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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



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

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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 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,

As we have achieved 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