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UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

UNITED NATIONS GENERAL ASSEMBLY, SIXTH COMMITTEE,
SEVENTY-THIRD SESSION, AGENDA ITEM 82,
REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK
OF ITS 70TH SESSION: PART I (A/73/10)
CHAPTERS I – III (INTRODUCTORY PARTS) and XIII (OTHER DECISIONS
AND CONCLUSIONS OF THE COMMISSION)
CHAPTER IV (SUBSEQUENT AGREEMENTS AND SUBSEQUENT
PRACTICE IN RELATION TO THE INTERPRETATION OF TREATIES)
CHAPTER V (IDENTIFICATION OF CUSTOMARY INTERNATIONAL LAW)

STATEMENT BY MR. ANDREW MURDOCH
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Mr/Madam Chairperson,

1. I would like to begin by thanking the Chairperson of the Commission, Mr Eduardo Valencia-Ospina for his report to the Sixth Committee and all members of the Commission for a busy and successful year which has seen some good progress. The United Kingdom is particularly grateful to the Chairperson of the Drafting Committee, Professor Jalloh, 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, including the preparation of a memorandum on ways and means for making the evidence of customary international law more readily available (A / CN.4/710). It is not only the support that the Codification Division provides to the Commission but also the assistance that they offer to States in the Sixth Committee, that is of significant value.

Mr/Madam Chairperson,

3. Before focusing on the topics concerning subsequent agreements and subsequent practice in relation to the interpretation of treaties and the identification of customary international law, the United Kingdom wishes to comment briefly upon Chapter XIII of the Commission's annual report regarding **other decisions and conclusions of the Commission.**
4. The United Kingdom is grateful to the Commission for its careful consideration of its programme of work. It is good to see that there is no shortage of interesting proposals coming before the Commission. The United Kingdom welcomes the Commission's decision to include

13. Fourth, the United Kingdom is concerned at the speed at which

16. In particular, the United Kingdom welcomes a key element of the Special Rapporteur's findings, as set out in conclusion 10, that subsequent agreements need not be legally binding. The United Kingdom is also pleased that the Commission confirmed, in the commentary, that Memoranda of Understanding do not amount to legally binding agreements.

Mr/Madam Chairperson,

17. Turning to the topic of the **identification of customary international law**, The United Kingdom welcomes the adoption by the Commission of 16 conclusions, together with commentaries thereto, on second reading.

18. The United Kingdom welcomes the clarifications that have been made to the conclusions and commentary following the fifth report of the Special Rapporteur and the Commission's plenary debate on that report.

19. In particular, the United Kingdom welcomes the clarifications made to conclusion 4, and its accompanying commentary, on the requ0.000005500B690i3isiog

inaction of states. In this regard, the United Kingdom welcomes the amendment to paragraph 3 of the commentary to conclusion 6 in relation to forms of practice, to clarify that it 'cannot simply be assumed that abstention from acting is deliberate.' Similarly, the United Kingdom appreciates the clarification to the commentary to conclusion 10, in particular the line at the end of paragraph 8, which states that 'a State may also provide other explanations for its inaction'. There are a number of political and other reasons why a State may not react, or may not react publicly, to the practice of another State and it is the United Kingdom's view that the failure of a State to react in such an instance should not be taken as an indication of its belief as to the legal status of such practice.

22. The United Kingdom remains circumspect regarding the possibility of the existence of particular customary law which does not have a geographical nexus. In this regard, the United Kingdom welcomes the cautious notes in the commentary to the draft conclusions, which note, that while particular customary international law is 'mostly regional, sub-regional or local' there is no reason 'in principle' why a rule of particular customary international law should not also develop among States linked by a common cause, interest or activity other than their geographical position, or constituting a community of interest.

23. As the United Kingdom has previously stated before the Sixth Committee, the United Kingdom considers this topic to be of real practical value. The United Kingdom sees the conclusions and commentaries as a valuable and accessible tool for judges, as well as other practitioners, confronted with the question of determining whether or not a customary rule of international law exists. Parties to litigation before domestic courts increasingly invoke arguments based on customary international law in a wide variety of contexts. Indeed, the Court of Appeal of England and Wales relied upon the conclusions and

