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UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

UNITED NATIONS GENERAL ASSEMBLY, SIXTH COMMITTEE,
SEVENTIETH SESSION, AGENDA ITEM 83,
REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK
OF ITS SIXTY-SEVENTH SESSION: PART I (A/70/10)
CHAPTERS I-III (INTRODUCTORY PARTS), CHAPTER XII (OTHER
DECISIONS AND CONCLUSIONS OF THE COMMISSION), CHAPTER IV
(THE MOST FAVOURED NATION CLAUSE) AND CHAPTER V
(PROTECTION OF THE ATMOSPHERE)

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Mr Chairman,

I would like to thank the Chairman of the Commission for his report to the Sixth Committee and also all members of the Commission for a successful year which has seen some good progress. The United Kingdom welcomes the report of the Commission's sixty-seventh session and is particularly grateful to Mr. Mathias Forteau, the Chairman of the Drafting Committee, for all his hard work during the session.

The United Kingdom also takes this opportunity to commend and thank the Codification Division of the Secretariat for their excellent work and extend a special thanks to Mr. George Korontzis for his many years of service with the Codification Division and the International Law Commission. The United Kingdom would like to congratulate and welcome Mr. Huw Llewellyn as the new Director of the Codification Division. It is not only the support that the Codification Division provides to the Commission, but also the assistance that they offer to States, that is of significant value.

The United Kingdom would like, in particular, to express its appreciation for the work of the Codification Division in their most recent update to the Commission's website. It is an accessible, user-friendly and invaluable resource, facilitating engagement with the Commission's work and as a tool for research more widely.

Turning to the ILC's annual report, the United Kingdom notes that this year the report sets out draft provisions (articles, guidelines etc.) at various stages. Some are in the usual format: provision adopted by the Commission together with the commentary. Elsewhere we find provisions as proposed by the Special Rapporteurs, which have already been revised by the Drafting Committee but for which there are not yet any commentaries. Sometimes the texts provisionally adopted by the Drafting Committee are set out in the report in a footnote, sometimes they can only be found in a separate document. We understand the practical reasons for this, but it can be confusing for the reader. At the very least it might have been helpful to state clearly (perhaps in

chapter one of the report) where the reader can find the latest version of the draft provisions for each topic, and precisely what their status is. That will ensure that in the Sixth Committee debate we are all addressing the latest versions, and doing so in full knowledge of their status.

It is obviously most satisfactory when the Commission is able to publish commentaries together with the draft provisions. As far as possible, the draft conclusions should be clear enough to speak for themselves, but on the other hand, States have a fuller understanding of the draft conclusions when the commentaries are produced simultaneously. Where commentaries are not produced alongside draft provisions, it should be noted that our comments are necessarily provisional.

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Mr Chairman,

Before concentrating on the topics concerning the Most-Favoured-Nation clause and the protection of the atmosphere, the United Kingdom would like to say a few words on the chapter regarding **Other decisions and conclusions of the Commission**. The United Kingdom is grateful to the Commission for its careful consideration of its programme of work.

The United Kingdom notes that the Commission decided to include the topic **Jus cogens** in its programme of work and to appoint Mr. Dire Tladi as Special Rapporteur.

The United Kingdom welcomes the inclusion of the topic **Jus cogens** in the programme of work of the Commission, and thanks the Special Rapporteur for the syllabus annexed to last year's ILC report. The United Kingdom agrees that questions concerning sources of international law are natural topics for consideration by the Commission, as its work on the identification of customary international law demonstrates. The topic *Jus cogens* could be of

considerable practical assistance, especially to domestic courts. Having said that, it is obviously not an easy topic, and will need to be approached with great care.

This topic could potentially be helpful if its object is to explain how to identify pre-existing *jus cogens* and the consequences of such an identification. The United Kingdom considers that the Commission could make a useful contribution to the codification of international law if it confines the parameters of this topic to methodology and generally approaches this topic with caution. The United Kingdom looks forward to the Special Rapporteur's first report.

Mr Chairman

On the subject of the **Most-Favoured-Nation clause**, the United Kingdom would like to thank the Chairman of the Study Group, Professor McRae, Professor Forteau and the other members of the Study Group for their work on this important topic. The United Kingdom welcomes the final report.

The intention of the Study Group was to produce a report that would assist in the interpretation and application of Most-Favoured-Nation provisions – a report that would be of practical utility particularly to those involved in the investment field and to policy makers. It appears to the United Kingdom that the final report will indeed be of practical utility.

Mr Chairman,

Turning to the topic of the **Protection of the atmosphere**, the United Kingdom notes the Commission's continued discussions. The United Kingdom endorses the Commission's recognition of the importance of being fully engaged with the international community's present day needs, alongside

confirmation that the Commission has no desire to interfere with relevant political negotiations, including those on climate change, alternatives to ozone depleting substances and long-range transboundary air pollution. Given the current focus of the international community on these topics, it is important not to depart from the 2013 decision that these will remain outside the scope of this topic.

With regard to the text of the draft guidelines included in the report, the United Kingdom welcomes the removal of the reference to the concept of “common concern of humankind”. As is noted in the report, the legal consequences of this concept remain unclear. The United Kingdom appreciates the Commission’s responsiveness to the concerns expressed on this issue by the United Kingdom and others. That said, the United Kingdom observes that such difficulties could be avoided altogether if the topic was not to be pursued further.

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