



**REPUBLIC OF POLAND**  
**PERMANENT MISSION TO THE UNITED NATIONS**

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**Report of the International Law Commission  
on the work of its seventieth session**

**Part III**

Agenda item 82

*S T A T E M E N T*

*BY*

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TO THE UNITED NATIONS***

**OCTOBER 30, 2018**

*Mr. Chairman,*

In my statement I will address chapters of the ILC Report from its seventieth session envisaged for cluster three, that is Succession of States in respect of State responsibility, Protection of the environment in relation to armed conflicts and Immunity of State officials from foreign criminal jurisdiction.

#### **Succession of States in respect of State responsibility**

With regard to the topic “Succession of States in respect of State responsibility”, Poland would like to thank the Special Rapporteur, Mr. Pavel Šturma, for his second report discussing *inter alia* the legality of succession, the general rules on succession of States in respect of State responsibility, particularly in relation to attribution and certain special categories of State succession.

Poland, as stated last year, shares the view, expressed also during this year’s debate in the Commission, that the scarcity of State practice regarding this topic presents significant challenges to the work of the ILC. We can agree with the opinion of the Special Rapporteur that there could be a need for shedding more light on the relation between the succession of States and State responsibility. Nonetheless, in our view the Commission should take into account the very limited support for treaties relating to state succession. Therefore, we would like to encourage some reflection in this regard. Preparing a set of draft articles instead of - for example - summary conclusions could weaken rather than strengthen the impact of ILC work on future state practice.

#### **Protection of the environment in relation to armed conflicts**

Allow me now to turn to the topic “Protection of the environment in relation to armed conflicts”. Poland would like to thank the Special Rapporteur, Ms. Marja Lehto, for her first report, which addressed the protection of the environment in situations of occupation. We take note of the fact that the Drafting Committee provisionally adopted draft principles 19, 20 and 21 with regard to this issue. We fully agree with the view that an Occupying Power shall respect and protect the environment of the occupied territory. Furthermore, Poland also supports incorporating the principle of not causing harm to the environment of another State into the obligations of the Occupying Power.

## **Immunity of State officials from foreign criminal jurisdiction**

*Mr. Chairman,*

With respect to the topic “Immunity of State officials from foreign criminal jurisdiction”, my delegation would like to thank the Special Rapporteur, Ms. Concepción Escobar Hernández, for her sixth report dealing with procedural aspects of the immunity from foreign criminal jurisdiction. Regarding the issue of timing, Poland supports the view that in principle, immunity considerations should be taken into account during the whole criminal procedure, that is covering both the trial and the pretrial conduct of organs of the forum state. This is also in line with Article 17 § 1 of the Polish Code of Criminal Procedure according to which criminal proceedings shall not be instituted, or, if previously instituted, shall be discontinued, when the perpetrator is not subject to the jurisdiction of the Polish criminal courts. Referring to the controversy surrounding the definition of “criminal jurisdiction”, Poland supports the view that there is no need to define this term for the purposes of the draft articles.

What seems to be central to this topic is finding a common understanding of draft article 7 relating to crimes to which immunity does not apply. Poland notes that different solutions in this regard were discussed in the Commission. In this respect we consider the procedure mentioned in paragraph 324 of the Commission’s Report to be a good starting point as it aims at addressing the need for combating impunity for the most serious international crimes while respecting the principle of sovereign equality, which is a source of the immunity of State officials.

*Thank you Mr. Chairman.*