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*Mr. Chairman,*

At the outset, let me congratulate the Chairman of the International Law Commission (ILC) Mr. Pavel Sturma, on his presentation of the Report of the Commission from its seventy-first session.

Poland recognizes the Commission as a body which can contribute through its work to the rule of international law. Clearly, the Commission is not (and should not be) alone in this task. In particular the dialogue with States in the framework of the 6<sup>th</sup> Committee, should aid the Commission in performing its task. Poland is a

he continues to provide. As upholding international law is one of our priorities, we are of the view that supplementing current international framework concerning prevention and punishment of atrocity crimes is of vital importance. Thus, my delegation believes that there is a need to continue the work, including through convening of the intergovernmental conference of plenipotentiaries, towards drafting a convention on the basis of the articles prepared.

At the same time, we reserve the right to provide some detailed comments concerning the text of the articles during subsequent work in this respect.

### **Peremptory norms of general international law (*ius cogens*)**

*Mr Chairman,*

Referring to the topic “Peremptory norms of general international law (*ius cogens*)” let me, at the outset, strongly emphasize, in line with the provisions of the Vienna Convention on the Law of Treaties, that we consider these norms are a cornerstone of the international legal order. This is the reason why, in our view, this topic requires particularly careful consideration in order to uphold the importance of these norms for international community and to avoid any possible confusion with respect to overly easy identification and subsequent application. Against this background, the adoption by the ILC of the conclusions on peremptory norms of general international law, on the first reading, already in this year has been a rather unexpected step. It is worth recalling that the Commission decided to work on this topic in 2015. Nevertheless, in the ILC reports from 2016 to 2018 there was no information that the Commission adopted any of the conclusions proposed by the Special Rapporteur, neither there was any accepted commentary to conclusions that could be subject to comments of States. As mentioned before, we would recommend this extraordinary method of work is not followed by the ILC in the future.

Referring to the document adopted by the Commission, Poland would like to draw attention to possible divergences between the Commissions’ conclusions in this respect and the International Court of Justice judgement in the case *Jurisdictional Immunities of the State*. It should be noted that in paragraph 93 of the said judgement the ICJ stated that there is no conflict between rules of *ius cogens* and the rules on state immunity as the latter are procedural in character. Nonetheless, neither the conclusions, nor the commentary refer to or reflect such a legal solution. Conversely, when reading conclusion 3, hierarchical superiority mentioned there does not find any exception and is not in any way limited or adjusted. As the “*conclusions are aimed at providing guidance to all those who may be called upon to determine the existence of*

*peremptory norms of general international law this issue rise*” that is *i.a.* domestic courts, it would seem necessary that this issue was further addressed and clarified.

Poland supports the conclusion 6, in particular insofar as it emphasizes the distinction between the acceptance and recognition of the *ius cogens* norms, on the one hand, and acceptance and recognition of norms of general international law, on the other. However, in this context one cannot help but notice that such a conclusion does not seem to be reflected in the remainder of the Commissions’ project in this respect.. In particular, the ILC is indicating in conclusions 8 and 9 a requirement for acceptance and recognition of *ius cogens* norms on the same level as norms of general international law or even on the lower level. For example, in conclusion 9 para 2, the ILC recognizes that expert bodies can serve as subsidiary means for determining the peremptory

of non-recognition, requires further consideration. In particular, question arises whether there can be only a “simple” breach of *ius cogens* norm which does not imply non-recognition obligation.

### **Other decisions and conclusions of the Commission**

*Mr Chairman,*

Poland takes note of the fact that the Commission included in the long-term programme of its work two topics: reparation to individuals for gross violations of international human rights law and serious violations of international humanitarian law and prevention and repression of piracy and armed robbery at sea. Allow me to make brief comments in this respect.

When it comes to the topic “reparation to individuals for gross violations of international human rights law and serious violations of international humanitarian law” we are of the view that this issue does merit attention. Already in 1969 in the ECOSOC discussions on punishment