

United Kingdom Mission
to the United Nations

authorities of the State in whose territory an offence is committed are generally best placed to prosecute that offence, not least because of the obvious advantages in securing the evidence and witnesses necessary for a successful prosecution.

Jurisdiction under Article 7(1)(a)

9. Separately, on draft Article 7(1)(a), we reiterate our point from yesterday that also note that as reflected in the recent award in the Enrica Lexie arbitration, the basis of jurisdiction over ships is not part of the principle of territoriality. We will submit a drafting suggestion to reflect this in the written comments we will provide later this year.²

Draft Article 8 Investigation

10. We welcome the inclusion of draft Article 8, and in particular the clarification in the commentary that this is not a criminal investigation as such. This broader investigative obligation when there is reasonable ground to believe crimes against the prevention mechanisms within the draft Articles.

Draft Article 10 ***Aut dedere aut judicare***

11. We note that this provision includes the possibility of extradition to another State or a competent international criminal court or tribunal. The UK notes that the structure of this provision is that there is an obligation on a State to prosecute a suspect on its territory, unless it agrees to extradite that individual to another State or international court. Article 10 therefore allows a State to recognise an extradition or transfer request from an international tribunal, but it is not required to agree to such a request by virtue of this provision.

² For example, in the Enrica Lexie arbitration before the Permanent Court of Arbitration (PCA), the a State is whether a vessel possesses the nationality of that State, as opposed to whether or not it is at paragraph 1029

12. Finally, we note the Commentary on draft Article 10 discusses the potential impact of an amnesty granted by one State on proceedings before the Courts of another State, though the text does not deal with these questions expressly.