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UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

UNITED NATIONS GENERAL ASSEMBLY, SIXTH COMMITTEE,
SEVENTY-FIRST SESSION, AGENDA ITEM 78,
REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK
OF ITS SIXTY-EIGHTH SESSION: PART III (A/71/10)
CHAPTER X (PROTECTION OF THE ENVIRONMENT IN RELATION TO
ARMED CONFLICTS)
CHAPTER XI (IMMUNITY OF STATE OFFICIALS FROM FOREIGN
CRIMINAL JURISDICTION)
CHAPTER XII (PROVISIONAL APPLICATION OF TREATIES)

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Mr. Chairman,

1. Turning to the topic of **protection of the environment in relation to armed conflicts**, the United Kingdom has read with interest the third report of the Special Rapporteur, Ms. Marie Jacobsson, and Chapter X of the Commission's report.
2. The United Kingdom notes that the focus of the Special Rapporteur's third report was on identifying rules applicable in post-conflict situations, whilst also addressing some preventive measures to be undertaken in the pre-conflict phase and also the situation of indigenous peoples.
3. In the United Kingdom's view, the international legal basis for a number of the draft principles is unclear. Specifically, the United Kingdom notes the controversy surrounding the formulation of draft principle 12 (prohibition of reprisals) and the Special Rapporteur's description of its inclusion as promoting the progressive development of international law. As the United Kingdom noted in its statement to the Sixth Committee last year, it remains in agreement with the Special Rapporteur that the Commission should not seek to modify the law of armed conflict.
4. The draft principles cover a range of issues, and so far it is difficult to see how the eventual output will look as a whole. The United Kingdom therefore remains unclear about the future of this topic. Whilst the preparation of non-binding guidelines or principles could be useful, the United Kingdom is unconvinced that there is a need for new treaty provisions in this area.

Mr. Chairman,

1. Turning to the topic of **Immunity of State officials from foreign criminal jurisdiction**, the United Kingdom is grateful to the Commission for the progress made on the topic this year, as reflected in Chapter XI of its 2016 annual report.
2. As the United Kingdom has previously noted in the Sixth Committee, 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 will be very valuable.

3. The United Kingdom notes that the Commission's work to date encompasses elements that reflect existing law as well as elements that represent progressive development. To the extent that the Commission's work contains proposals for progressive development, the United Kingdom takes the view that the appropriate outcome is likely to be a treaty.
4. This year, the Commission has provisionally adopted draft Articles 2(f) and 6, with commentaries, dealing with the definition of the term "act performed in an official capacity" and the scope of immunity *ratione materiae* respectively. These drafts cover some difficult issues, and will need to be reviewed in light of the draft Articles and commentaries as a whole. For example, the question of whether or not acts *ultra vires* can be considered official acts for the purpose of immunity has still to be addressed.
5. The United Kingdom further notes that the fifth report of the Special Rapporteur, Ms. Concepción Escobar Hernández, was the subject of only preliminary debate during the Commission's sixty-eighth session, and that relatively few members of the Commission took part. Even so, it seems clear that views within the Commission are deeply divided on the question of exceptions to immunity.
6. As that debate has yet to be completed, and the Commission has taken no action as yet on the proposed draft article 7, the United Kingdom will reserve its full statement on the matter until next year. Indeed, until the text of all draft articles is available, the United Kingdom's comments on those adopted so far must necessarily be regarded as provisional.
7. The United Kingdom welcomes the Special Rapporteur's proposed draft Article 7(2) which provides that any exceptions to the immunity of State officials do not apply to persons who enjoy immunity *ratione personae*. So long as draft Article 4(1) confines that type of immunity to such persons' terms of office, however, the final five words of draft Article 7(2) might be considered superfluous. Similarly, the United Kingdom has no difficulty with the substance of draft Article 7(3).
8. In respect of draft Article 7(1), however, the United Kingdom recalls that a violation of a *jus cogens* norm pertaining to a criminal offence does not of necessity constitute an exception to immunity. The United Kingdom considers that, as a matter of treaty law, States which are parties to the UN Convention against Torture have implicitly waived the immunity of their officials in relation to the offence of torture, since it is an offence

which as defined in that Convention can only be committed by those acting on behalf of the State; and each State party has an express duty to establish jurisdiction whenever a suspect is present on its territory and not extradited. But the United Kingdom does not consider that an equivalent exception to immunity exists in respect of the other offences enumerated in paragraph (a) of draft Article 7(1), and would not consider such an exception appropriate even as progressive development.

9. Moreover, the United Kingdom does not consider that crimes of corruption should form an exception to immunity, even as progressive development. Not only is the international legal basis unclear for paragraph (b) of draft Article 7(1), the United Kingdom also considers that the adoption of such an exception could undermine the immunity of State officials by facilitating spurious or politically motivated prosecutions in foreign jurisdictions. And the United Kingdom sees no reason to single out corruption in this way as against the many other crimes covered by international conventions.
10. Finally, the United Kingdom notes that the Special Rapporteur's next report is intended to cover the procedural aspects of the topic. These were already dealt with very well in 2011 in the third report of the former Special Rapporteur, Mr. Roman Kolodkin, and will form an important aspect of the Commission's eventual output.

Mr. Chairman,

1. Turning to the topic of **Provisional application of treaties**, the United Kingdom welcomes the fourth report of the Special Rapporteur, Mr. Juan Manuel Gómez-Robledo.
2. The United Kingdom supports the preparation of draft guidelines on this topic; provisional application is a matter that often arises in practice and on which there is not always clarity.
3. The United Kingdom was also pleased to note the development of draft guideline 10, concerning the obligation not to invoke internal law as justification for non-compliance with international obligations undertaken by means of the provisional application of all, or part, of a treaty.
4. The United Kingdom notes the view of the Special Rapporteur in their fourth report that because the provisional application of treaties

produces legal effects, reservations may also, in principle, be made by a State as from the time of its agreement to the provisional application of a treaty. The United Kingdom considers that the interplay between provisional application and the making of reservations would merit further consideration. In the United Kingdom's view, an analysis of the practice of States and international organisations would be of assistance in conducting a full and comprehensive consideration of this issue.

Thank you, Mr. Chairman.
