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to the United Nations**

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Mr/Madam Chairperson,

1. I would like to begin by thanking the Chairperson of the International Law Commission, Mr. Pavel Šturma, for his report to the Sixth Committee, and all members of the Commission for a busy and successful year. The United Kingdom is particularly grateful to the Chairperson of the Drafting Committee, Mr. Claudio Grossman Guiloff, for all his hard work during the session.
2. The United Kingdom also commends and thanks the Codification Division of the Secretariat and its director, Mr. Huw Llewellyn, for their consistently excellent work.

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Mr/Madam Chairperson,

3. Before addressing specific chapters in the Commission's report, I would like to make some general remarks regarding the Commission's methods and output, and the Sixth Committee's treatment of that output.
4. First, the Commission's work products are nowadays frequently cited by international and domestic courts and tribunals. This is in principle, a good thing – provided there is clarity about the legal force of these products. But that is not always the case. The Commission's work is sometimes relied on as an articulation of international law without proper consideration of whether that product



8. Third, the United Kingdom is concerned at the speed at which voluminous and important topics, with wide ranging syllabuses, are being dealt with by the Commission. Topics with excessively broad syllabuses should be approached with caution, and the Commission should choose new topics carefully and judiciously, taking into consideration the requirements and needs of States when planning its work. If there were fewer, more focused, topics on the Commission's agenda, the Commission could adopt a more rigorous and measured approach to those topics, which would be to the benefit of the clarity and acceptability of the final product

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United Kingdom's view is that there is currently no need for the Commission to move any further topics onto its current programme of work.

12. However, if the Commission is still minded to do so, the United

is not yet sufficiently advanced to enable consideration of the topic by the Commission.

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Mr/Madam Chairperson,

15. The United Kingdom is grateful to the Commission and to the Special Rapporteur, Mr. Sean Murphy, for their impressive and important work on the topic '**crimes against humanity**'. The United Kingdom welcomes the Commission's adoption on second reading of a set of draft articles on prevention and punishment of crimes against humanity, and accompanying commentaries.

16. The draft articles navigate this complex and sensitive area well through a rigorous, practical approach that draws significant inspiration from international criminal law precedents. The United Kingdom considers the draft articles to be a positive and useful example of the potential for the Commission to promote the codification and progressive development of international law, by distilling existing international law and practice in a focused, responsible and practical way.

17. Since States provided their written comments to the Commission last December, the Commission has made some amendments to the draft articles and their commentaries. Many of these amendments are helpful. In particular, the United Kingdom supports the removal of the definition of "gender" from draft article 3, and the amendment of draft article 4 so that the list of measures through which each State undertakes to prevent crimes against humanity is more clearly exhaustive. The United Kingdom also supports the Commission's decision to keep the scope of the draft articles limited by, for example,

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to elaborate the draft articles into a convention in the UN General Assembly or at a diplomatic conference.

19. In the United Kingdom's view, a future convention on this subject would complement, rather than compete with, the Rome Statute. A new convention could also facilitate national prosecutions, thereby strengthening the complementarity provisions of the Rome Statute. The elaboration of the draft articles also provides a good opportunity for States to work together to tackle a lacuna in the fight against the most serious crimes.

20. The United Kingdom should, however, note that a convention based on these draft articles would require it to amend its domestic law on crimes against humanity, as presence in the United Kingdom alone is not currently sufficient for the exercise of jurisdiction. Consequently, before becoming a party to a convention containing this extension of jurisdiction, the United Kingdom would need to assess in full the impact on its justice system. The United Kingdom also needs to consider carefully the requirement to apply the undertaking to prevent crimes against humanity in any territory under its jurisdiction, and whether certain safeguards should be included in any convention to ensure the extension of jurisdiction is not abused.

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Mr/Madam Chairperson,

21. I now turn to the topic '**Peremptory norms of general international law (*jus cogens*)**'. The United Kingdom is grateful to the Commission, and especially to the Special Rapporteur, Mr. 21.

project overall. From the outset, the United Kingdom has supported the Commission's work on this topic, which it believes could have practical value for States, judges and practitioners. However, as previously noted, this is not an easy topic and, given its importance and difficulty, and the need to secure wide support from States, the United Kingdom urged the Commission to approach this topic with caution.

23. For the most part it has done so, and the United Kingdom welcomes this. However, in certain respects the Commission has adopted a somewhat expansive and in places theoretical approach to the topic. This has resulted in the adoption on first reading of a set of draft conclusions which cover a diverse range of sensitive issues and which do not in all respects reflect current law or practice. Nor, in some instances, do they reflect or address the specific views and concerns expressed on this topic by States in Sixth Committee. This approach has no doubt been driven in part by the lack of State practice relating to *jus cogens* and the dearth of existing rules of international law in this area. But in the United Kingdom's view this is no justification for adopting such an expansive approach to such a fundamental topic. This is especially so when, as here, the Commission's output does not clearly distinguish between when it is codifying existing law and when it is suggesting the progressive development of the law or new law. Given the importance and complexity of this topic's subject matter, and therefore the potentially far-reaching consequences of these draft conclusions, the United Kingdom considers it imperative that the Commission addresses these matters on second reading.

24. The United Kingdom has provided some headline observations in a written annex to this statement: these cover issues such as the introduction of the notion of 'fundamental values' in draft conclusion 3; the need for caution in referring to the Security Council in the commentary to draft conclusion 16; and the question of the list annexed to the draft conclusions. The United Kingdom will submit detailed written comments by the 1<sup>st</sup> of December 2020 deadline, and



encourages others to do likewise. This is an important and difficult topic, and input from States is vital.

Thank you, Mr/Madam Chairperson.

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Annex to United Kingdom statement on the topic **Peremptory norms of general international law (*jus cogens*)**

1. In relation to the draft conclusions and commentary thereto adopted on first reading by the Commission this year, the United Kingdom remains of the view that, for the reasons articulated in its 2017 statement on this topic, draft conclusion 3 (or draft conclusion 2 as it was at the time) is at best superfluous, and at worst unhelpful. It would be better to drop this provision from the conclusions. The rationale underpinning *jus cogens* is a controversial and essentially theoretical matter which the United Kingdom does not believe it is necessary or helpful for the Commission to try to address.
2. Draft conclusion 3 is also a potential source of confusion to States and practitioners, not least because its descriptive elements could be read as creating additional requirements regarding the formation and identification of peremptory norms of general international law (*jus cogens*). In particular, the reference to 'fundamental values' does not appear in the definition of such norms in Article 53 of the Vienna Convention on the Law of Treaties or in any other relevant text. Draft conclusion 3 could therefore lead to an argu305.57 385.01 TmID 8>BDC q0.000008D

goes, but the United Kingdom also notes that the Commission “*considered it important*” to highlight in the accompanying commentary to draft conclusion 16 that this conclusion applies equally to binding resolutions, decisions and acts of the Security Council. Along with a number of other States, the United Kingdom voiced concerns in its statement on this topic last year that there was a lack of State practice to support the contention that a State can refuse to comply with a binding Security Council resolution based on an assertion of a breach of a *jus cogens* norm. Furthermore, specific reference to Security Council resolutions in this conclusion could undermine the legality and effectiveness of binding UN Security Council resolutions and such a conclusion could be used to weaken respect for Security Council resolutions.

4. Having reviewed the commentary to draft conclusion 16, the United Kingdom remains of the view that there is insufficient State practice to support the assertion that a State can refuse to comply with a binding UN Security Council resolution on the basis that it is in breach of a *jus cogens* norm. The limited practice cited by the Commission is insufficient to justify such a significant conclusion. The United Kingdom also considers that the commentary is misleading as to the existence of divergent views on this issue. The Commission should be very cautious about (or better still avoid) making assertions about the relationship between peremptory norms of general international law (*jus cogens*) and UN Security Council resolutions.
  
5. With regard to draft conclusion 23 and the annex thereto, the United Kingdom recalls that at the outset of this topic it said that it would not, in principle, be against the development of an illustrative list of pre-existing *jus cogens* norms, provided that this effort did not detract from



preparing an illustrative list of general principles of law would be impractical, necessarily incomplete and would divert attention away from the central aspects of the topic.

8. If, however, there is to be a list, the United Kingdom's strong view is that any reconsideration of draft conclusion 23, the list and the accompanying commentary will need to be done with great care, and that any list should go no further than the current neutral, descriptive statement of norms that the Commission has previously referred to as having peremptory s