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UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

UNITED NATIONS GENERAL ASSEMBLY, SIXTH COMMITTEE,
SEVENTY-SECOND SESSION, AGENDA ITEM 81,
REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-NINTH SESSION: PART 1 (A/72/10)
CHAPTERS I – III (INTRODUCTORY PARTS) and XI (OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSION)
CHAPTER IV (CRIMES AGAINST HUMANITY)
CHAPTER V (PROVISIONAL APPLICATION OF TREATIES)

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Mr Chairman,

1. I would like to begin by thanking the Chairperson of the Commission, Mr Georg Nolte, for his report to the Sixth Committee, and all members of the Commission for a successful first year of the current quinquennium, during which some fruitful progress has been made. The United Kingdom is also grateful to the Chairperson of the Drafting Committee, Mr Aniruddha Rajput, for all his hard work during the session.

2. The United Kingdom also takes this opportunity to commend and thank the Codification Division of the Secretariat and its Director, Mr Huw Llewellyn, for their excellent work. It is not only the support that the Codification Division provides to the Commission, but also the assistance they offer to States, which is of great value.

3. In particular, the United Kingdom expresses its appreciation for the work of the Codification Division in their continuous updating and maintenance of the Commission's website, which is an invaluable and user-friendly resource, facilitating engagement with the Commission's work and as a research tool more widely.

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Mr Chairman,

4. Before turning to the draft articles on crimes against humanity and the provisional application of treaties, the United Kingdom takes this **opportunity to congratulate the Commission** ahead of the commemoration of its seventieth anniversary, and looks forward to participating in the events next year here in New York and in Geneva to celebrate the Commission's achievements.

5. While now is not the time for detailed tributes to the Commission, at this stage it is fitting to register the deep appreciation of the United Kingdom. Even a cursory glance at the Commission's work over the past seven decades reveals the rich contribution it has made to the practice and theory of international law, enriching the rules based international legal order and respect for the rule of law while doing so.

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Mr Chairman,

6. The United Kingdom welcomes the third report of the Special Rapporteur, Mr. Sean Murphy, on the topic of **crimes against humanity**, and congratulates the Commission on the completion on first reading of a complete set of draft articles. The draft articles have been transmitted to Governments, international organisations and others for comments and observations by 1 December 2018.

7. At the outset, allow me to stress that we are broadly supportive of the draft articles, and look forward to giving them more detailed consideration in the coming months.

8. The United Kingdom acknowledges that there is currently no general multilateral framework governing the national prosecution of crimes against humanity. As such, we continue to see benefit in exploring how an extradite-or-prosecute regime in respect of such crimes could operate.

9. The United Kingdom appreciates the careful consideration that the Special Rapporteur, the Drafting Committee and the Commission as a whole have given to the inter-relationship between their work and the Rome Statute of the International Criminal Court. As we have previously emphasised, and as the Special Rapporteur and Commission clearly intend, a future convention on this subject will need to complement, rather than compete with, the Rome Statute. A new

convention could facilitate national prosecutions, thereby strengthening the complementarity provisions of the Rome Statute.

10. The United Kingdom recalls its position that the expansion of the scope of this work into issues such as civil jurisdiction and immunity would be unhelpful. It is important that a future convention should be ratified widely, and to that end the United Kingdom welcomes the fact that the Commission has kept the draft relatively simple, along the model of earlier *aut dedere aut judicare* conventions.

11. Turning briefly to the draft articles themselves, we note that draft Article 5 concerning *non-refoulement* goes beyond the protections in the Refugee Convention. We query the utility of this expansive approach, given the protections already guaranteed by international human rights law, for example those provided by Article 3 of the European Convention on Human Rights, which prohibits torture, inhumane or degrading treatment.

12. Draft Article 13, concerning extradition, is based on similar provisions in the United Nations Convention against Corruption. This is unlikely to be problematic for us, although a number of considerations arise. First, we will need to assess the interplay between this draft Article and our relevant domestic extradition legislation, which gives effect to our existing international extradition obligations, as well as enabling *ad hoc* extradition arrangements to be reached with territories with which we have no prior extradition agreements. Secondly, we will need to consider the interaction of Article 13 with our domestic legislation which gives effect to our obligations under the Rome Statute. The International Criminal Court Act 2001 features provisions on the operation of extraterritorial jurisdiction for certain criminal offences, including crimes against humanity.

13. We note that draft Article 14 on mutual legal assistance is likewise modelled on equivalent provisions in the United Nations Convention

against Corruption and the United Nations Convention against Transnational Organised Crime. We are broadly supportive of this draft article, noting with particular approval paragraph (8) which makes clear that the mutual legal assistance provisions would have no application where the requesting and requested states are party to a separate mutual legal assistance treaty.

14. The United Kingdom will consider carefully the draft Articles and we look forward to providing detailed comments shortly.

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Mr Chairman,

15. The UK is grateful to the Special Rapporteur, Mr Gómez-Robledo, and the members of the Commission for their work in taking forward the topic of **provisional application of treaties**.

16. The UK welcomes the extension of the scope of the draft guidelines to include treaties to which international organisations are party.

17. In respect of Draft Guideline 6, the UK would seek further clarity on the distinction between the legal effect of a provisionally applied treaty and one in full force. Although the Guideline indicates that the legal effect is the same, paragraph 5 of the commentary makes it clear that provisional application does not "give rise to the whole range of rights and obligations that derive from the consent by a State or an international organization to be bound by a treaty or a part of a treaty." As such, although the substantive legal effects may be the same, the technical and procedural legal effects may be different. This should be made clear in the body of the Guideline and the relationship with the provisions of the VCLT further elaborated. The UK would invite the Commission to give further thought to this and develop the commentaries accordingly.

18. Draft Guideline 7 makes it clear that breach of a provisionally applied treaty entails international responsibility. However, this Guideline does not indicate the consequences of breach on the operation of the provisionally applied treaty itself, the Commentary is clear that in the opinion of the ILC, Part 5, section 3 of the VCLT will not apply. Therefore the Special Rapporteur could helpfully elaborate on the effect of breach on the provisionally applied treaty itself.

19. The UK welcomes the pragmatic and flexible approach taken by the Special Rapporteur and the Commission to provisional application of treaties, underlining the prerogative of sovereign states to enter into international agreements in a manner that best suits their international relations and domestic considerations at the time. However, given the difficulties that have arisen in the interpretation of some provisional application clauses, the Commission is invited to begin work on draft model clauses with commentary to cater for various modes of provisional application, particularly in respect of the completion of internal procedures. Where and when appropriate, model clauses which are fully explained and unambiguous could be adopted to ensure legal certainty.

Thank you, Mr Chairman.