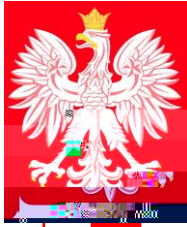


REPUBLIC OF POLAND
PERMANENT MISSION TO THE UNITED NATIONS



750 THIRD AVENUE, 30TH FLOOR, NEW YORK, NY 10017

TEL. (212) 744-2506

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SeventySecondession of the General Assembly

Mr. Chairman,

In my statement, I will address chapters of the ILC Report from its sixty night session envisaged for cluster two and additionally issues of “Peremptory norms of general international law (jus cogens)” and “Succession of States in respect of State responsibility”.

Protection of the atmosphere

With regard to the topic of “Protection of the atmosphere”, Poland would like to thank Special Rapporteur Mr. Shinya Murase for his fourth report discussing interrelationship of international law on the protection of the atmosphere with other relevant fields of international law, most notably international trade and investment law, the law of the sea and human rights law. We notice the adoption by the Commission of preambular paragraphs and draft guideline 9 with the commentary.

With regard to draft guideline 9 paragraph 1, a question arises what would be the relation between this provision and the Commission’s Study Group conclusions on fragmentation, which are cited in the commentary as a source of inspiration. It is our view that these conclusions,

Immunity of State officials from foreign criminal jurisdiction

Allow me now to turn to the topic “Immunity of State officials from foreign criminal jurisdiction”.

We have noticed that the Commission adopted by recorded vote the draft article 7 relating to crimes in respect of which immunity does not apply. This is quite unusual, taking into account the practice of the Commission. But apart from this procedural observation, in our view this provision can be considered as an effort, which tries to strike a balance between the law related to immunities, rooted in the principle of sovereign equality on the one side, and the need for combating impunity for the most heinous crimes under international law on the other side.

We agree that this issue goes to the heart of the understanding of international law as a system. In this context we have to remember that despite the important developments in international criminal justice in the last three decades, it is unquestionable, that still it is a state and its organs, who are tasked with ensuring observance of international law. Implementing prevention and punishment with regard to the most serious crimes under international law is without doubt in the interest of the international community as a whole. Nonetheless, whether draft article 7 indeed draws balance between codification and progressive development needs further evaluation, particularly after assessing draft articles on procedural character of the immunity, that are to be discussed by the Commission in future.

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 Special Rapporteur Dire Tladi for his second report containing six draft conclusions. We would like also to congratulate the Commission for streamlining these conclusions.

At the beginning of our comment in this regard we would like to recall our statement from the previous year, as this issue seems to come back in the debates of the Commission. Poland is of the view that the concept of regional *ius cogens* is in contravention, by definition, with the notion of *ius cogens* norm itself and therefore should not be accepted. It cannot be reconciled with paramount prerequisite of *ius cogens*, namely: acceptance and recognition by the international community of States – as a whole.

Furthermore, we are also of the view that endeavors on this topic should not focus on developing an illustrative list of norms that had acquired status of *ius cogens*, as this has been already done in other past works of the Commission.

As a result, treaties relating to state succession enjoy relatively narrow support. The 1978 Vienna Convention on Succession of States in Respect of Treaties counts only with 22 states-parties and entered into force 18 years after its signature. The 1983 Vienna Convention on Succession of States in Respect of States Property, Archives and Debts has not entered into force yet.

In our view the Commission should take into account these circumstances to achieve significant outcome on this topic. My delegation believes that it would be more efficient to follow the method of work that has been applied to “Most-favoured-nation clause“ in 2015 or to “Obligation to extradite or prosecute (aut dedere aut judicare)” in 2014 – that is summary conclusions or the report on the topic as a final outcome.

Thank you Mr. Chairman.