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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 III (A/74/10)
CHAPTER VII (SUCCESSION OF STATES IN RESPECT OF STATE
RESPONSIBILITY)
CHAPTER IX (GENERAL PRINCIPLES OF LAW)

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Mr/Madam Chairperson,

1. On the topic '**Succession of States in respect of State responsibility**', the United Kingdom is grateful to the Special Rapporteur, Mr Pavel Šturma, for his third report. The United Kingdom is also grateful to the Drafting Committee and in particular to the Chairperson, Mr. Claudio Grossman, for the interim report this year, and to the Commission's Secretariat for its memorandum of information on treaties which may be of relevance to the future work of the Commission on this topic.
2. The United Kingdom recalls that it has always retained an open mind as to the utility of the Commission's work on this topic. From the outset the United Kingdom has expressed concerns, including that it will be difficult to reach broad agreement among States given the dearth of existing practice; that what practice there is is context-specific and sensitive and must be viewed in its historical, political and even cultural context; that the Special Rapporteur should not place undue reliance on academic writings, especially where these may be used as the basis for the inclusion of draft articles based on 'new law' or progressive development of the law; and, finally, the undesirability of draft articles which are primarily based on practical and policy considerations, rather than existing practice or law. The Special Rapporteur's third report has confirmed rather than alleviated many of these concerns.
3. First, the United Kingdom notes that the third report acknowledges that State practice in this area is "*diverse, context-specific and sensitive*" and inconclusive.
4. Second, the United Kingdom notes that the Special Rapporteur has now confirmed in his third report that, as a result of the non-conclusiveness of State practice in this field, the proposed draft articles would constitute progressive development of international law or new international law. The United Kingdom welcomes, in this regard, the

Special Rapporteur's agreement in his concluding remarks at this year's ILC session that this should be stated clearly at the outset of the general commentary to the draft articles and in the draft articles themselves.

5. Third, the United Kingdom is concerned that, despite the addition of a new paragraph 2 to draft article 1 which makes it clear that the draft articles would only apply in the absence of any agreement between the parties, the Special Rapporteur continues in his third report to propose draft articles on the back of examples of purported 'State practice' which in fact are arrangements underpinned by agreements or treaties and to which, as a result of paragraph 2 to draft article 1, the articles would not apply were these arrangements to take place today.
6. Finally, the Special Rapporteur continues in his third report to cite examples of 'State practice' which are in fact context-specific arrangements and do not evidence an *opinio juris* regarding a general rule in connection with State succession.

Mr/Madam Chairperson,

7. Turning now to the topic '**General principles of law**', the United Kingdom is grateful to the Special Rapporteur, Mr. Marcelo Vázquez-Bermúdez, for his first report. The United Kingdom is also grateful to the members of the Commission for their excellent contributions to the debate on the topic, and to the Drafting Committee and in particular to the Chairperson, Mr. Claudio Grossman, for the interim oral report this year.
8. The United Kingdom notes that the Commission's work on this topic is at a very early stage. The Special Rapporteur's first report is preliminary and introductory in nature. The Drafting Committee has provisionally adopted one draft article concerning the scope of the

topic. The United Kingdom will reserve detailed comments until the work is further developed.

9. The United Kingdom remains of the view that questions concerning sources of international law are natural topics for consideration by the Commission and that a careful and well-documented study, focusing on this 'third' source of international law listed in Article 38, paragraph 1(c) of the ICJ Statute, could be of practical assistance to States and practitioners alike.
10. The United Kingdom is of the same view as the Special Rapporteur that the Commission should confine the parameters of this topic to explaining how to identify general principles of law and clarifying their nature, scope and functions. In particular, the United Kingdom agrees with the Special Rapporteur that the Commission should not address the substance of general principles of law in its work on this topic. The United Kingdom is therefore also in agreement with the Special Rapporteur that preparing an illustrative list of general principles of law would be impractical, necessarily incomplete and would divert attention away from the central aspects of the topic. References to examples of general principles of law in the course of the Commission's work should go in the commentaries and be for illustration only.
11. The United Kingdom welcomes the Special Rapporteur's statement in his first report that the Commission's work on this topic should be done "*in a pragmatic way based on current law and practice*". At the same time, the United Kingdom notes that there is little by way of State practice in this area from which to draw conclusions, particularly regarding some of the more detailed questions the Special Rapporteur hopes to answer. As the Special Rapporteur acknowledges in his report, what practice of States and international courts and tribunals there is has been described as "*unclear or ambiguous*". The United Kingdom therefore agrees with the Special Rapporteur that "*as the present topic is likely to touch upon certain fundamental aspects of the international legal system, a cautious and rigorous approach is*

required.” As was noted in the Commission’s debate on the topic this year, it is important that the Commission be transparent if State practice is insufficient.

12. The United Kingdom agrees with the Special Rapporteur that the requirement of ‘recognition’ is essential to determining the existence of a general principle of law. Explaining the meaning of recognition in this context, and how it is to be assessed, will be an important part of the Commission’s work. The United Kingdom also agrees that the term “civilized nations” is anachronistic and should be avoided.
13. The United Kingdom notes that in draft conclusion 3, the Special Rapporteur proposes two categories of general principles of law. Those ‘derived from national legal systems’ and those ‘formed within the international legal system’. Draft conclusion 3 was not considered by the Drafting Committee this year and so the United Kingdom will reserve detailed comments on this conclusion until it has been through the Drafting Committee. The United Kingdom notes at the outset, however, that while it agrees with the former category, it is quite unclear what the latter category means; the United Kingdom is not convinced that the practice referred to in the first report in support of this second category is sufficient to reach a conclusion on the matter.
14. With regard to the Commission’s future programme of work on this topic, the United Kingdom welcomes the Special Rapporteur’s statement in his concluding remarks at this year’s ILC session that he would take into account the suggestions from members of the Commission that in his next report he should address the requirement of recognition and the identification of general principles of law.
15. With regard to the Special Rapporteur’s suggestion that future work on the topic examine general principles of law at the regional or bilateral level, it is not clear to the United Kingdom that such an analysis would fall within the scope of a topic on “general” principles of law.

Thank you, Mr/Madam Chairperson.