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**UNITED NATIONS GENERAL ASSEMBLY SIXTH COMMITTEE:
Report of the International Law Commission, Cluster I
(agenda item 77)
25 October 2022**

**Statement by Mr Adam McCarthy, Chief Legal Officer,
Department of Foreign Affairs and Trade**

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Thank you, Chair.

Australia wishes to thank the International Law Commission for its report this year on the work of its 72nd session. Australia acknowledges the valuable work of the Commission over the past year including its contribution to the development of international law.

Given the centrality of sources of law to the international legal system, Australia welcomes the Commission's study of the sources of law identified in Article 38(1) of the Statute of the International Court of Justice.

Australia appreciates the Commission's decision to include in its programme of work a topic on subsidiary means for the determination of rules of international law listed in sub-paragraph (d), that is, judicial decisions and the teachings of the most highly qualified publicists.

With this study, the Commission will finalise its systematic consideration of Article 38(1) of the Statute of the International Court of Justice, which has been a valuable exercise for Member States so far.

This will help to provide much-needed clarity on the nature, scope and functions of subsidiary means with regard to sources of international law. It will also enhance the Commission's existing work on completed topics that refer to the use of subsidiary means, such as its recently adopted draft conclusions on peremptory norms of general international law.

Australia also welcomes the Commission's decision to include the topic of the prevention and repression of piracy and armed robbery at sea in its programme of work.

Australia condemns all acts of piracy and armed robbery against vessels at sea, which pose an ongoing threat to maritime security, particularly the safety and welfare of seafarers and the security of international navigation and commerce, and recognises the crucial role of international cooperation at all levels in combatting such threats.

The 1982 United Nations Convention on the Law of the Sea sets out the legal framework applicable to the prevention and repression of piracy and armed robbery at sea. The Commission's consideration of State practice in this area and clarification of any areas of uncertainty will support ongoing international cooperation in this regard.

Australia welcomes the addition of settlement of international disputes to which international organisations are parties to the Committee's program and appreciates receiving further information in relation to this topic.

[Madame/Mr] Chair,

Australia acknowledges the importance of the Commission's work in providing clarity and guidance on identifying the peremptory character of norms of international law (*jus cogens*) and their consequences and legal effects. We appreciate the Special Rapporteur and the Commission's diligent work.

Australia considers that it is essential that the draft conclusions and their commentaries accurately reflect international law, are grounded in the practice of States, and are practical.

In that regard, we emphasise the importance of the information submitted by States on this topic last year.

Australia reiterates its observations on this topic submitted to the Commission last year. In particular, Australia had respectfully requested that further evidence of State practice be included in the commentary to draft conclusion 5 to demonstrate the possibility that treaty provisions and general principles of law could form the basis of *jus cogens* norms.

Australia also reiterates that the standard for the identification of jus cogens norms in draft conclusion 7 should be acceptance and recognition by the international community of States as a whole.

Finally, Australia remains doubtful of the utility of the non-exhaustive list referred to in the Annex to draft conclusion 23. Australia would have preferred the Commission to have addressed in the commentaries a limited number of established jus cogens norms using the methodological approach established by the draft conclusions.

[Madame/Mr] Chair,

Australia extends its sincere appreciation to the Commission for its careful consideration of protection of the environment in relation to armed conflicts.

Australia reaffirms its support for the call for States, pursuant to their obligations under international law, to take effective measures to enhance the protection of the environment in relation to armed conflict and welcomes the guidance by the Commission of additional measures that States could take to further that objective.

Respect for existing international humanitarian law can limit the impact that armed conflict can have on the natural environment and the populations that depend on it.

Australia encourages all States to take concrete measures to enhance respect for international humanitarian law rules protecting the natural environment, including the dissemination of these rules and their incorporation into military manuals, and national policy and legal frameworks.

In reference to the draft Principles adopted by the Commission, Australia further welcomes the references to “applicable international law” which highlights that this topic does not suggest new or amended interpretations of existing international humanitarian law.

Australia emphasises that there are substantive differences under international humanitarian law between obligations related to international conflicts and those related to non-international conflicts, noting that the draft Principles do not currently provide differentiation.

[Madame/Mr] Chair,

Australia welcomes the Commission’s achievements this year. With the current term of the Commission coming to an end, we wish to thank all its members for their dedication and contribution to the codification and progressive development of international law.

We welcome the new members commencing on the Commission in 2023. Although gender balance continues to evade the Commission, we are pleased to see that the new membership will include a larger number of women than before. We encourage the Commission to ensure gender

balance among the Bureau, Drafting Committees, Special Rapporteurs and other officeholders.

Finally, Australia reaffirms our support for the Commission, which provides an invaluable contribution to the rules-based international order.

Thank you.