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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 II (A/71/10)
CHAPTER VII (CRIMES AGAINST HUMANITY)
CHAPTER VIII (PROTECTION OF THE ATMOSPHERE)
CHAPTER IX (JUS COGENS)

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26-28 OCTOBER 2016

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Mr. Chairman,

1. The United Kingdom welcomes the second report of the Special Rapporteur, Mr. Sean Murphy, on the topic of **Crimes against humanity**.
2. The United Kingdom agrees that there is currently no general multilateral framework governing crimes against humanity. We continue to see benefit in exploring how an extradite or prosecute regime in respect of such crimes could operate.
3. The United Kingdom appreciates the careful consideration that the Special Rapporteur, the Drafting Committee and the Commission as a whole have given to the inter-relationship between their work and the Rome Statute of the International Criminal Court. As we have previously emphasised, and as the Special Rapporteur and Commission clearly intend, a future convention on this subject will need to complement, rather than compete with, the Rome Statute by facilitating national prosecutions and thereby strengthening the complementarity provisions of the Rome Statute.
4. As work on this topic continues, the United Kingdom underlines that it would not welcome the expansion of the scope of this investigation into issues such as civil jurisdiction and immunity. It is important that a future convention should be widely ratified, and the United Kingdom would therefore continue to urge the Commission to continue to keep the draft simple, along the model of earlier *aut dedere aut judicare* conventions.
5. Finally, the United Kingdom would urge the Commission to complete work on this topic as swiftly as possible.

Mr. Chairman,

1. On the topic of **protection of the atmosphere**, the United Kingdom notes the third report of the Special Rapporteur, Mr. Shinya Murase, and welcomes the steps taken by the Commission to address the concerns of the United Kingdom and other States.
2. In particular, the United Kingdom welcomes the inclusion of preambular text specifically recognising the boundaries of the Commission's work in relation to political negotiations on climate change, ozone-depleting

substances and long-range transboundary air pollution, as well as confirmation that this work will not seek to fill gaps in international regimes or introduce new rules or principles.

3. However, the United Kingdom's view is that care must continue to be taken to ensure that the guidelines themselves maintain consistency with this preambular paragraph and the 2013 understanding, which must be fully respected. The inclusion of this text would be rendered meaningless if the Commission purports, in the guidelines, to do precisely what it has been agreed under the 2013 understanding not to do.
4. The United Kingdom acknowledges the importance of different national circumstances for the implementation of environmental policies. However, the United Kingdom would question the need for specific preambular text on the special situation and needs of developing countries, in light of the fact that paragraph 2 of draft guideline 2 indicates that the present draft guidelines do not deal with questions concerning common but differentiated responsibilities. In addition, in the United Kingdom's view, the proposed preambular text does not capture the fact that State practice has evolved to take a more balanced approach, as demonstrated by the Paris Agreement on climate change.
5. The United Kingdom is also encouraged that the Commission has included a threshold in draft guideline 4 on environmental impact assessment of "*significant adverse impact on the atmosphere in terms of atmospheric pollution or atmospheric degradation*". Such a threshold is important if the guideline is to be consistent with provision made for environmental impact assessments elsewhere. This is also necessary for ensuring that the process of an assessment does not create unnecessary burdens or preclude activity with limited impacts, which would appear at odds with draft guidelines 5 and 6 on utilisation of the atmosphere.
6. However, the wording on environmental impact assessments continues to raise concerns for the United Kingdom due to the very broad framing of when States are expected to apply these. It is stated that assessments are necessary for "*proposed activities*". This could cover a whole range of things for which an environmental impact assessment is neither appropriate nor proportionate. It is also unclear when an assessment should take place and how thorough it should be. The United Kingdom believes that the Commission should consider making this language more focused. The approach taken in EU legislation has been to require assessments for "projects", including construction works

or interventions in the natural surroundings. For example, although the Espoo Convention on Environmental Impact Assessment in a Transboundary Context uses the term “activities”, it details the scope of what is intended to be covered through Appendix I, reproduced in EU legislation.

Mr. Chairman,

1. On the topic of **jus cogens**, the United Kingdom is grateful to the Commission for the progress made on this topic this year and welcomes the first report of the Special Rapporteur, Mr. Dire Tladi.
2. The United Kingdom remains of the view that the Commission could make a useful contribution to the clarification of international law in this difficult but important area if it confines the parameters of this topic to methodology in explaining how to identify pre-existing *jus cogens* and the consequences of such identification. The United Kingdom accordingly supports the Special Rapporteur’s suggested dedication of the next stage of work on this topic to the rules of identification of *jus cogens*. It would also be important to ensure that this topic is developed with a close eye to the Commission’s other topic on the identification of customary international law.
3. The United Kingdom would not, in principle, be against the development of an illustrative (non-exhaustive) list of pre-existing *jus cogens*, provided that this effort did not detract from the principal focus of the Commission’s work on this topic. However, the United Kingdom considers that the establishment of such a list would not seem to be an essential part of the topic, and that the Commission should only include in any list norms that clearly fulfilled the requirements of *jus cogens*.
4. The United Kingdom also considers that this topic should continue to be approached with caution. In this regard, the United Kingdom notes that draft conclusion 3(2) was not referred to the Drafting Committee and supports the view that the outcome of the Commission’s work on this topic should not deviate from Article 53 of the 1969 Vienna Convention on the Law of Treaties.
5. Finally, the United Kingdom is in agreement with the Special Rapporteur that draft conclusions are the most appropriate outcome for the Commission’s work on this topic. As the United Kingdom has previously

noted before the Sixth Committee, this topic could be of significant practical assistance, particularly to domestic courts.

Thank you, Mr. Chairman.
