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UNITED NATIONS GENERAL ASSEMBLY SIXTH COMMITTEE: INTERNATIONAL LAW COMMISSION CLUSTER II

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Statement by H.E. The Hon. Mitch Fifield, Ambassador and Permanent Representative of Australia to the United Nations

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Thank you Madam Chair,

Australia acknowledges the work of the International Law Commission over the past year on a range of important topics.

In particular, Australia welcomes the preliminary work undertaken by the Commission, on the topic of “sea-level rise in relation to international law”.

Australia steadfastly supports the United Nations Convention on the Law of the Sea (UNCLOS), which reflects our commitment to an international rules-based order, as the basis for international stability and prosperity.

UNCLOS provides the legal framework within which all activities in the oceans and seas must be carried out.

As a member of the Pacific community, Australia commends the attention that the Commission and States Parties continue to give to the issue of sea-level rise.

Sea-level rise poses significant development, economic, and environmental challenges, the impacts of which will be felt by all States in one way or another.

It is important that we protect our maritime zones, established in accordance with UNCLOS, in the face of sea-level rise.

We encourage Commission members and all States, as they consider further the challenges and impacts of sea-level rise, to take note of the Declaration on preserving maritime zones in the face of climate change-related sea-level rise adopted by Pacific Islands Forum Leaders on 6 August 2021.

While preserving maritime zones to the greatest extent possible, the Declaration upholds the integrity of UNCLOS and is supported by the legal principles underpinning it, including legal stability, security, certainty and predictability.

Australia is committed to working together with all States to preserve maritime zones and the rights and entitlements that flow from them and to secure livelihoods for future generations in a manner that is consistent with international law, particularly UNCLOS.

Madam Chair,

Australia would also like to make some remarks today in relation to the Commission's work on the immunity of State officials from foreign criminal jurisdiction.

Australia welcomes the Commission's continued discussion of the procedural aspects of such immunity.

Regarding draft Article 18 proposed by the Special Rapporteur, Australia invites the Commission to further elaborate and clarify the rationale for the new draft article.

In this regard, Australia notes the existing without prejudice clause in draft article 1. The commentary to that draft article makes clear that immunities enjoyed before international criminal tribunals remain outside the scope of the draft articles.

Further, the commentary also provides that none of the rules that govern immunity before such tribunals are to be affected by the content of the draft articles.

In relation to draft article 17, Australia invites the Commission to clarify how the article would operate in practice, particularly in light of language in draft article 17 indicating that States "may suggest" referral of a dispute to arbitration or to the International Court of Justice.

Australia welcomes the Commission's efforts in drafting commentaries to drafts articles 8 ante, 8, 9, 10, 11 and 12, which were provisionally adopted by the Commission at its seventy-second session.

In our view, it would be helpful if the commentaries more clearly distinguish between where the Commission seeks to codify an existing rule of customary international law or where it is engaged in progressive development of the law. Where the Commission's intention is codification, Australia recommends that the commentaries more clearly identify the relevant State practice and *opinio juris* in support of the draft article.

In this regard, Australia maintains its position that the proposed exceptions to immunity *rationae materiae* in draft article 7 do not reflect any real trend in State practice, still less existing customary international law.

Australia also shares the concern of those members who have doubted that the use of procedural safeguards could sufficiently rectify the substantive flaws inherent in draft article 7.

We invite the Commission to address States' concerns with respect to draft article 7, including by identifying it as a progressive development in the law, before the completion of the first reading of the present draft articles.

Australia reiterates its support for the work of the Commission and looks forward to continuing to contribute to its work in this important area.

Thank you.