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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 I (A/71/10)
CHAPTERS I-III (INTRODUCTORY PARTS) and XIII (OTHER DECISIONS
AND CONCLUSIONS OF THE COMMISSION)
CHAPTER IV (PROTECTION OF PERSONS IN THE EVENT OF
DISASTERS)
CHAPTER V (IDENTIFICATION OF CUSTOMARY INTERNATIONAL LAW)
CHAPTER VI (SUBSEQUENT AGREEMENTS AND SUBSEQUENT
PRACTICE IN RELATION TO THE INTERPRETATION OF TREATIES)

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Mr. Chairman,

1. I would like to begin by thanking the Chairperson of the Commission, Mr Pedro Comissário Afonso, for his report to the Sixth Committee and all members of the Commission for a successful final year of the current quinquennium in which some fruitful progress has been made. The United Kingdom is also grateful to the Chairperson of the Drafting Committee, Mr. Pavel Šturma, for all of his hard work during the session.
2. The United Kingdom also takes this opportunity to commend and thank the Codification Division of the Secretariat and its Director, Mr. Huw Llewellyn, for their excellent work. It is not only the support that the Codification Division provides to the Commission, but also the assistance they offer to States, which is of great value.
3. In particular, the United Kingdom expresses its appreciation for the work of the Codification Division in their continuous updating and maintenance of the Commission's website, which is an invaluable and user-friendly resource, facilitating engagement with the Commission's work and as a research tool more widely.

Mr. Chairman,

4. Before focusing on the topics concerning protection of persons in the event of disasters, identification of customary international law and subsequent agreements and subsequent practice in relation to the interpretation of treaties, the United Kingdom wishes to comment briefly upon chapter XIII of the Commission's annual report regarding **other decisions and conclusions of the Commission**.
5. The United Kingdom is grateful to the Commission for its careful consideration of its programme of work, and notes the Commission's decision to include two new topics in its long-term programme of work, namely: (i) the settlement of international disputes to which international organisations are parties; and (ii) succession of States in respect of State responsibility. The United Kingdom attaches great importance to the choice of topics selected by the Commission.
6. The United Kingdom also notes the success of the International Law Seminar held in July of this year. We encourage other States also to make voluntary contributions in order to ensure as wide as possible participation in the 2017 Seminar.

7. The United Kingdom also takes note of the Commission's recommendation to hold the first part of its seventieth anniversary session in 2018 in New York.

Mr. Chairman,

1. Turning to the topic of **protection of persons in the event of disasters**, the United Kingdom wishes to thank the Commission for all of the work carried out on this topic and to express its appreciation to the Special Rapporteur, Mr Eduardo Valencia Ospina, for his dedicated efforts in the preparation of the draft Articles.
2. The United Kingdom remains in broad agreement with the substance of the draft Articles as adopted by the Commission on second reading at its sixty-eighth session. In particular, the United Kingdom appreciates the careful balance achieved by Article 13 (Consent of the affected State to external assistance). The United Kingdom supports draft Article 13(2), which provides that the consent of affected States to the provision of external assistance shall not be withheld arbitrarily. The United Kingdom notes that, in the context of armed conflict, such a refusal can amount to a breach of international humanitarian law.
3. Finally, the United Kingdom notes the Commission's decision to recommend to the General Assembly the elaboration of a convention on the basis of these draft Articles. The United Kingdom continues to be of the view that the development of guidelines to inform good practice would be most helpful for States and others engaged in disaster relief, rather than a legally binding instrument, on the basis that such guidelines appear more likely to enjoy widespread support and acceptance. Nonetheless, the United Kingdom will continue to monitor developments on this issue with interest.

Mr. Chairman,

1. Turning now to the topic of the **identification of customary international law**, the United Kingdom welcomes the adoption by the Commission of 16 draft conclusions, together with commentaries, on

first reading at its sixty-eighth session. The United Kingdom is pleased with the progress of this work to date and supports the “two element approach” underpinning the draft conclusions.

2. As the United Kingdom has previously stated before the Sixth Committee, we consider this topic to be of real practical value. Parties to litigation before the domestic courts in the United Kingdom increasingly invoke arguments based on customary international law in a wide variety of contexts. In a situation where it is asserted before the domestic court that there is, or, conversely, is not a rule of customary international law, there is of course important guidance to be found throughout the jurisprudence of the International Court of Justice. However, there is currently no other authoritative point of reference to which a domestic judge may turn for guidance as to how to determine the issue.
3. The United Kingdom sees these draft conclusions and commentaries as a valuable, accessible tool for judges, as well as for other practitioners, confronted with the question of determining whether or not a customary rule of international law exists. Indeed, there is already evidence of the High Court of England and Wales making reference to them.
4. The United Kingdom notes the Commission’s decision to transmit these draft conclusions and commentaries to Governments for the submission of comments and observations by 1 January 2018. The United Kingdom considers the draft commentaries to be a key component of this guidance on the identification of customary international law and therefore appreciates this opportunity to carefully reflect and comment upon the conclusions and commentaries ahead of the second reading by the Commission, planned for 2018.
5. In this regard, the United Kingdom takes note of the divergence of views, as reflected in the fourth report of the Special Rapporteur, regarding draft conclusion 4, paragraph 2, which concerns the practice of international organisations. The United Kingdom would encourage States to provide comments on this issue and considers that it would merit further consideration by the Commission during second reading.
6. Finally, the United Kingdom is in agreement with the Commission that renewed consideration of ways and means for making the evidence of customary international law more readily available could prove useful. The United Kingdom therefore welcomes the Commission’s request for the Secretariat to prepare a memorandum on this subject and will

respond to the Secretariat's related questionnaire addressed to States before 1 May 2017. The United Kingdom looks forward to sight and further discussion of that memorandum in due course and will consider carefully what is proposed.

Mr. Chairman,

1. Turning finally to the topic of **Subsequent agreements and subsequent practice in relation to the interpretation of treaties**, the United Kingdom welcomes Mr. Georg Nolte's fourth report on this topic and the adoption by the Commission of a set of thirteen draft conclusions, together with commentaries. These draft conclusions and commentaries give helpful guidance to States, international organisations and courts, both international and domestic, when interpreting treaties.
2. The United Kingdom notes that the Commission has decided to seek comments and observations from Governments on these draft conclusions to be submitted by 1 January 2018. Accordingly the United Kingdom will carefully consider this set of draft conclusions and commentaries in order to provide written comments and observations by that deadline.
3. In this regard, the United Kingdom considers that written comments and observations by States could be particularly useful were they to address the issues raised in Part IV (specific aspects) of the draft conclusions, as these concern some difficult aspects of the effect of subsequent agreements and subsequent practice in relation to treaty interpretation. The extended commentaries to these draft conclusions would appear to highlight the complexity of these issues.

Thank you, Mr. Chairman.
