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UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

UNITED NATIONS GENERAL ASSEMBLY, SIXTH COMMITTEE,
SEVENTY-THIRD SESSION, AGENDA ITEM 82
REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK
OF ITS 70TH SESSION: PART 3 (A/73/10)

CHAPTER IX (PROTECTION OF THE ENVIRONMENT IN RELATION TO
ARMED CONFLICTS)
CHAPTER X (SUCCESSION OF STATES IN RESPECT OF STATE
RESPONSIBILITY)
CHAPTER XI (IMMUNITY OF STATE OFFICIALS FROM FOREIGN
CRIMINAL JURISDICTION)

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Mr/Madam Chairperson,

1. On the topic of the **protection of the environment in relation to armed conflicts**, the United Kingdom welcomes the first report of the new Special Rapporteur, Ms Marja Lehto, who continues the good work of Ms Marie Jacobsson.
2. We note that the report proposed three new draft principles on an issue that the Commission had identified for further consideration namely the protection of the environment in situations of occupation.
3. We also note the very wide scope of that report, covering the whole conflict cycle and allowing review of the law of armed conflict, international human rights law and international environmental law.
4. The United Kingdom remains unconvinced that there is a need for new treaty provisions in this area, and agrees that the Commission should not seek to modify the law of armed conflict, or the law of occupation. The United Kingdom also considers that the topic should not broaden in scope to examine how other legal fields, such as human rights interrelate.
5. We look forward to the Special Rapporteur preparing commentaries in 2019 and would expect that the commentaries will be narrower in scope than the report itself.

Mr/Madam Chairperson,

6. Turning now to the **succession of states in respect of State responsibility**, the United Kingdom is grateful to the Special Rapporteur, Mr Pavel Šturma for his second report.

7. The United Kingdom reiterates its earlier concerns that there is little by way of State practice in this area to guide the Commission and notes the challenges that this poses to work in this area. While noting the additional practice highlighted in the Special Rapporteur's second report, the United Kingdom remains concerned that such practice is context-specific and sensitive and must be viewed in its historical, political and even cultural context.
8. In the absence of extensive state practice, the United Kingdom also urges against the Special Rapporteur placing undue reliance on academic writings, especially where these may be used as the basis for the inclusion of draft articles based on 'new law' or progressive development of the law.
9. The United Kingdom supports the acknowledgment of the Special Rapporteur that a general theory of non-succession should not be replaced by another similar theory in favour of succession and agrees that a more flexible and realistic fact sensitive approach is required. However, the United Kingdom is not convinced that there is existing law or state practice to support the idea apparent in the draft articles that a general underlying theory of succession should be influenced by whether or not the predecessor state continues to exist. The United Kingdom cautions against draft articles that are based on practical and policy considerations, rather than existing practice or law.
10. The United Kingdom further recognises that the scope of possible exceptions to the underlying general rule of non-succession is the object of considerable debate. In this regard, the United Kingdom agrees with the comments of members of the Commission that it will be important for the Special Rapporteur to clarify the extent to which each of the draft articles codifies customary international law, or alternatively would constitute progressive development of international law or new international law.

11. The United Kingdom also agrees with proposals for a draft article to be added to make it clear that the draft articles would only apply in the absence of any agreement between the parties, including the injured State of an internationally wrongful act. For the avoidance of doubt, such agreements in themselves however, should not be relied on to infer general rules regarding the effects of succession on state responsibility.

12. The United Kingdom continues to retain an open mind as to the utility of this work. However, the United Kingdom's view is that it will be difficult to reach broad agreement among States in relation to this topic given the dearth of existing practice, and the case-by-case approach that states take in reality when faced with questions of the succession of states in respect to state responsibility. In particular, the United Kingdom notes that the practice that does exist in this area, is usually the product of negotiation and agreement between the relevant states, rather than the existence of an underlying general rule.

Mr/Madam Chairperson,

13. On the topic of **Immunity of State officials from foreign criminal jurisdiction**, the United Kingdom notes that there were only limited developments in the Commission this year: the Special Rapporteur's sixth report (which contained no new proposed drafts), and the opening of a debate thereon. We await with interest the seventh report.

14. As the United Kingdom has previously noted, this topic is of great practical significance. It also increasingly attracts comment and scrutiny from a variety of perspectives, so a clear, accurate and well-documented proposal by the Commission would be very valuable. But, there is a long way to go before achieving that goal.

15. This year, the Special Rapporteur, Professor Concepcion Escobar Hernandez, submitted her sixth report as the session was drawing to a close. The report is a preliminary report. It reiterates the need to address the procedural aspects of immunity including the timing of consideration of immunity, which organ should determine its applicability and its effect on jurisdiction.
16. The report addresses a number of general procedural matters, including the need for such safeguards to protect the sovereign equality of States by preventing the politicization or abuse of criminal jurisdiction, autonomous procedural issues such as those relating to the invocation and waiver of immunity, as well as the need to consider the procedural safeguards necessary to protect the fair trial rights of the accused official.
17. It is clear, however, that there remains a divergence of opinion on how these procedural aspects should be addressed and their relationship to the proposed exceptions to immunity. This difference of view maps the divergence of views of States on whether exceptions or limitations to immunity, in particular in relation to crimes under international law, are appropriate. To this extent, the United Kingdom regards these procedural elements as inseparable from the substantive elements in the context of this topic. While the United Kingdom welcomes the identification of some of the issues the procedural safeguards will have to address, it awaits the elaboration of draft articles following the seventh report.
18. The United Kingdom continues to consider it to be of vital importance that the Commission clearly indicates those draft articles which it considers to reflect existing international law and those which it considers to represent the progressive development of the law. Recalling its previous comments on the point, the United Kingdom would also welcome a renewed focus in the seventh report on the basis in international law for the exceptions to immunity proposed in

draft Article 7. This basis remains unclear, and the United Kingdom notes the importance of consensus on topics of such importance.

Thank you, Mr/Madam Chairperson.
