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UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

UNITED NATIONS GENERAL ASSEMBLY, SIXTH COMMITTEE,

CRIMES AGAINST HUMANITY: CLUSTER 3

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Delivered by

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Check against delivery

Thank you Mr Chair and good morning colleagues.

1. I will provide comments on draft Articles 6, 7 and 10.

Draft Article 6 – Criminalization under national law

Official position

2. On draft Article 6(5), the UK notes the statement in the commentary that its effect is that, where an offence is committed by a person holding an official position, that fact alone does not exclude substantive criminal responsibility. The UK reaffirms its position (and that of many other states) that paragraph 5 has no effect on any procedural immunity that a foreign State official may enjoy, which continues to be governed by general and customary international law.

Statute of limitations

3. The UK strongly supports the inclusion of draft Article 6(6) which requires States to ensure that statutes of limitations do not apply to crimes against humanity. We are aware that this has widespread support. This will allow survivors to seek judicial remedy when they are ready, which could be many years after the incident. The UK welcomes the clarification made by the Commission in paragraph 33 of the commentary to draft Article 6 which expressly confirms that position. However, the UK considers that it would be helpful for the draft Articles to state that the obligation in draft Article 6(6) does not mean that States are obliged to prosecute crimes against humanity that took place before such crimes were criminalised in their law.

Draft Article 7 – Establishment of national jurisdiction

4. Draft Article 7 provides for extraterritorial jurisdiction over crimes against humanity, in similar terms to the Torture Convention. This reflects the gravity of the crimes and the interest of the international community of States in bringing an end to impunity for them and ensuring that perpetrators cannot escape justice by moving between States. It is also an important signal to victims and survivors that the international community treats these crimes with appropriate gravity. The UK would

be required to make changes to its domestic legislation to give effect to a provision of this nature.

5. However, it remains the UK's strong view that, it is preferable, where possible, for crimes against humanity, to be prosecuted in the State in which they occurred. This reflects the reality that the authorities of the State in whose territory an offence is committed are generally best placed to prosecute that offence, not least because of the obvious advantages in securing the evidence and witnesses necessary for a successful prosecution. We note that several other states also share the view that prosecution by the territorial state is to be preferred.

6. We are aware that several states have flagged the issue of competing or overlapping claims to jurisdiction. We recognise that it could be helpful to avoid future disputes and would be open to considering suggestions on how to address this.

Draft Article 10 – *Aut dedere aut judicare*

7. Draft Article 10 includes the possibility of extradition to another State or a competent international criminal court or tribunal. The UK notes that the structure of this provision is that there is an obligation on a State to submit a case for the prosecution of a suspect on its territory to the appropriate authorities, who shall take their decision in the same manner as other offences of a similarly grave nature, under their national law. As other States have submitted in their written comments and also this week, this preserves prosecutorial discretion and independence. That obligation does not arise where the State agrees to extradite or surrender that individual to another State or international court.