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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 3 (A/76/10)
CHAPTER VII (SUCCESSION OF STATES IN RESPECT OF STATE
RESPONSIBILITY)
CHAPTER VIII (GENERAL PRINCIPLES OF LAW)

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Madam Chair,

1. The United Kingdom thanks the Commission for its further consideration of the topic of '**Succession of States in respect of State responsibility**' and thanks the Special Rapporteur, Mr Pavel Šturma, for his fourth report.
2. The United Kingdom welcomes the Special Rapporteur's acknowledgement that State practice does not support the primacy of either automatic succession or a "clean slate" and his confirmation that the proposed draft articles are not intended to imply automatic succession. The United Kingdom reiterates its long-standing concern that it is not possible to extrapolate general conclusions from specific cases in a topic such as this, where priority must be given to agreements between the States concerned, and where those agreements are the product of context-specific negotiations, inevitably combining political, cultural and legal considerations.
3. The United Kingdom takes note of the Commission's view that it can decide on the most suitable format for the outcome of this topic at a later stage. We also note with interest the suggestion by some members of the Commission that model clauses could be drafted to be used as a basis for States to negotiate agreements on succession in respect of State responsibility. The United Kingdom continues to maintain an open mind as to the utility of this topic, and what outputs might best assist States going forward.

Madam Chair,

4. The United Kingdom is grateful to the Special Rapporteur, Mr Marcelo Vázquez-Bermúdez, for his Second Report on the topic of '**general principles of law**' and commends the Special Rapporteur and the

members of the Commission for the thoughtful way in which they are approaching this important topic.

5. We also thank the Commission's Secretariat for its excellent Memorandum surveying the case law of inter-State arbitral tribunals and international criminal courts and tribunals of a universal character, as well as relevant treaties.
6. The Commission and the Secretariat have already made an important contribution to various questions of terminology, which have for a long time complicated and confused discussion of the third source of international law listed in Article 38 of the Statute of the International Court of Justice: general principles of law.
7. This careful approach is reflected in draft conclusions 1, 3 and 4, with commentaries, which have been provisionally adopted by the Commission, and in draft conclusion 5, which was provisionally adopted by the Drafting Committee. These texts represent a good basis for future work on the topic.
8. The United Kingdom welcomes the clear and concise commentaries that reflect some important points of agreement amongst the members of the Commission and which the United Kingdom shares. First, that the term 'general principles of law' as it is used throughout the draft conclusions refers to "*the general principles of law*" listed in Article 38, paragraph 1 (c) of the Statute of the International Court of Justice. Second, that the differences in terminology between the wording used in draft conclusions 1 and 2 (including in the various language versions) and the wording used in Article 38 do not imply any change in the substance of Article 38. Third, that recognition is the essential condition for the emergence of a general principle of law.
9. The thoughtfulness with which Commission members are approaching this topic is apparent from the excellent plenary debate which is well-

reflected in the summary records, and in the Commission's annual report. The United Kingdom would like to take this opportunity to emphasise the importance of having full summary records.

10. Turning to future work on this topic, the United Kingdom notes the text of draft conclusion 5 provisionally adopted by the Drafting Committee, and looks forward to seeing the accompanying commentary. The United Kingdom also has no comment on the Special Rapporteur's proposals for draft conclusions 8 and 9, which look to reflect accurately the provisions of Article 38. However, as noted in the Commission's plenary debate, draft conclusion 6 on the transposition to the international legal system of a general principle of law raises important questions which the Drafting Committee will need to examine carefully in order to produce a satisfactory text.
11. The remaining draft conclusions proposed by the Special Rapporteur – draft conclusions 3 and 7 - bring us to the central, and as yet unresolved, questions under this topic. Does Article 38, paragraph 1 (c) include a second category of general principles of law going beyond general principles derived from national law? And if so, how is such a category to be described and identified?
12. The United Kingdom notes that these questions remain controversial, both within the Commission and among States and writers. The United Kingdom retains an open mind and looks forward to studying any proposals the Commission may make.
13. In this regard, the United Kingdom agrees with the Special Rapporteur's summary of the main concerns set out at paragraph 187 of Chapter VIII of the Commission's report: first, *“that there would not be sufficient practice to reach conclusions regarding that category of general principles of law”*, second, *“the difficulty of distinguishing those principles from customary international law”*, and, third, *“the apparent risk that the criteria for identifying general principles in that category*

would not be sufficiently strict, which could render them too easy to invoke.”

14. The United Kingdom supports the view expressed by members of the Commission during the debate that, if the Commission were to conclude that there is a second category of general principles beyond those derived from national legal systems, that “*second category of general principles of law must not be constructed too broadly and that it must be clearly distinguished from existing rules of customary international law, to avoid the risk that it would become a shortcut to identifying customary norms where general practice had not yet emerged*”.

Thank you, Madam Chair.