



Commission's conclusions on the state of the law governing the identification of customary international law.

We do not have a strong view on the suggestion that draft conclusion 1 on scope could

forum, inaction should not be assumed as evidence of acceptance of law. A State would first need to know of a certain practice and have had a reasonable time to respond. However, we wish to emphasise again that States cannot be expected to react to everything, and that attributing legal significance to inaction must depend on all the relevant circumstances of the particular case.

Australia agrees that a resolution adopted by an international organization or at an intergovernmental conference cannot, of its own right create a rule of customary international law. We will carefully assess the commentary to draft conclusion 12 in this light.

Mr Chairman,

Australia thanks the Secretariat for its comprehensive and informative memorandum on the role of decisions of national courts in the case law of international courts and tribunals for the purpose of the determination of customary international law. The Commission's approach of regarding national court decisions as a form of State practice, a form of evidence as acceptance as law, and potentially as a "subsidiary means" for determining the existence of a customary rule is, in Australia's view, appropriately reflected in draft conclusions 6, 10, and 13.

We also thank the Special Rapporteur for his work in preparing a draft bibliography on