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UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

UNITED NATIONS GENERAL ASSEMBLY, SIXTH COMMITTEE,
SEVENTY-EIGHTH SESSION, AGENDA ITEM 79,
REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS 74TH SESSION: PART 3 (A/78/10)
CHAPTER VII (SUBSIDIARY MEANS FOR THE DETERMINATION OF RULES OF INTERNATIONAL LAW)
CHAPTER IX (SUCCESSION OF STATES IN RESPECT OF STATE RESPONSIBILITY)

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Mister Chair,

1. On the topic '**Subsidiary means for the determination of rules of international law**', the United Kingdom is grateful to the Special Rapporteur, Mr Charles Jalloh, for his first report, and to the Secretariat for their detailed and comprehensive memorandum.
2. Questions concerning sources of international law are particularly suitable ones for consideration by the Commission. Given the importance of such questions to the international legal system it is imperative that the Commission approaches them with the utmost caution, and allows time for States to contribute fully.
3. The United Kingdom notes that the Commission's work on this topic is at an early stage. The Special Rapporteur's first report is introductory in nature and offers a basic conceptual foundation for the Commission's work. Notwithstanding this, the Commission has provisionally adopted 3 draft conclusions along with commentaries,

and took note of a further 2 draft conclusions provisionally adopted by the Drafting Committee.

4. The United Kingdom welcomes the Commission's explanation in the general commentary of the proposed normative value of its output. The Commission's stated intention is to produce draft conclusions which reflect "primarily codification and possibly elements of progressive development of international law." The United Kingdom is sceptical that the output of the Commission thus far reflects this intention and encourages the Commission to maintain an open mind as to the form of final output as it progresses its work on this topic. Whatever the final output, the United Kingdom urges the Commission to make clear in the commentaries the status of specific provisions.

5. For example, as regards the general criteria set out in Draft Conclusion 3, it appears to the United Kingdom that these are better characterised as guidelines than codification of existing law. It is welcome that the commentary to this draft conclusion notes there may be

insufficient practice supporting these criteria at this stage. The same issue also applies to the second sentence of Draft Conclusion 5, which the United Kingdom considers to be a guideline. We respectfully suggest that this point might be brought out in commentary.

6. The United Kingdom agrees with the Commission that it is important to elaborate the functions of subsidiary means and to define what determination of rules means. We see value in exploring this issue early in the Commission's consideration of the topic to inform the direction of its work.

7. The United Kingdom notes that in Draft Conclusion 2 the Commission proposes a non-exhaustive list of categories, with a third broad category comprising "any other means generally used to assist in determining rules of international law". While members generally agreed that the categories are not necessarily exhaustive, some members cautioned against an undue expansion of subsidiary means. The United Kingdom strongly agrees with that caution.

8. In this regard, we consider the issue raised in Chapter IX (9), Section D of the Special Rapporteur's report to be of fundamental importance. Here, the Special Rapporteur acknowledges the need to distinguish between subsidiary means and evidence of the existence of rules of international law. The United Kingdom respectfully suggests that it would be helpful to consider this issue in more detail before the Commission explores potential additional subsidiary means.
9. It is also important that the Commission ensures consistency with its previous products where they have addressed the issue of subsidiary means. For example, the 2018 Draft conclusions on identification of customary international law.
10. As regards the proposed timeline for this topic, the United Kingdom notes that some members advised caution and it was recalled that more time had been needed to complete the consideration of certain other topics relating to sources. This is a substantial and important topic and the United Kingdom supports a

measured approach which builds in sufficient time for States to participate fully.

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Mister Chair,

11. Turning to the topic '**Succession of States in respect of State responsibility**', the United Kingdom welcomes the cautious, incremental approach adopted by the Working Group established to consider this topic and maintains an open mind as to what output might best assist States going forward.

Thank you, Mister Chair.