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UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

UNITED NATIONS GENERAL ASSEMBLY, SIXTH COMMITTEE,
SEVENTY-SIXTH SESSION, AGENDA ITEM 82,
REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK
OF ITS 72ND SESSION: PART 2 (A/76/10)
CHAPTER VI (IMMUNITY OF STATE OFFICIALS FROM FOREIGN
CRIMINAL JURISDICTION)
CHAPTER IX (SEA LEVEL RISE IN RELATION TO INTERNATIONAL LAW)

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Madam Chair,

1. The United Kingdom thanks the Commission for its continued work and consideration of the important topic of **'Immunity of State officials from foreign criminal jurisdiction'** and thanks the Special Rapporteur, Ms Concepción Escobar Hernández, for her eighth report.
2. The United Kingdom commends the measured way in which the Commission is now approaching this sensitive topic, while noting that substantive issues – including areas of significant disagreement - remain to be addressed and that considerable further work is required before the draft articles are presented to States for their considered views. The United Kingdom hopes, nevertheless, that this can be done next year, before the end of the present quinquennium.
3. The United Kingdom takes note of the progress achieved by the Commission during this session, including its provisional adoption of draft articles 8 *ante*, 8, 9, 10, 11 and 12 and accompanying commentaries, and emphasises that any proposals the Commission makes in relation to procedural requirements must respect, and be capable of application across, diverse national legal systems. The United Kingdom also underlines the practical significance of the Commission's work in this area for national authorities. It would be preferable if the obligation to consider immunity were triggered only where the competent authorities of the forum State were considering exercising criminal jurisdiction in respect of an individual; it was made clear by that individual, or by the State whom they were purporting to represent, that they claimed the status of a State official; and the proposed exercise of criminal jurisdiction would, if the claim to that status were made out, engage or impinge on the immunity owed to the individual by virtue of that status.

4. The United Kingdom also takes note of the Commission's well-reasoned debate in relation to paragraph 5 of draft article 11 on the irrevocability of waiver of immunity and welcomes its invitation to States in paragraph (18) of its commentary to provide comments.
5. The United Kingdom notes the dearth of State practice in this area. Yet, at the same time, the United Kingdom cautions against making an assumption that, just because States do not regularly revoke waivers of immunity, there must be an absolute rule against such revocations. The possible exceptions identified by members of the Commission in paragraph (15) of the commentary are by their very nature wholly exceptional.
6. As with the other provisions already considered by the Commission, the United Kingdom wishes to reserve its position until a full set of draft articles can be read together in context. However, given the importance of legal certainty, it is vital that the commentary prepared by the Commission for this paragraph provides a full explanation of the purpose and meaning of any text it adopts, as well as any contrary views. The United Kingdom also emphasises that the revocation of a waiver must not be made arbitrarily.
7. Finally, the United Kingdom notes the Commission's discussion in relation to the form of its output on this topic. The United Kingdom reiterates that it is of vital importance that the Commission clearly indicates those draft articles which it considers to reflect existing international law and those which it does not, whether on the basis of representing the progressive development of international law or whether amounting to proposals for new law. If the goal for the draft articles is to act as a set of guidelines for use in domestic courts, States, as well as their judges and practitioners, need to know what the Commission considers existing international law to be. Conversely, if the aim is to make a proposal to States for new law to regulate this topic, that should be clearly stated. The United Kingdom reiterates that,

if the Commission's work on this topic is going to contain proposals for the progressive development of the law or new law, the appropriate form for the outcome of the Commission's work should be a treaty.

Madam Chair,

8. Turning to the topic of '**sea-level rise in relation to international law**', sea-level rise is a very significant issue that affects many States. The United Kingdom, therefore, thanks the two co-chairs and the members of the Study Group for their efforts on the law of the sea aspects of the topic, the results of which are set out in Chapter IX of the annual report of the Commission, and welcomes the fact the Commission continues to study this important topic.

9. The United Kingdom looks forward in due course to considering the results of the Study Group's deliberations on the issues of statehood and the protection of persons affected by sea-level rise, as well as the consolidated results of the work undertaken by the Commission in its 72nd and 73rd sessions.

Thank you, Madam Chair.