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As an overarching comment, Australia invites the Commission to clarify how the terminology used in the draft conclusions interacts with the draft conclusions on the identification of customary international law.

For example, draft conclusion 5(2) requires that to identify a general principle of law, a comparative analysis is required. This is similar to the requirement in the draft conclusions on customary international law. The Commission should consider whether the draft conclusions on customary international law should be revised to reflect the requirement in draft conclusion 5(2).

In our view, it would be helpful if consistent terms were used across the two sets of draft conclusions where appropriate. Otherwise, where the Commission intentionally adopts different language, Australia recommends the commentaries clearly explain the different terminology used.

Australia welcomes the outline in the Second Report on how to identify customary international law. The Commission should consider whether the draft conclusions on customary international law should be revised to reflect the outline in the Second Report.

Australia recommends the Commission provide further clarification on what constitutes a general principle of law, and whether a general principle must be compatible with the international legal system. The Commission should consider whether the draft conclusions on customary international law should be revised to reflect the Commission's clarification.

A definition of terms would also enhance the draft conclusions, including a definition of a general principle of law. The Commission should consider whether the draft conclusions on customary international law should be revised to reflect the Commission's clarification.

In relation to general principles formed in the international legal system, Australia welcomes the clarification in the Second Report on how a general principle in this category would be identified and how its identification differs from the identification of customary international law.

Given the limited practice on general principles formed in the international legal system, aspects of the draft conclusions present the codification of existing international law, and which parts represent the progressive development of international law.

Australia invites the Commission to further clarify how general principles of law derived from the international legal system can be distinguished from other sources of international law, such as customary international law or treaties.

In this regard, Australia welcomes the inclusion in the next programme of work the relationship between general principles of law and other sources of international law

Australia also supports in particular to clarify ascribed to general principles of law, as demonstrated by State practice and decisions of international courts and tribunals

Australia commends the progress made by the Special Rapporteur and the

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topic.

Thank you.