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Report of the International Law Commission on the Work of its Seventy-First Session

Cluster I

Statement by Mr Jordan Aitken, Adviser, Department of Foreign Affairs and Trade

(Check against delivery)

Chair

Australia welcomes the adoption by the Commission of its draft articles on crimes against humanity.

We extend our thanks to the Special Rapporteur for his leadership, for taking into careful account the views of states and for the extensive effort he has put in to crafting the draft articles.

As we consider the substance of the draft articles, we are mindful of the Commission's recommendation that States elaborate a Convention on the basis of the draft articles and the potential benefit such a convention may bring.

We recognise the role such an instrument could play in closing the gap in the current structure of conventions regarding serious international crimes and we are open to continuing a conversation with other States in this regard.

Chair

Australia welcomes the Commission's continued work on peremptory norms of general international law.

We note the importance the Commission's work has in providing clarity to the international community on the peremptory character of norms of international law.

Australia also welcomes consideration of proposed draft conclusions on the consequences and legal effects of peremptory norms of general international law, and the accompanying commentaries.

The draft conclusions provide a useful framework to assist with the identification of peremptory norms of international law and their content.

Australia has taken note of the varying views as to the propriety of dealing with the question of the existence of regional jus cogens and the inclusion of a list of peremptory norms of general international law in the fourth report of the Special Rapporteur.

Australia remains doubtful as to the utility of further consideration of regional jus cogens, given the conceptual and practical challenges involved, the significant debate relating to the utility of such a concept and whether the concept could undermine the universality of jus cogens.

In relation to Draft Conclusion 23, which provides for a non-exhaustive list of peremptory norms of general international law, Australia remains unconvinced of the practical value of such a list.

Should the inclusion of such a list nevertheless be considered necessary, we note the important clarifications provided in the Commentary to Draft Conclusion 23 that: (i) the draft conclusions are methodological in nature and do not attempt to address the content of individual peremptory norms of general international law; and (ii) the list merely represents a non-exhaustive list of those norms which have previously been referred to by the Commission as having peremptory character.

We commend the progress made by the Special Rapporteur and the Drafting Committee to date and recognise that there is further work to be done. Australia looks forward to future developments on this matter and continues to recommend a balanced approach be taken on the Commission's work on peremptory norms of international law.

Thank You.