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UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

UNITED NATIONS GENERAL ASSEMBLY, SIXTH COMMITTEE,
RESPONSIBILITY OF STATES FOR INTERNATIONALLY WRONGFUL
ACTS (NEW YORK, 21 OCTOBER 2013)

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Mr. Chairman,

The Articles on the Responsibility of States for Wrongful Acts, adopted by the ILC on second reading in 2001, constitute one of the most significant projects – if not the most significant project – that the ILC has produced in recent years. As has frequently been observed, the scope of the Articles is very broad: they are intended to provide a generally applicable code of secondary rules in response to wrongful acts by States and to bring greater coherence across the whole of the international legal system.

The Articles are the product of many decades of work in the ILC, which ranged over many highly sensitive and controversial matters. Finally, the Commission was able to craft a set of Articles which, in their careful formulation, seek to balance the different views of States, and combine elements of strict codification with other elements which constitute progressive development. It is clear that in many areas of international law, aspects of the Articles have already been, and continue to be, highly influential, as is evidenced by the many judgments of both international and national courts and tribunals that make reference to them, and also by the frequent recourse that Governments have to them in formulating their legal views.

However, it is also clear that the very breadth of the Articles, both in terms of their scope and their formulation, mean that it is still premature to say that they reflect in their entirety settled customary international law or even a settled consensus of views among States. There remain elements of uncertainty and disagreement. In our previous statements on this topic we have outlined some of these, and we stand by our previous views without restating them in full here. As we have said on previous occasions, during the process through which the Articles are further engrained and the practice of States becomes more settled, there are dangers in pressing ahead to a convention. As others have said previously, to take such a course would risk provoking divergences and differences of views, and thereby threaten the very coherence that the Articles are seeking to instil.

We note that this is now the fifth occasion starting in 2001 on which the Sixth Committee has considered what further action is appropriate to take in relation to the Articles. On each of the previous occasions, the Committee has taken due account of the Articles, but decided to defer consideration of whether it was appropriate to take further action to adopt or formalise the Articles for a period of years. We see no developments since the last debate in the Committee in 2010 which require the Committee to take more concrete action in relation to the Articles. Indeed we would suggest that the Committee might be better advised once again to acknowledge the importance of the Articles, but to defer further discussion until it becomes clear that the time is ripe for further action in relation to the Articles.

Thank you, Mr. Chairman.