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SIXTH COMMITTEE

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Agenda Item 82: Report of the International Law Commission - Cluster I

Statement by Ms Marie-Charlotte McKenna, Acting Legal Adviser, International Law Branch, Department of Foreign Affairs and Trade

(Check against delivery)

Chair

Australia welcomes the adoption by the Commission on second reading of draft conclusions, together with commentaries, on the topics of subsequent agreements and subsequent practice in relation to the interpretation of treaties, and the identification of customary international law.

Australia would like to join the Commission in expressing its deep appreciation and warm congratulations to the Special Rapporteurs for these topics, Mr Georg Nolte and Sir Michael Wood, for their outstanding contributions to this important work.

The Commission's conclusions and commentaries on both of these topics will provide helpful guidance to States, international organisations, courts and legal academics grappling with these complex issues.

Chair

Australia wishes to comment upon chapter XIII of the Commission's annual report regarding other decisions and conclusions of the Commission. Australia appreciates the Commission's careful consideration of its programme of work, and notes the Commission's decision to include two

new topics in its long-term programme of work, namely: (i) universal criminal jurisdiction; and (ii) sea-level rise in relation to international law. Australia attaches great importance to the topics selected by the Commission.

Turning first to universal criminal jurisdiction. All States have a responsibility to help ensure accountability for those most serious crimes of international concern: torture, grave breaches of the Geneva Conventions of 1949 and their Additional Protocols, serious violations of international humanitarian law in relation to non-international armed conflicts, crimes against humanity, genocide, slavery and piracy.

Accountability is essential for the maintenance of international peace and security. Where impunity prevails, history demonstrates that lasting and sustainable peace and reconciliation will be more difficult to achieve.

Australia welcomes the inclusion of the topic of universal criminal jurisdiction on the Commission's long-term programme of work.

As a well-established principle of international law, universal jurisdiction is a key component of an effective international criminal justice system, providing a legal basis to prosecute serious international crimes, that might otherwise go unpunished, where the territorial state or state of nationality is unable or unwilling to do so.

It is also a valuable complementary mechanism to international tribunals. In light of the importance of the principle, and the diversity of State practice regarding its use, Australia concurs with the Commission's view that the topic of universal jurisdiction would benefit from the Commission's attention.

Australia considers that enhanced clarity regarding the definition and scope of universal jurisdiction, and the parameters for its application, would assist States in effectively implementing the principle in a manner that appropriately takes into account the need to ensure accountability and other relevant considerations.

Chair

Turning next to sea-level rise in relation to international law. Sea-level rise is a significant concern in our region. It is small island States in the Pacific which have brought to the fore the potential impact of sea-level rise to a

global audience, as well as some of the complex legal issues many States will face as a result.

Australia supports the addition of the topic of sea-level rise in relation to international law to the long-term programme of work of the Commission and thanks Pacific states for initiating this idea. Australia looks forward to engaging with the Commission on the topic.

Australia encourages the Commission to draw on the substantial practice of States in the Pacific region and elsewhere, which have worked hard to identify basepoints and baselines and define the outer limits of their maritime zones, consistent with the UN Convention on the Law of the Sea (UNCLOS).

They have also sought to resolve outstanding maritime delimitations and make extended continental shelf submissions. States have sought to maximise the stability and clarity that UNCLOS brings to oceans governance and maritime jurisdiction.

Australia also notes the recent substantial work of the International Law Association on sea-level rise, which is a useful contribution to considering the international law issues at hand.

Given the urgency and potential consequences, we encourage the Commission to consider this issue expeditiously. Australia strongly supports the Commission, States and regional forums prioritising this important issue.

Thank you, Chair.