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to the United Nations**

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Mr Chairman,

Mr Chairman,

Turning to the topic of **Subsequent agreements and subsequent practice in relation to the interpretation of treaties**, the United Kingdom welcomes further five draft conclusions with accompanying commentaries.

As with the previous work on this topic, the United Kingdom supports the approach taken by the Commission in producing draft conclusions together with supporting commentaries. In particular, the United Kingdom welcomes the depth of analysis and practical examples provided in the commentaries through a careful analysis of relevant practice and case law.

The United Kingdom has detailed comments on the draft articles which are contained in an annex to the written copy of its statement. I do not, therefore, intend to set these out in my oral intervention today but would like them to be reflected in the record as the formal position of the United Kingdom on the draft articles.

The United Kingdom welcomes the draft conclusions, in particular draft conclusions 6, 7, 9 and 10; the United Kingdom is concerned that draft conclusion 8 as currently drafted is too prescriptive which does not reflect the intention behind it.

The United Kingdom considers that explaining the difference between this being clearly explained in draft conclusion 6.

The United Kingdom is also particularly pleased that in relation to diverging views of states on what constitutes a subsequent agreement, the United Kingdom legally binding agreements has been reflected.

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Mr Chairman,

On the topic of **Protection of the atmosphere**, the United Kingdom notes

This recognises the challenges associated with finding a role for contributing to global endeavours to protect the environment within the context of the 2013 understanding. On the basis of these challenges, and given that we are in a crucial period of political negotiations on established legal arrangements, including on climate change and alternatives to ozone-depleting substances, the United Kingdom would continue to question whether this is a useful topic for further consideration by the Commission. In any event, it is essential that the understanding continues to be fully respected.

However, if the Commission decides to proceed, the United Kingdom does

the first preambular paragraph of the UN Framework Convention on Climate Change and in the preamble to the Convention on Biological Diversity. However, it does not appear in the Vienna Convention or its Montreal Protocol, which aside from the UN Framework Convention is the main international agreement dealing with atmospheric protection. Indeed, the United Kingdom is concerned about the consequences of importing this concept from the preambles to conventions which deal with specific and narrowly defined issues into a subject such as the protection of the atmosphere which is much wider in scope.

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Mr Chairman,

Turning to the topic **Immunity of State officials from foreign criminal jurisdiction**, the United Kingdom is grateful to the Commission for the progress that has been made on this topic.

As the United Kingdom has previously noted, this topic is of genuine practical significance. It also increasingly attracts comment and scrutiny from a variety of perspectives, and so a clear, accurate and well documented statement of the law by the Commission is likely to be very valuable.

The United Kingdom

elements that reflect existing law as well as elements that represent a progressive development of the law. In these circumstances, the United Kingdom takes the view that the appropriate form for the outcome of the

are subject to immunity *ratione materiae* from foreign criminal jurisdiction. The United Kingdom notes that the distinction between acts performed in an official capacity and acts performed in a private capacity is not the same distinction as is drawn between *acta jure imperii* and *acta jure gestionis* in the

United Kingdom welcomes the confirmation in the commentary to Article 2(e) that the

be given a broad meaning. The United Kingdom nonetheless considers that greater clarity could be achieved in the text on this point. The United Kingdom would therefore ask that the Commission give this matter further consideration when it returns to these draft provisions.

The United Kingdom notes that important aspects of the draft Articles are yet to be developed, including those relating to possible exceptions from immunity and the procedures for asserting and waiving immunity. The United Kingdom
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regarded as provisional until the full text of all the Articles is available.

In respect of the question of exceptions to immunity *ratione materiae*, the United Kingdom recalls the well-known decision of the House of Lords in the *Pinochet* case, which found that, for those States that had ratified it, the UN Convention against Torture constituted a *lex specialis* or exception to the usual rule on immunity *ratione materiae* of a former head of State because under the Convention definition of torture it could only be committed by persons acting in an official capacity. The United Kingdom is not aware of similar reasoning in judgments in respect of other treaties which require the criminalisation of certain conduct and the assertion of extra-territorial jurisdiction. The United Kingdom also recalls another criminal case in which immunity of state officials was considered, the *Khurts Bat* case, which suggests that a plea of immunity *ratione materiae* would not operate in respect of certain criminal proceedings for acts of a State official committed

In **draft conclusion 10**, the United Kingdom would suggest that the final three words in paragraph (3) are deleted. The United Kingdom considers that retaining the final three words creates the possibility of misinterpretation which would require a reading of the commentaries to correct; the United Kingdom therefore considers that this matter is best left to the commentaries.