



United Kingdom Mission
to the United Nations

One Dag Hammarskjold Plaza
(885 Second Avenue)
New York, NY 10017

Tel: +1 (212) 745 9200
Fax: +1 (212) 745 9316

Email: uk@un.int
http://twitter.com/UKUN_NewYork

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

UNITED NATIONS GENERAL ASSEMBLY, SIXTH COMMITTEE,
SEVENTY-FOURTH SESSION, AGENDA ITEM 79,
REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK
OF ITS SEVENTY-FIRST SESSION: PART II (A/74/10)
CHAPTER VI (PROTECTION OF THE ENVIRONMENT IN RELATION TO
ARMED CONFLICTS)
CHAPTER VIII (IMMUNITY OF STATE OFFICIALS FROM FOREIGN
CRIMINAL JURISDICTION)
CHAPTER X (SEA-LEVEL RISE IN RELATION TO INTERNATIONAL LAW)

STATEMENT BY MR. EDWARD HAXTON
ASSISTANT LEGAL ADVISER
FOREIGN & COMMONWEALTH OFFICE

31 OCTOBER – 5 NOVEMBER 2019

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Mr/Madam Chairperson,

1. On the topic '**protection of the environment in relation to armed conflicts**', the United Kingdom welcomes the Commission's completion this year of the first reading of a set of draft principles and accompanying commentaries. The United Kingdom expresses its appreciation to the Special Rapporteur, Ms Marja Lehto, for her work, and is grateful to the Commission for its careful consideration of this topic. The draft principles and commentaries are extensive, and cover a lot of ground. The United Kingdom will provide detailed written comments by the Commission's deadline of the 1st of December 2020. At this stage, the United Kingdom shall just highlight a couple of points.
2. The United Kingdom notes that the scope of the draft principles is very wide, covering the whole conflict cycle and the law of armed conflict, international human rights law and international environmental law. The commentaries cite a number of sources in support of the draft principles, of varying degrees of authoritativeness, many of which do not constitute State practice.
3. The United Kingdom welcomes the fact that in its work on this topic the Commission does not seek to modify the law of armed conflict, or the law of occupation. The United Kingdom remains unconvinced, however, that there is a need for new treaty provisions in this area.
4. The United Kingdom also considers that the topic should not broaden in scope to examine how other legal fields, such as human rights, interrelate with it. The United Kingdom is concerned, for example, about references in the draft principles to human health alongside the environment. In the United Kingdom's view, human health does not fall within the parameters of a study on the protection of the environment.
5. On the draft principles specifically, the United Kingdom is concerned about the reference to Common Article 1 of the Geneva Conventions in the commentary to draft principle 3. The commentary states that Common Article 1 "*is interpreted to require*" that States exert influence

in conflicts to which they are not a party. The United Kingdom does not accept that Common Article 1 contains such an obligation.

6. Nor does the United Kingdom accept the blanket prohibition against reprisals in draft principle 16. In the United Kingdom's view, this does not reflect the current state of customary international law and reservations by States to article 55(2) of Additional Protocol 1 to the Geneva Conventions.

Mr/Madam Chairperson,

7. Turning to the topic '**immunity of State officials from foreign criminal jurisdiction**', the United Kingdom notes the developments in the Commission this year, which are reflected in Chapter VIII of its report and in the interim report of the Drafting Committee.
8. The United Kingdom reiterates its view that this is a topic of vital importance and practical significance.
9. The United Kingdom is grateful for the inclusion in the seventh report by Special Rapporteur, Professor Concepción Escobar Hernández, of nine draft articles regarding procedural aspects for consideration by the Commission. Notwithstanding this welcome progress, the Commission is still very far from being in a position to submit a clear and acceptable proposal. This objective remains out of reach, not least because of persistent and significant differences within the Commission on the subject of exceptions or limitations to immunity *ratione materiae*. Those exceptions are set out in draft article 7, to which the United Kingdom has previously made known its strong objections. Those objections persist, notwithstanding the work of the Commission on procedural safeguards.
10. There was little progress in 2018. The Commission had limited time to consider the Special Rapporteur's sixth report, which had addressed a number of procedural matters, including the need for safeguards to

protect the sovereign equality of States by preventing politicisation or abuse, but without proposing draft articles.

11. Debates on the sixth and seventh reports in this year's session indicated a measure of agreement within the Commission that procedural safeguards are needed to address concerns regarding potential politicisation or abuse, but disagreement as to what those safeguards should be.
12. The Drafting Committee provisionally adopted one draft article (draft article 8 *ante*), which would be the opening article of a new Part Four on procedure.
13. Although the United Kingdom welcomes the Commission's general acknowledgement that procedural safeguards are needed to guard against potential politicisation and abuse, the United Kingdom does not consider that the draft articles proposed in the Special Rapporteur's seventh report really address that key concern. Moreover, in several cases (for example draft article 11 on waiver) the draft procedural articles appear to complicate the legal position on immunity or to lean towards protecting the forum State in its exercise of criminal jurisdiction.
14. To address this key concern, the United Kingdom suggests consideration by the Commission of potential safeguards specific to draft article 7, such as the need for decisions in relation to prosecution to be taken at the highest level of the relevant authority.
15. The United Kingdom continues to encourage the Commission to clearly indicate those draft articles which it considers reflect existing international law, and those which it does not. In this respect, the United Kingdom notes the Special Rapporteur's apparent acknowledgement that draft article 7 does not necessarily reflect customary international law. The United Kingdom also reiterates its request that the Commission adopt a clear position on the outcome it

sees for its work on this topic, which the United Kingdom assumes will be a convention open to ratification by States.

16. The United Kingdom notes that in her future work on this topic, the Special Rapporteur proposes to address "*the relationship between national criminal courts and international criminal courts for the purposes of immunity treatment*", without consideration of the decision of the ICC Appeals Chamber in the *Al-Bashir* case. The United Kingdom considers such a task to be difficult, given the latter's possible implications for the former, but strongly agrees that the Commission should not take up for debate, nor be influenced by, such a highly contentious decision. The United Kingdom is concerned by the decision and in particular does not agree with the Court's finding that, as a matter of customary international law, there is no immunity from prosecution before international criminal tribunals. In any event, the United Kingdom considers that subject to be irrelevant to this topic.

17. The United Kingdom notes that, as part of her next report, the Special Rapporteur may be considering proposing 'recommended good practices'. In the United Kingdom's view, work on this topic is already proceeding rather slowly and the Special Rapporteur should not look to expand the project further, but rather focus on the Commission producing a full set of draft articles and completing a first reading. Hopefully, that first reading will be in 2020, but the Commission needs to spend as much time as is needed in order to reach a generally acceptable draft on this matter.

Mr/Madam Chairperson,

18. The United Kingdom welcomes the Commission's decision to include the topic '**sea-level rise in relation to international law**' in its current programme of work, and to establish an open-ended Study Group on the topic.

19. The United Kingdom welcomes the IPCC Special Report on the Ocean and Cryosphere in a Changing Climate, which provides the best available science on the wide range of impacts of climate change on the ocean and the cryosphere, and potential measures for building resilience to those impacts.

20. The United Kingdom views the work of the Commission on this important topic as part of the suite of actions that the international community must take, as a matter of urgency, to address the impacts of climate change.

Thank you, Mr/Madam Chairperson