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

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Statement by Ms Alexandra Hutchison, First Secretary and Legal Adviser of the Permanent Mission of Australia to the United Nations

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Thank you Madam Chair,

Australia wishes to thank the International Law Commission for its report this year on the work of its 72nd session.

We welcome the Commission's achievements this year, despite the challenges posed by the COVID-19 pandemic.

We encourage the Commission to continue exploring how virtual or hybrid working methods could also be used to strengthen engagement with the Sixth Committee and its Member States, and to enable a more inclusive and diverse composition of the Commission.

Madam Chair,

Australia would like to make some remarks today on the Commission's work on Provisional Application of Treaties.

We thank the Special Rapporteur, Mr Juan Manuel Gómez Robledo, for his work on this topic through the publication of six reports, and the Commission for the development of the Guide to Provisional Application of Treaties.

Australia welcomes the Guide as a framework for guiding international bodies and governments on the provisional application of treaties. It is a useful compilation of contemporary practice.

Provisional application is an important and practical mechanism available to States and international organisations where circumstances call for the application of some or all provisions of a treaty prior to its entry into force.

One of the overarching objectives of provisional application is that it should facilitate the subsequent entry into force of the treaty. Australia therefore welcomes that the commentary to the Guide highlights that provisional application can facilitate entry into force of a treaty.

Australia notes that a treaty should not be provisionally applied in a manner that in effect bypasses important domestic or constitutive procedures. The commentary to the Guide provides important clarity on this point, and we also welcome the compilation of provisions in the Guide that reflect this qualification.

The draft guidelines strike a good balance between protecting compliance with domestic or constitutive procedures and facilitating provisional application of treaties.

Australia also supports the Commission's recommendation that the General Assembly should request the Secretary-General to prepare a volume of the United Nations Legislative Series on the practice of States and international organisations in the provisional application of treaties. Australia encourages Member States and international organisations that have not provided such information to do so in order to promote wider knowledge of such practice.

Madam Chair,

More broadly, Australia notes with appreciation the Commission's consideration of other formats for its work that could be most useful for States, beyond draft Articles only.

Where the Commission decides to develop non-binding guidelines or conclusions for a particular topic, we encourage the Commission to make clear in its reports why this decision was made, and what is the need for them, in order to help facilitate States' understanding of and support for the Commission's non-binding work.

This is especially so where the Commission decides to develop guidelines that reflect a progressive development of international law. In such cases, the Commission should make clear which parts of the guidelines or conclusions represent the codification of existing international law, and which parts represent the progressive development of international law.

Australia also encourages the Commission to give due consideration to specific actions that it could recommend to States to most effectively promote its non-binding work going forward.

Thank you.