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## UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

UNITED NATIONS GENERAL ASSEMBLY, SIXTH COMMITTEE,  
AGENDA ITEM 81,  
REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK  
OF ITS SIXTY FIFTH SESSION: PART I (A/68/10)  
CHAPTERS I-III (INTRODUCTORY PARTS), CHAPTER IV (SUBSEQUENT  
AGREEMENTS AND SUBSEQUENT PRACTICE IN RELATION TO THE  
INTERPRETATION OF TREATIES), CHAPTER V (IMMUNITY OF STATE  
OFFICIALS FROM FOREIGN CRIMINAL JURISDICTION) AND CHAPTER  
XII (OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSION)  
(NEW YORK: 28 - 30 OCTOBER 2013)

STATEMENT BY MR. JESSE CLARKE  
FIRST SECRETARY (LEGAL AFFAIRS)  
UNITED KINGDOM MISSION TO THE UNITED NATIONS

28 – 30 OCTOBER 2013

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Mr Chairman,

I would like to thank the Chairman of the Commission for his report to the Sixth Committee. The United Kingdom welcomes the report of the Commission's sixty-fifth session; and also thanks all members of the Commission for a successful year which has seen some good progress.

The UK also takes this opportunity to commend and thank the Codification Division of the Secretariat for their excellent work (including their studies on provisional application of treaties and on customary international law) and to congratulate the new Director of the Codification Division, Mr George Korontzis, on an excellent first year as Secretary of the Commission.

The UK would also like to express its appreciation for the work of the Codification Division in their continuous updating and management of the Commission's website on the work of the Commission. It is an invaluable resource, facilitating engagement with the Commission's work and as a tool for research more widely.

The UK would also like to acknowledge the services of Gionata Buzzini, particularly in respect of his work on reservations to treaties and on customary international law.

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Mr Chairman,

Turning to the topic of **Subsequent agreements and subsequent practice in relation to the interpretation of treaties**, the UK welcomes the work of the Special Rapporteur, Professor Nolte, and the Commission on this topic, which has resulted in five draft conclusions and commentaries.

The UK supports the approach taken by the Commission in producing draft conclusions and supporting commentaries as the outcome of the Commission's work and notes that the commentaries give the opportunity to provide valuable concrete examples of the principles underpinning the draft conclusions. We would welcome more concrete examples of actual practice in the commentaries where appropriate, for example, in commentary (4) to conclusion 2.

The UK believes that the work of the Commission should be firmly based on Articles 31, 32 and 33 of the Vienna Convention on the Law of Treaties and that nothing in the draft conclusions or commentaries should detract from that. The UK is also of the view that the Commission should give further consideration to streamlining the draft conclusions, in particular with the aim of reducing the overlap both between draft conclusions themselves and between the draft conclusions and the Vienna Convention.

Looking at each draft conclusion in turn:

The UK welcomes **draft conclusion 1**, particularly the fifth paragraph which stresses that interpretation of a treaty is a “single combined operation” and that different weight will need to be accorded to different means of interpretation depending on the circumstances. We consider that it is important to maintain the emphasis on this single combined operation and a flexible approach to different means of interpretation. The UK notes that commentary (4) reflects the codification of customary international law in the Vienna Convention and suggests that the concluding words of the commentary could reflect more clearly that the rules on interpretation apply, as a matter of customary international law, to those treaties pre-dating the Vienna Convention.

The term “authentic means of interpretation” is used in **draft conclusion 2**. We are concerned that this might not be the most appropriate term, since in treaty terms, the word “authentic”, often used when referring to language versions of treaties, does tend to have a particular technical meaning. We would suggest that there could be a more appropriate term to fit the definition given in commentaries (2) and (7), such as “accepted” or “valid” and would welcome the Commission’s consideration of this. We would make the same point in relation to the term “authentic means of interpretation” in respect of draft conclusion 4.

The UK welcomes **draft conclusion 3**, in particular commentary (4) reflecting the Commission’s general approach to the question of ‘contemporaneous’ and ‘evolutionary’ interpretation.

The UK welcomes the recognition, in commentary (2), of the practical impact of practice occurring in respect of a treaty before it enters into force. We look forward to the further work outlined in commentaries (6) and (20) which is to be done on the nature of agreement in this context and the establishment of such an agreement.

On **draft conclusion 5**, the UK considers that the flexibility imported by the word “may” is important here, to link back to the concept in the first draft

conclusion that different means of interpretation will carry different weight depending on the circumstances but that interpretation is a single operation.

We look forward to the further work of the Commission on this topic.

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Mr Chairman,

Turning now to the topic of the **Immunity of state officials from foreign criminal jurisdiction**, we are grateful to the Commission, and especially to the Special Rapporteur, for the progress that has been made on this topic at the last session. This topic is extremely important in the conduct of foreign relations, and is of genuine practical significance. It is also a topic which increasingly attracts comment and scrutiny from a variety of perspectives, and so a clear, accurate and well documented statement of the law by the Commission is likely to be very valuable.

We have noted the texts of the three draft Articles that were adopted this year, and reviewed the commentaries on them.

In relation to the first draft Article on the scope of the project, we are broadly in agreement with this Article. In relation to Article 1(2) we have two observations. Firstly we would like to emphasise, as the commentary makes clear, that the special rules referred to in this paragraph can derive from customary international law as well as from treaty provisions. Secondly, we note that whilst this list covers the main examples of special rules, it does not purport to be an exhaustive list. This is right in our view, as there may be other forms of international contacts and cooperation which arise on an ad hoc basis but require additional special rules of immunity, for example, conferences, commissions, and international judicial or arbitral proceedings.

We also note that at paragraph (6) of the commentary to Article 1, the Commission explains that immunities before international criminal courts and tribunals are excluded from the scope of these articles. We fully agree with the Commission in this respect, but we note that there may nevertheless be questions about the applicability of immunities in relation to national legal processes (for example, arrest, seizure of evidence) in cooperation with an international court. We hope that the Commission will give further thought to these matters as the work proceeds.

In relation to draft Articles 3 and 4, we note that the text appears to limit the enjoyment of immunity *ratione personae* to members of the so-called "Troika", that is the Head of State, Head of Government and Minister for Foreign

Affairs. Of course the judgment of the International Court of Justice in the Arrest Warrant case is clear authority that the Troika do enjoy immunity *ratione personae*, but it does not seem that the Court intended to limit such immunity to these three high offices of State. The primary basis for limiting immunity to the Troika that is put forward in the commentary to the present draft Article appears to derive from the representative character of these offices in international law and practice. However it is also perfectly possible to interpret the Court's judgment in the Arrest Warrant case as not intending to limit immunity *ratione personae* to these three offices, both in terms of the language that the Court used, but also by reference to the underlying functional basis for immunity. If immunity *ratione personae* attaches to certain offices because of the necessity of their functions to the maintenance of international relations and international order, then in our view certain high ranking office-holders in addition to the Troika should enjoy such immunity. As mentioned in footnote 284 there are UK cases where such immunity has been extended to visiting Defence Minister and to a visiting Minister for International Trade. We would therefore ask that the Commission give this matter further consideration when it returns to this draft Article.

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Mr Chairman,

Turning finally to the **Other decisions and conclusions of the Commission.**

On the decision of the Commission to include the topic of **Protection of the atmosphere** in its current programme of work, the UK notes the understanding reached with the Special Rapporteur, which we welcome. However, we remain to be convinced that this is a useful topic for the Commission to pursue given that this area is already well served by established legal arrangements.

On the decision of the Commission to include the topic **Crimes against Humanity** in its long-term programme of work, the UK has considered the proposal set out in Annex B of the Commission's report, to develop draft Articles for a Crimes against Humanity Convention. As a party to the ICC the UK is fully committed to combating Crimes against Humanity and we already have detailed prosecution and extradition processes in place for alleged Crimes against Humanity. We note the analysis of the relationship between a Crimes against Humanity Convention and the Statute of the International Criminal Court contained in the proposal, and stress that any new conventions in this area must be consistent with and complementary to the ICC Statute.

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Finally, the UK would like to congratulate the Secretariat of the Commission on the success of the International Law Seminar held in July this year and we look forward to the 50th Anniversary of the International Law Seminar, which will take place next year.

That concludes this statement on behalf of the UK.

Thank you.

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