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UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

UNITED NATIONS GENERAL ASSEMBLY, SIXTH COMMITTEE,
SEVENTY-SEVENTH SESSION, AGENDA ITEM 77,
REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK
OF ITS 73RD SESSION: PART 3 (A/77/10)
CHAPTER VII (SUCCESSION OF STATES IN RESPECT OF STATE
RESPONSIBILITY)
CHAPTER VIII (GENERAL PRINCIPLES OF LAW)

STATEMENT BY MS DEBRA GERSTEIN
ASSISTANT LEGAL ADVISER

3 NOVEMBER 2022

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Chair,

1. The United Kingdom thanks the Commission for its further consideration of the topic of

and thanks

fifth

report.

2. The United Kingdom reiterates its long-standing position that a cautious approach is needed in a topic such as this. Such State practice that exists, in the form of agreements between the States concerned, must be seen as the product of context-specific negotiations, inevitably combining historical, political, cultural and legal considerations.

3. The United Kingdom notes the discussion among the Commission as to the most appropriate way to proceed with this topic and the form of the final product. We continue to maintain an open mind as to the utility of this topic, and what outputs might best assist States going forward.

Chair,

4. The United Kingdom is grateful to the Special Rapporteur, Mr Marcelo Vázquez-Bermúdez, for his Third Report on the topic of **General principles of law** and commends the Special Rapporteur and the members of the Commission for their careful approach to this important topic.

5. This approach is reflected in draft conclusions 3, 5 and 7, with commentaries, which have been provisionally adopted by the Commission, and in draft conclusions 6, 7, 8, 9, 10 and 11, which were provisionally adopted by the Drafting Committee. These texts represent a good basis for future work on the topic and we hope that a first reading of the complete set of draft conclusions will be concluded in the next session.

6. With respect to draft conclusion 5, the United Kingdom welcomes the adoption of the commentary explaining how the existence of a principle common to the various legal systems of the world might be determined.

7. The United Kingdom notes that draft conclusion 7 was adopted by the Commission despite differing views among its members, with a view to obtaining further comments by States. In this regard, the United Kingdom approach and clearly stated objective in the commentaries.

8. The United Kingdom notes that the question of the existence of the second category of general principles - those formed within the international legal system - remains contentious, both within the Commission and among States. The United Kingdom notes the concern raised by members of the Commission regarding the apparent lack of State practice, case-law and teachings to support fully the existence of such a category or the methodology for the identification of such principles. In

particular, it is not clear that there is support for the notion contained in draft conclusion 7 that a general principle of law formed within the international legal system must be recognised in the international legal system.

9. The United Kingdom also notes the view expressed by some members of the Commission that, if the Commission were to conclude that there is a category of general principles of law formed within the international legal system, then it must in any event be clearly distinguished from customary international law. In this regard, the United Kingdom notes that the examples of general principles of law formed within the international legal system referred to by members of the Commission during the debate appear to be principles existing within customary international law.

10. With respect to the Commission's approach to this topic, the United Kingdom welcomes the Drafting Commission's streamlined approach to draft conclusions 10 and 11, as provisionally adopted by the Drafting

