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CHECK AGAINST DELIVERY

Statement by:

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Agenda Item 79

**Report of the International Law Commission on the work of its sixty-third and
sixty-fourth sessions**

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Mr. Chairman,

At the outset, Israel would like to express its appreciation to the ILC and its ongoing work. We believe the dialogue between the Commission and the Sixth Committee is of great value and we welcome once again the opportunity to share our observations relating the report of the ILC on the work of its sixty-third and sixty-fourth sessions.

Turning to Chapter IV of the report, we note that the Commission has made significant progress in its consideration of the topic of **Expulsion of Aliens**, by completing a first reading of the draft articles. We commend the Commission in general and the Special Rapporteur, Mr. Kamto, in particular, for their work.

With the completion of a first reading it is an appropriate time for reflection as we consider the way forward regarding this topic. Our point of departure is the topic's inherent legal complexity and political sensitivity. We recall that the aim of the work is to strike a delicate balance between a State's exercise of sovereign prerogatives regarding admission to its territory on the one hand, and the protection of fundamental human rights on the other. We reiterate our view that this goal can be best achieved by focusing strictly on well-settled principles of law, reflected in widely established State practice.

In this regard, we note the numerous methodological questions concerning the Commission's work, including the extent of its reliance on the diverse and specific national and regional jurisprudences in this field and the methods of determining the relevant general rules of international law. These and other questions were raised with respect to voluntary departure and protection of property. These issues which are governed either by extensive national legislation or a regional framework of rules and regulations, have not been settled in international law. Consequently, doubts remain as to the basis or need for codification *de lex lata*; equally controversial is the question of whether treatment *de lege ferenda* – as suggested by the Special Rapporteur regarding the current formulation of provisions on readmission and appeal procedures – is suitable.

Furthermore, we note that the draft articles contain elements which are analytically and substantively controversial, such as the scope of application with respect to aliens in transit, as well as the interplay with other fields of international law, in particular extradition, diplomatic protection and State responsibility. This topic raised significant practical concerns which are not simply academic in nature. They relate to difficulties in interpretation and application of the draft articles, which will only be compounded by the topic's delicate public policy aspects, including migration and national security. Such considerations have direct implications on the future form of the Commission's work, including whether this area of law is ripe for prescriptive regulation. In light of these considerations, Israel is of the opinion that the final form of the Commission's work should be determined at a later stage, and that perhaps a

more advisable and realistic outcome may take the form of general well-established guidelines of States' best practices. We concur with the Special Rapporteur's assessment that since the full draft articles and commentary have become available, States are in a better position to make informed decisions with regard to their preferences for the final form of the work, and we encourage them to share their views in this regard.

We also take note of the Commission's transmittal of the draft articles to Governments for comments and observations. Israel is thoroughly studying this extensive body of work with the intention of submitting such comments and observations, and we accordingly reserve our position on all substantive matters.

Mr. Chairman,

Turning now to the topic of **Protection of persons in the event of disasters**, we commend the Special Rapporteur, Mr. Eduardo Valencia-Ospina, for his thorough work as reflected in his fifth report.

While Israel continues to attach great importance to this topic, we support the view expressed by some Commission members that the topic should not be considered in terms of rights and duties but rather with the ultimate goal of guiding international voluntary cooperation efforts. We are accordingly of the view that this should also be reflected in the draft articles currently proposed by the Rapporteur.

As regards Draft Article A, while we welcome the proposed elaboration of the duty to cooperate, we think there is a need to clarify that such cooperation measures are not an obligation imposed on the assisting State but rather optional measures which it may apply with discretion.

Similarly, as regards Draft Article 14, Israel is of the view that the language of this draft article should clearly reflect the right of the affected state or of the assisting state to terminate the assistance at any time.

Finally, we wish to reiterate our view that the duty of States to cooperate is understood in the context of an affected State retaining primary responsibility for protection of persons and the provision of humanitarian assistance in its territory.

Thank you.