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Mr Chairman,

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Turning to the topic of **Subsequent agreements and subsequent practice in relation to the interpretation of treaties**, the United Kingdom welcomes ~~the~~ 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 ~~the~~ 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 ~~is~~ legally binding agreements has been reflected.



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.

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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 term should 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 regards 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 acting in an official capacity.







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.