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UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

UNITED NATIONS GENERAL ASSEMBLY, SIXTH COMMITTEE,
SEVENTY-SEVENTH SESSION, AGENDA ITEM 77,
REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK
OF ITS 73RD SESSION: PART I (A/77/10)
CHAPTERS I – III (INTRODUCTORY PARTS) and X (OTHER DECISIONS
AND CONCLUSIONS OF THE COMMISSION)
CHAPTER IV (PEREMPTORY NORMS OF GENERAL INTERNATIONAL
LAW (JUS COGENS))
CHAPTER V (PROTECTION OF THE ENVIRONMENT IN RELATION TO
ARMED CONFLICTS)

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24 – 28 OCTOBER 2022

Chair,

1. I would like to begin by congratulating the Chair of the International Law Commission, Mr Dire Tladi on his skilful chairing of what was an exceptionally busy Session of the Commission. And I thank him for his excellent and clear report to the Sixth Committee.
2. The United Kingdom wishes to express its thanks the members of the Commission for the progress they have achieved this year across the Commission's current programme of work – including the completion of two topics - despite the ongoing challenges posed by the coronavirus pandemic. The United Kingdom is particularly grateful to the Chair of the Drafting Committee, Mr Ki Gab Park, for all his highly effective work during the session.

3. The United Kingdom commends and thanks the Codification Division of the Secretariat and its Director, Mr Huw Llewellyn, for their consistently excellent work, including the efforts required again this year to support the session's hybrid format.

4. The United Kingdom would particularly like to express its appreciation for the contributions made by the outgoing members of the Commission and to welcome all those who will be joining the Commission at the beginning of 2023.

Chair,

5. Before addressing specific chapters in the Commission's report, I would like to recall two fundamental points from the United Kingdom's statements in this Committee in 2019 and in 2021. First, the importance of the Commission distinguishing clearly between when it is

codifying international law and when it is proposing the progressive development of the law, or new law. And secondly, the need for greater engagement with States, both in considering new topics, and taking account of their comments on the Commission's ongoing work. This includes taking into account States' resources for engaging with the Commission's work. The United Kingdom welcomes the Commission's recognition of the importance of these issues and looks forward to further progress in these areas.

Chair,

6. Turning to Chapter X of the Commission's annual report concerning '**other decisions and conclusions of the Commission**', the United Kingdom notes the Commission's decision to recommend the inclusion of the topic 'Non-legally binding international agreements'

in the long-term programme of work of the Commission. We thank Mr Matthias Forteau for his preparation of the syllabus annexed to the Commission's report on this important topic. We agree with Mr Forteau that a key point is to distinguish such instruments from binding agreements and in this regard would advocate using one of the alternative terms – such as “instruments” or “arrangements” – which he identifies.

7. The United Kingdom notes the Commission's decision to move three new topics onto its **current programme of work** this year. A careful study of subsidiary means would fit in well with the Commission's work on the sources of international law. As previously noted, the Commission could usefully suggest improvements to arrangements for the prosecution of piracy and armed robbery at sea. And the topic of settlement of disputes to which international organisations are parties could also potentially address an ongoing problem.

Chair,

8. I turn now to **‘Peremptory norms of general international law (jus cogens)’**. The United Kingdom is grateful to the Commission and to the Special Rapporteur, Mr Dire Tladi, for their hard work to conclude this topic.

9. The United Kingdom has urged the Commission to approach this important and complex topic with caution. Following the Commission’s first reading of the draft conclusions, the United Kingdom emphasised the importance of ensuring that States’ views and concerns were taken into account on second reading.

10. The draft conclusions and annex, together with commentaries, adopted on second and final reading by the Commission, should be of some assistance in ensuring that States and courts are appropriately

rigorous when faced with questions of *jus cogens*. But they do not in all respects reflect current law or practice. Given their potentially far-reaching consequences, the United Kingdom considers it essential that the draft conclusions are taken forward alongside the views of States, including as expressed here in the Sixth Committee, and that courts and practitioners are clearly informed of such views when considering the draft conclusions' legal status.

11. As set out in the United Kingdom's written observations on the draft conclusions adopted at first reading, the persistent objection of certain States, and particularly those which are specifically affected, to a rule of customary international law while that rule is in the process of formation, is relevant to whether it is possible to conclude that the rule has been accepted and recognised by the international community of States as a whole as having a peremptory character. The United Kingdom also remains doubtful that there is sufficient State practice to support the proposition in paragraph 3

of draft conclusion 14 that the persistent objector rule does not apply to peremptory norms of general international law.

12. With respect to draft conclusion 16, the United Kingdom welcomes the clarification in the commentaries that the procedural rules in draft conclusion 21 are “*particularly important in relation to resolutions of the United Nations adopted under Chapter VII of the Charter of the United Nations.*” We nevertheless remain of the view that there is insufficient practice to support the position that a State can refuse to comply with a binding UN Security Council Resolution on the basis that it is in breach of a *jus cogens* norms.

13. The United Kingdom notes that draft conclusion 19 is based on draft articles 40 and 41 of the articles on responsibility of States for internationally wrongful acts. As we have previously stated, those provisions do not, in their entirety, reflect existing customary international law. Further, the United Kingdom questions whether the State

conduct cited in the commentaries to this draft conclusion evidences a legal duty to cooperate.

14. With regard to draft conclusion 23 and the annex thereto, the United Kingdom had previously expressed the view that it would be better not to include a “*non-exhaustive list*” of norms having the status of peremptory norms. The United Kingdom is particularly concerned that – as the Commission itself acknowledges – in compiling the list “*it did not apply the methodology*” set out in its own draft conclusions for the identification of such norms. The United Kingdom has previously made clear, referring in particular to the inclusion of the right to self-determination, that it does not consider that all the norms listed clearly fulfil the relevant criteria.

Chair,

15. On the topic '**Protection of the environment in relation to armed conflicts**', the United Kingdom welcomes the completion of the Commission's work on this topic following the second and final reading of the draft principles and accompanying commentaries. These are a positive contribution to environmental protection. The United Kingdom expresses its sincere appreciation to the Special Rapporteur, Ms Marja Lehto and to her predecessor, Ms Marie Jacobsson, and is grateful to the Commission for its careful consideration of the topic.

16. The United Kingdom notes that the scope of the draft principles and accompanying commentaries is very wide, touching on the law of armed conflict, international human rights law and international environmental law. In this regard, the United Kingdom understands that the draft principles do not, and are not to be regarded as, in any way, modifying international humanitarian law, nor affecting any limitations and reservations relating to that law.

17. The United Kingdom welcomes the commentaries' confirmation that, where the draft principles' terminology does not align with international humanitarian law (for example, the use of "environment" rather than "natural environment"), this is not intended to alter the scope of international humanitarian law. The United Kingdom similarly welcomes the recognition in the commentaries that international humanitarian law constitutes the *lex specialis* in those situations to which it applies.

Thank you, Chair.