STATEMENT BY

Chapter VI
(Protection of persons in the event of disasters)

Mr. Chairman,

1. My Government welcomes the sixth report of the Special Rapporteur, Mr. Valencia-Ospina, which comprehensively focusses on cooperation and prevention. The report cites many international, regional and national sources that are relevant for the topic under consideration. However, with reference to the plenary debate of the Commission on the sixth report, we can agree with the hesitations that were expressed by some ILC members with regard to section B of the report, on *"prevention as a principle of international law"*. In our view, the principle of prevention should indeed

Leaving it as a separate article would in our view give too much prominence to the pre-disaster phase. As stated previously,we favor a clear focus of this study on the phase of the actual disaster, with reference to the title of the study.

3. Draft article 16 deals with the duty to reduce the risk of disasters. We consider the adjustments made to this article in the course of the Commission’s deliberations as useful, as we were not fully convinced by the initial drafting of this article. The current wording better clarifies that the duty to reduce the risk of disasters applies to each state individually, implying measures primarily to be taken at the domestic level.

4.

Chapter VII
(Formation and evidence of customary international law)

Mr. President,

1. We have read the Commission's discussion on customary law with great interest and congratulate the Special Rapporteur Michael Wood and the Commission with the initial thinking on this subject. I would like to make a few comments on the discussion so far.
2. My delegation supports the change of the title of the issue to the 'Identification of Customary Law'. This more appropriately describes a focus on improving transparency about the process of the establishment and development of customary law. This move towards greater transparency and providing an authoritative statement on how to identify customary international law is important for two reasons.
3. First of all, I would like to underline that the Commission's work may be of great relevance to national judges who at times may need to apply customary law. In particular, it is relevant to note that in many jurisdictions in the continental legal tradition customary law is frowned upon, if not looked at with suspicion. As tradition wants it, law must be codified in writing and a reference to international law in the shape of customary law is frequently misunderstood. The process of the

whether it takes the shape of written law or customary law. While *ius cogens* is much debated both in academia and between practitioners, we would consider that the identification of how a rule obtains the status of a peremptory norm from which deviation would not be legitimate, to be quite distinct from the identification of rules of customary law.

6. The central theme of the research is the identification of customary law. Clearly references to the law of treaties are relevant to this research, we have no doubts about that. At this stage however, we do not quite understand the reference to general principles of international law in the discussions. The general principles are understood to be secondary sources of international law, and so their relevance for the identification of customary law is not directly obvious. We would appreciate to better understand this approach and look forward to future work in this respect.

Chapter VIII
(Provisional application of treaties)

Mr. Chairman,

7. Turning to the topic of Provisional application of treaties, let me congratulate the Special Rapporteur, Mr. Juan Manuel Gómez-Robledo, on his first report. We have read the report as well as the subsequent discussion within the Commission with great interest, and

appreciate the memorandum provided by the Secretariat which provides relevant background information.

8. The Special Rapporteur sets out the main parameters of provisional application. While we view this approach as a necessary initial step to establish the framework for future work, we are not convinced whether the issues identified by the Special Rapporteur in paragraph 53 of the report are indeed the ones in need of further clarification and whether it provides the adequate framework for conducting the study.

9. Although we view the provisional application of treaties to be an instrument of practical relevance, we do not believe that, as the report seems to suggest, it is for the Commission to encourage greater use of it. In our opinion, the main purpose of the study at this stage should be to elucidate the concept of provisional application.

10. With the Special Rapporteur we agree that the Commission should not aim at changing the terms of the Vienna Convention, but rather thoroughly analyzeState practice in the light of the language of article 25 of the Convention. This is all the more relevant in light of determining the status of that provision under customary international law, which we believe the Special Rapporteur should reflect upon.

15. Since the Commission has only just embarked upon exploring this topic, it may still be too early to discuss a preferred outcome. The study should give guidance to States on how to use the instrument of provisional application - if they so choose - and, in such cases, should inform them of the legal consequences thereof, without imposing a particular course action that might prejudice the flexibility of the instrument. As with other studies undertaken by the Commission practical utility should be the yardstick with which to measure its usefulness.

Thank you, Mr. Chairman