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UNITED NATIONS GENERAL ASSEMBLY SIXTH COMMITTEE

REPORT OF THE INTERNATIONAL LAW COMMISSION (CLUSTER 2): CRIMES AGAINST HUMANITY

28 October 2016

Statement by Michael Bliss

Mr Chairman,

Australia welcomes the work completed by the Commission on the topics combined under Cluster 2.

The work undertaken by Special Rapporteur, Mr Murase, on the protection of the atmosphere is to be commended, and Australia will continue to follow this closely, conscious that this work needs to proceed in a manner that takes account of international efforts to combat climate change and other existing instruments relevant to management of the atmosphere.

Australia also welcomes the work of Special Rapporteur, Mr Tladi, on jus cogens. We look forward to reviewing the results of consideration by the drafting Committee on draft conclusions 1 and 3. This work is, and will continue to be, fundamental to our understanding of peremptory norms. Careful consideration of the manner in which the results of this work is finally presented will be crucial.

Mr Chairman,

Australia welcomes the Commission's progress on the topic of crimes against humanity and the provisional adoption of four draft articles together with commentaries by the Commission. It is on this topic that I intend to focus my remarks today. Australia thanks the Special Rapporteur, Mr Sean Murphy, for his leadership on this topic. We also thank

the drafting Committee for its constructive engagement with the Special Rapporteur's proposals.

Mr Chairman,

We meet at a time at which the international community is grappling with a range of intense conflicts and situations in which crimes against humanity are a constant feature. Our objective must be to prevent, and to punish, such crimes. The ILC's work to clarify the elements of crimes against humanity is a crucial element of this endeavour.

As we know, a legal framework for dealing with crimes against humanity exists in the Rome Statute of the International Criminal Court. Importantly, the Special Rapporteur has made clear that these draft articles seek not to replace or compete with this framework, but to complement it. The definition of 'crimes against humanity' is taken directly from the Rome Statute and the commentary to Article 1 underlines that the draft articles will avoid any conflicts with relevant existing treaties.

Australia welcomes emphasis in the draft articles on the importance of the adoption of national laws and inter-State cooperation on the prevention of crimes against humanity.

Australia considers that the Commission's work on this topic will contribute to our efforts to prevent and punish these crimes and encourage States to implement effective legislative, administrative, judicial or other preventive measures as envisaged by draft article 4.

Mr Chairman,

Australia has expressly and comprehensively criminalised crimes against humanity under Australian domestic law. Australia has provided for such crimes consistent with the Rome Statute and therefore, draft article 3 as provisionally adopted by the Commission.

Australia has made these offences unrestricted such that they apply whether or not the conduct constituting the alleged offence occurs in Australia, and whether or not the victim or the offender was an Australian citizen, resident or body corporate. In addition to domestic criminalisation of crimes against humanity, Australia has criminalised attempting to commit such a crime; and inciting, aiding, abetting, counselling or procuring the commission of such a crime, or conspiring to commit such a crime. Australia provided detailed information in January, including the text of the relevant statute, in response to the request of the Commission.

Mr Chairman,

Australia welcomes the Special Rapporteur's next tranche of work in this important area and efforts to achieve a first reading of the entire set of draft articles by 2018. We look forward to engaging with the Commission on the next six proposed draft articles including in relation to criminalisation under domestic law, investigation and prosecution, international cooperation and treatment of an offender.