para 2 of conclusion 7 and the aligning of conclusion 9 with ongoing work on the topic “Subsidiary means for the determination of rules of international law”.

Even so, we believe that certain other modifications are still needed in the text. We continue to hold the position that the Commission’s usage of the new term “community of nations” in draft conclusion 2 will create additional problems of

interpretation. Instead, the Commission should apply terms it has used in the past – either “international community of States as a whole” or possibly “international community as a whole”. On draft conclusion 7, we wish again to point out a discrepancy between the rigour required by the Commission when identifying general principles of law derived from national legal systems (specified in conclusions 4 to 6) and the relaxed criteria for identification of general principles of law formed within the international legal system encapsulated in a single sentence. Regrettably, neither the conclusion nor the commentary comprehensively explain how the community of nations can recognise these principles as intrinsic and how the term “intrinsic” should be understood.

Furthermore, Poland is in favour of deleting conclusion 10 on “functions of general principles of law” for several reasons. Firstly, the Commission has not inserted an analogous provision in its work on identification of customary law. As conclusion 1 specifies, general principles of law are already considered a source of international law, thus obviating the need to specifying any other function. Secondly, conclusion 10 is not consistent with conclusion 11. While the former states that “General principles of law are mainly resorted to when other rules of international law do not address or resolve a particular issue in whole or in part”, the latter rightly emphasizes that “General principles of law, as a source of international law, are not in a hierarchical relationship with treaties and customary international law”. Thus, there is no obligation under international law to apply general principles in the manner specified in draft conclusion 10, para 2. Thirdly, para 1, letter b of draft conclusion 10 conflates different types of international law norms, in particular by wrongly juxtaposing “substantive rights and obligations” with “secondary” rules. Finally, Poland also supports the deletion of draft conclusion 12, as the Commission presented no convincing

evidence to support claims about the existence of general principles of law with a limited scope of application as a source of international law.

Other decisions and conclusions of the Commission

With respect to “Other decisions and conclusions of the Commission”, Poland welcomes the inclusion in the ILC work programme of two new topics: 1) compensation for the damage caused by internationally wrongful acts and 2) due diligence in international law. We agree that the Commission's study of these issues would make a useful contribution.

In this context, we wish to draw particular attention to the importance of due diligence. We encourage both the Special Rapporteur and the Commission to concentrate on understanding due diligence as a substantive rule of international law corollary of the sovereignty principle in accordance with the Corfu Channel judgement. Considering the matter from this perspective could be most useful in an era when states face threats from cyberspace. This is proved by the plethora of States’ positions on applying international law to cyberspace, which refer to due diligence as well as discussion of this norm in the Open-ended Working Group on the security and use of information and communications technologies.

On working methods and procedures, we believe the Commission should not abandon the good practice of appending to the final report the draft text which served as the basis for discussion. As for texts discussed but not yet adopted by the Commission, this could be done as in the past by citing relevant extracts in footnotes. The lack of such practice in the current Report makes this document far from user-friendly. For example, in Chapter V on “Immunity of State officials from foreign criminal jurisdiction”, the Report discusses draft Articles 8 to 18 in detail but unfortunately does not provide the draft texts of these articles for

comparison. This latter issue, which concerns possible modifications to the text adopted during its first reading, requires particular attention. We believe that using charts to compare modifications discussed between the first and second readings would streamline the work and ensure a more transparent and legitimate process.

We also think that use of charts would be helpful in clarifying the phase of particular topics in the general scheme of the Commission's work.

As for the ILC's long-term work programme, we are of the view that the UN financial crisis makes it even more important for the Commission to work on problems related to present-day applications of international law that are of interest to all states. Poland suggests two such topics concerning the law of the sea: namely, "the protection of critical undersea infrastructure" and "the question of ships without nationality or operating under a false flag". We are of the view that the myriad of challenges that States, engaged in cable and pipeline activities, currently face require further reflection and clarification of applicable legal regime. Simultaneously, the growing phenomenon of ships flying unauthorized flags or having no nationality poses a serious threat to the global maritime order, including to other vessels, their crews, to the marine environment, and coastal states.

Thank you, Mr Chairman.