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UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

UNITED NATIONS GENERAL ASSEMBLY, SIXTH COMMITTEE,
SIXTY-NINTH SESSION, AGENDA ITEM 78,
REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF
ITS SIXTY-SIXTH SESSION: PART III (A69/10)
CHAPTER X (IDENTIFICATION OF CUSTOMARY INTERNATIONAL LAW),
CHAPTER XI (PROTECTION OF THE ENVIRONMENT IN RELATION TO
ARMED CONFLICTS), CHAPTER XII (PROVISIONAL APPLICATION OF
TREATIES) AND CHAPTER XIII (THE MOST-FAVOURED-NATION CLAUSE)

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Mr Chairman,

On the topic of the **Identification of customary international law**, the United Kingdom welcomes the Special Rapporteur's second report. The United Kingdom continues to see this topic as having real practical value.

The United Kingdom appreciated the "two-elements" approach the Special Rapporteur took in his report; that the topic requires an assessment of both State practice and *opinio juris*. The United Kingdom also agrees that this topic should not deal in detail with *jus cogens* since whether a rule constitutes a rule of *jus cogens* is a different question to whether a rule constitutes a rule of customary international law.

As set out previously, parties to litigation before the domestic courts in the United Kingdom have increasingly sought to make arguments based on customary international law in a wide variety of contexts. In situations where the proposition before the domestic court is that there is or, conversely, is not a customary rule of international law, there is of course important guidance to be found in various judgments of the International Court of Justice, but there is currently no other authoritative point of reference to which a domestic judge can turn for guidance as to how to determine the issue. Accordingly, the United Kingdom welcomes the Commission's intention that the outcome of the work of this topic should be of an essentially practical nature, in the form of a set of conclusions with commentaries. The United Kingdom sees such conclusions as a useful tool for judges as well as for practitioners confronted with the question of determining whether or not a rule of customary international law exists.

The United Kingdom broadly agrees with the approach taken and the substance of the draft conclusions provisionally adopted by the drafting committee. The United Kingdom looks forward to sight of the draft commentaries for these draft conclusions together with further discussion of the draft conclusions from the Special Rapporteur's second report which the drafting committee has yet to consider, and to the further work on this topic.

Mr Chairman,

Turning to the topic of **Protection of the environment in relation to armed conflicts**, the United Kingdom welcomes the Special Rapporteur's preliminary report on the environmental rules and principles applicable to a potential armed conflict (or what are referred to as "peacetime obligations" in her report).

The United Kingdom recalls that last year the Special Rapporteur intended to concentrate on what are described as Phases I and III (the pre and post conflict phases), whilst Phase II (the phase during conflicts) would be given less focus. The United Kingdom welcomes the confirmation that Phases I and III remain the main focus of the work and the acknowledgment that there is no intention to modify the law of armed conflict. The United Kingdom considers that, in relation to Phase II, the proposal to produce guidelines with examples of rules of international law that may be suitable for continued application during armed conflict (paragraph 169) could be a useful initiative. However, that would only be the case so long as such rules could satisfy the following criteria:

- that they are confined to the environmental field; and
- that they recognise the law of armed conflict is *lex specialis* and already contains rules relating to the protection of the environment.

The United Kingdom supports the Special Rapporteur's proposal to exclude certain subject matter from the scope of the topic including the exploitation of natural resources, the protection of cultural heritage and the effect of particular weapons. In more general terms, the United Kingdom does not consider that this is a topic that should be addressing undecided and often controversial questions of international environmental law, human rights law, or the rights of indigenous peoples. The United Kingdom considers that

internal disturbances and tensions such as riots should also be excluded from this topic. The United Kingdom would again like to convey that it does not think it appropriate for States to be obliged to prepare environmental impact assessments as part of military planning.

Finally, the United Kingdom notes the view of the Special Rapporteur that the topic is more suitable for the preparation of non-binding guidelines than a convention. The United Kingdom remains unconvinced that there is a need for new conventions in this area.

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Mr Chairman,

Turning to the topic of **provisional application of treaties**, the United Kingdom welcomes the second report of the Special Rapporteur on this topic.

The United Kingdom was pleased to respond to the Commission's request for information on state practice and thanks the Special Rapporteur for reporting on United Kingdom practice.

The analysis of the legal effects of provisional application at the international level is of particular interest to us. The United Kingdom was disappointed not to see more detailed reporting of State practice and would be very keen to see much more in the next report. Indeed, a broader picture on state practice is vital before any conclusions are presented. The United Kingdom looks forward to an analysis of further responses and the continuing work of the Commission on this interesting topic.

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Mr Chairman,

Turning to the topic of **the Most-Favoured-Nation clause**, the United Kingdom would like to thank the Study Group for its update on work in this area. The United Kingdom welcomes the progress the Group has made in undertaking a substantial and technical review of the draft final report. The United Kingdom supports the Group's ambition to shorten the report and update the current draft in light of recent cases. The United Kingdom also welcomes the Group's determination to ensure that the final report is of practical utility to those involved in the investment field and to policy makers. As the United Kingdom has previously indicated, and as the report acknowledges is the general orientation of the Study Group, it would not be appropriate to develop any draft articles or revise the 1978 draft Articles on the Most Favoured Nation clause. The United Kingdom notes the anticipated timeline for the submission of the final report and looks forward to reviewing this in due course.

Thank you, Mr Chairman.

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