1. The United Kingdom is grateful to Special Rapporteur Professor Georg Nolte for his impressive and important work on subsequent agreements and subsequent practice. The United Kingdom recognises that subsequent agreements and subsequent practice is a complex area of treaty law. We therefore welcome contributions from leading experts, such as the Special Rapporteur.

2. In this document the United Kingdom provides a list of potential suggestions regarding the draft Conclusions. We are grateful to Special Rapporteur Professor Georg Nolte in advance for his consideration of our proposals.

General

3. The United Kingdom is particularly grateful to the Special Rapporteur for his excellent work on the Commentary. The Commentary is detailed and rigorous. It is a helpful and constructive contribution to the development of treaty interpretation.

4. In view of the usefulness of the Commentary, the United Kingdom welcomes any step to ensure that further details from the Commentary are brought out in the draft Conclusions.

Conclusion 2

5. **Sub-paragraph 2** repeats the text of Article 31(1) of the Vienna Convention on the Law of Treaties ('VCLT').

6. The United Kingdom questions whether it might be sensible to delete the reference to Article 31(1). This is because the inclusion of a reference to Article
31(1) may lead readers that are unfamiliar with the law to an incorrect understanding that treaty interpretation starts with an analysis as to the object and purpose of a treaty, as opposed to being one single exercise, in accordance with the whole of Article 31.

7. **Sub-paragraph 5** discusses the emphasis to be placed on the various means of interpretation in Articles 31 and 32 VCLT.

8. The United Kingdom agrees with the content of sub-paragraph 5 as a statement of principle. However, the United Kingdom questions whether it would be of assistance for the Special Rapporteur to elaborate further on the meaning of the word ‘appropriate’ used in sub-paragraph 5, perhaps by reference to the factors set out in draft Conclusion 9.

**Conclusion 4**

9. **Sub-paragraph 1** defines ‘subsequent agreement’.

10. The United Kingdom respectfully suggests that the definition of subsequent agreement in sub-paragraph 1 be expanded to include a statement that a subsequent agreement does not need to be legally binding.

11. The United Kingdom recognises that draft Conclusion 10(1) provides that a subsequent agreement does not need to be legally binding. However, the United Kingdom questions whether it might be useful to make this point at the beginning of the draft Conclusions, at the definition stage. The United Kingdom considers that this approach might assist users of the draft Conclusions that are unfamiliar with the details regarding subsequent agreements.

12. **Sub-paragraph 2** defines ‘subsequent practice’.

13. The United Kingdom respectfully suggests that it might assist if the indefinite article, ‘a’, at the beginning of the sub-paragraph 2 is deleted. This is because the wording “a subsequent practice” implies that practice is a single event, as opposed to a course of practice.
14. The United Kingdom further proposes that the word “all” be added to sub-paragraph 2, to make clear that the agreement of “all” of the parties is required for there to be subsequent practice under Article 31(3)(b). The fact that the agreement of all of the parties is required is made in Commentary. The United Kingdom would welcome the repetition of this point in sub-paragraph 2.

**Conclusion 5**

15. **Sub-paragraph 2** discusses the relevance of non-State actor conduct as regards subsequent practice.

16. As to the second sentence of sub-paragraph 2, the United Kingdom respectfully suggests the language is amended slightly to reflect the fact that non-State actor practice can provide evidence of subsequent practice.

17. Revised language could, for instance, read “such conduct may, however, provide ancillary evidence to demonstrate subsequent practice by a party or itself generate or give rise to subsequent practice by a treaty party.”

**Conclusion 6**

18. **Sub-paragraph 1** effectively provides that it is necessary to assess whether parties to a treaty have taken a position regarding its interpretation.

19. The United Kingdom considers that it might be sensible to include an explanation as to the distinction between agreements that establish practical arrangements and agreements that provide for substantive interpretation in sub-paragraph 1. This is because the distinction between the two forms of agreement is often unclear in practice.

20. **Sub-paragraph 2** provides a general statement of principle as to the form that subsequent agreements and subsequent practice can take.
21. The United Kingdom questions whether it would assist if sub-paragraph 2 became a new sub-paragraph 1. By adopting this approach, the United Kingdom considers that those unfamiliar with the law might first understand the basic principle, and that they can then move on to understand further details.

**Conclusion 7**

22. **Sub-paragraph 2** explains the role of subsequent practice with regard to Article 32 VCLT.

23. The United Kingdom considers that it might assist if the following text was added to end of the sentence in sub-paragraph 2 “by confirming the interpretation that has been reached under Conclusion 7(1)”. The aim of this proposed amendment is to reflect the scheme of Articles 31 and 32 VCLT.

**Conclusion 9**

24. **Sub-paragraph 2** discusses the weight of subsequent practice.

25. The United Kingdom questions whether sub-paragraph 2 could be expanded so that “how” is replaced with “how often and with what precision”. The aim of this proposed amendment is to introduce greater specificity.

**Conclusion 10**

26. **Sub-paragraph 1** articulates a key element of the Special Rapporteur’s findings: that subsequent agreements need not be legally binding.

27. The United Kingdom respectfully suggests that this central principle might be brought out earlier in the Conclusions. One option is to introduce the general principle in Conclusion 4(1), as set out in paragraphs 10 and 11 above.
28. **Sub-paragraph 2** discusses the number of parties that must engage in practice, and the significance of silence.

29. The United Kingdom respectfully suggests that the word “manifestly” be included before the phrase “call for some reaction”. The aim of this proposed amendment is to avoid subsequent practice from arising by inadvertence. The risk of subsequent practice arising by inadvertence without the addition of the word “manifestly” is a concern of the United Kingdom.

**Conclusion 13**

30. **Sub-paragraph 3** discusses the effect of pronouncements of expert treaty bodies as regards subsequent agreements and subsequent practice.

31. The United Kingdom considers that it might be helpful to expand on sub-paragraph 3 to make clear that the effect of a pronouncement of an expert treaty body depends on the interpretative impact that is permitted or provided for by a particular treaty.

32. The United Kingdom further considers that it might assist if:

   a. Appropriate wording were added to first sentence of sub-paragraph 3, to reflect the fact that States may reach subsequent agreements on the effect of the pronouncement of an expert treaty body; and

   b. The second sentence of sub-paragraph 3 were slightly amended so that the word “accepting” is replaced with “neither shall it indicate acceptance of”. The United Kingdom considers that this amendment will assist in making the effect of silence totally clear.

33. The United Kingdom is grateful to Special Rapporteur Professor Georg Nolte for his continued work on the principles of treaty interpretation. We look forward to seeing work from the Special Rapporteur in the future.