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UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

UNITED NATIONS GENERAL ASSEMBLY, SIXTH COMMITTEE,
SEVENTY-FIRST SESSION, AGENDA ITEM 75,
RESPONSIBILITY OF STATES FOR INTERNATIONALLY
WRONGFUL ACTS

STATEMENT BY MS. AHILA SORNARAJAH
FIRST SECRETARY (LEGAL AFFAIRS)
UNITED KINGDOM MISSION TO THE UNITED NATIONS

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Mr Chairman,

The International Law Commission's Articles on State Responsibility represent one of the Commission's most important works in recent years. The extent to which so many of the Articles feature in the judgments of national and international tribunals is a testament to the work of the Commission.

That many of the Articles continue to perform such an influential role further underlines their significance and the meticulous care with which the Commission approached its formidable task.

The Articles were developed over a period of decades. They cover a range of sensitive and controversial topics, and sought to reconcile a range of differing views of States. While many of the articles codified existing customary international law, others represent progressive development. Many of the matters which were controversial and sensitive during the Commission's formulation of the Articles remain controversial and sensitive to this day, in some respects more so.

It is, of course, clear that courts and tribunals have chosen to draw upon some Articles to resolve issues arising in cases before them. However, the same cannot be said of all of the Articles. There remains a varied spectrum of State views concerning a number of issues. It is not possible to identify a settled consensus of views among States on a number of key issues covered by the Articles, and nor is it possible to draw firm conclusions about the status of some aspects of the Articles as reflective of customary international law. This is perhaps hardly surprising given the breadth, complexity and controversy of many of the issues covered by the Articles.

The practice of States in this area continues to evolve. There remain areas of uncertainty and disagreement, as outlined in our previous statements. We do not propose to restate our objections in full here, but we do observe once again that there are dangers in pressing ahead to a Convention during the process of the natural development of customary international law.

The very premise upon which codification is founded – namely that customary international law is settled – would be absent. The process would likely serve to highlight and augment the differences of approach across the international community as a whole, thereby threatening the very coherence that the Articles seek to instil and which they do in fact, to a most helpful extent, already instil.

As such, the Articles cannot be said to capture the state of customary international law in its entirety at this stage. The United Kingdom remains of the view that a convention adopting the Articles would be premature and likely to be counterproductive.

We suggest a better course of action will be to once again defer discussion of this issue until the remaining issues of uncertainty are resolved, returning to this issue once customary international law has settled.

Thank you, Mr. Chairman.