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Thank you Chair,

Australia acknowledges the particular importance of this Cluster on the definition of crimes against humanity and general obligations.

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We have reflected closely on the statements, submissions and other observations made to date on the draft articles within this Cluster by States, observers, civil society, academia and others.

## Draft article 2

From the outset, Australia reaffirms its in principle support for the definition of crimes against humanity set out in draft article 2.

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We acknowledge this definition draws heavily from Article 7 of the Rome Statute of the International Oriminal Court (ICC), to which some United Nations (UN) member States are not party.

However, as others have said this week, the International Law Commission (ILC) did not prepare these draft articles in a vacuum.

And draft article 2 reflects what was and in our view largely still is the prevailing view of the international community on the definition of crimes

Permanent Mission of Australia to the United Nations 150 East 42nd Street, New York NY10017-5612 I +1 (212) 351-6600 I <u>australiaUN@dfat.gov.au</u> www.uppy mission.gov.au We note there are different views on whether or not this definition reflects customary international law.

However, as others have said this week, the purpose of the draft articles was not limited to codification of customary international law. It was about putting forward a balanced set of draft articles that could garner the widest possible support as the basis for negotiation by States.

based simply on its consistency

with the Rome Statute.

Rather, it is because there is benefit in basing negotiations on a definition that has such broad and cross-regional acceptance and implementation into national laws.

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## Third, Australia notes there are different views on whether or not the draft

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Second, consistent with the proposals from a number of delegations, Australia considers there is merit in considering whether draft article 2 should codify forced marriage as a crime against humanity, noting it has been recognised as such in a number of significant cases before international criminal courts and tribunals.

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Finally on draft article 2, Australia is also considering ways in which the draft

as well as proposals to recognise reproductive violence as a crime against humanity.

Draft article 3

Chair,

I will now turn briefly to draft article 3. Australia supports the general obligatif

Permanent Mission of Australia to the United Nations 150 East 42nd Street, New York NY 10017-56121 +1 (212) 351-6600 I <u>australiaUN@dfat.gov.au</u> www.unny.mission.gov.au In particular, we support the important reaffirmation in paragraph (2) of draft article 3 that crimes against humanity can be committed both in peacetime and during armed conflict, where such acts are committed as part of a widespread or systematic attack directed against any civilian population.

We note that some States have questioned whether crimes against humanity can

chapeau of draft article 2 somehow implies that the scope of crimes against humanity is limited to acts committed in armed conflict.

Australia does not agree with this assertion and nor is it supported by the

commentaries to the draft articles.

On the contrary, Australia considers that the effect of is to generally exclude non-civilians (i.e. combatants) from the class of victims of crimes against humanity.

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Acts that would otherwise constitute crimes against humanity against combatants in the context of an armed conflict would amount to war crimes or violations of international humanitarian law, which are classes of crimes dedicated specifically to addressing violations in armed conflicts.

Draft article 4

Chair,

crimes against humanity under draft article 4.

We appreciate that it provides high-level and non-exhaustive guidance on the scope of this duty, while maintaining a level of flexibility for States when implementing preventive measures that are most appropriate for their national systems.

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It also makes clear, for the avoidance of doubt, that all preventive measures and interstate cooperation must be in conformity with international law.

We consider the balance struck by the ILC in draft article 4 is sufficient and appropriate for States to be able to able to implement the duty to prevent effectively, noting also the existing jurisprudence on such an obligation, as

Nonetheless, Australia notes that some States have suggested draft article 4 should be elaborated for clarity or precision. We remain open to engaging on specific proposals to that effect.

Chair,

In conclusion, we remain convinced that the draft articles in this Cluster provide a strong and balanced basis for future negotiations on a convention on crimes against humanity.

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I feel compelled to emphasise that this does not mean a cut and paste exercise. As we have said, Australia sees merit in making adjustments, including to the definition, that support the overall objective of preventing and punishing crimes against humanity.

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But deep engagement to date on the draft articles continues to give us confidence that States are ready to use them as a valuable starting point for future negotiations.

Thank you.

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