(*Translation from Spanish*)

STATEMENT OF CHILE

REPORT OF THE INTERNATIONAL LAW COMMISSION / PART I

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Mr. Chair (Burhan Gafoor, Singapore),

As this is my first statement, I would like to begin by congratulating you on your well-deserved election to the chair of this, the Sixth Committee. I convey my respects also to the other members of the Bureau.

I would also like to congratulate the President of the International Law Commission, the distinguished jurist Georg Nolte, for the excellent presentation that he made with regard to the work of the Commission during its sixty-ninth session.

This is the first session at which the Commission is meeting with its new membership. At the same time as extending a warm welcome to the new members elected by the General Assembly at the end of last year and wishing them every success in their important responsibilities, I would like to draw attention to the fruitful work accomplished by the Commission at this session.

A number of important issues were considered by the Commission this year. I shall be referring to most of them at this session – when I shall be considering the issues of "Crimes against humanity" and "Provisional application of treaties" – and to others which I shall be taking up at subsequent sessions.

I would also like to express our support for the Commission's decision to include two new items in its long-term programme, "General principles of law", an item complementary to that of the "Identification of customary law"; and "Evidence before international courts and tribunals", an issue of growing importance at the current time, as evidenced by the proliferation of international judicial bodies and the increase in cases before the International Court of Justice.

We also welcome the decision by the Commission to mark its seventieth anniversary next year, at meetings to be held both in New York and in Geneva. These meetings provide good opportunities for members of the Commission and representatives of Governments to

exchange views on the work of the International Law Commission and the future work that it will undertake.

In its recent work, the Commission has focused not just on the drafting of articles, but also on guidelines, principles and conclusions. Nonetheless, the item of "Crimes against humanity" still calls to mind the great projects undertaken by the Commission in the past, thereby opening the possibility of eventually converting this material into an international treaty instrument.

The Special Rapporteur, Mr. Sean Murphy, presented his third and penultimate report this year, which addressed the following issues in particular: non-refoulement; extradition; mutual legal assistance; victims, witnesses and other affected persons; the relationship to competent international criminal tribunals; federal State obligations; monitoring mechanisms and dispute settlement; remaining issues; and the preamble to the draft articles and the final clauses of a convention.

As a result of its consideration of the topic at the present session, the Commission adopted, at first reading, a draft preamble, 15 draft articles and a draft annex, together with commentaries thereto, on crimes against humanity. The Commission decided to transmit the draft articles, through the Secretary-General, to Governments, international organizations and others, for comments and observations, with the request that such comments and observations be submitted to the Secretary-General by 1 December 2018.

The topic under consideration, set out in chapter IV of this report, is to bridge the gap as regards implementing national legislation of crimes against humanity. As we know, international courts are limited by their budgets and capacities in judging the potential perpetrators of such crimes. In addition, the principle of complementarity, to which the International Criminal Court is subject, restricts its competence, meaning that the initial work in these areas should be conducted by national courts, whose States should define the crimes in an appropriate manner and to the required international standards. This would strengthen international criminal law in a consolidated and consistent manner, thereby helping to prevent the impunity of the perpetrators of these grave crimes.

With regard to the articles to be discussed in particular at this session, let me turn to the principal ones among them, without prejudice to any comments which my Government shall present in due course on the draft articles adopted on first reading.

We agree fully with draft article 5 referring to "Non-refoulement". As stipulated in paragraph 1 – and I quote: "No State shall expel, return (*refouler*), surrender or extradite a person to territory under the jurisdiction of another State where there are substantial

grounds for believing that he or she would be in danger of being subjected to a crime against humanity."

We believe that today it is more important than ever to establish that States are duty-bound not to deliver, return or extradite persons who may be victims of crimes against humanity in the territory of another State. This should be an undertaking made by the entire international community. Many people have had to flee their countries to seek refuge in other States, owing to the risk of being victims of a crime against humanity. They deserve to have their lives and physical integrity ensured.

On draft article 12 on "Victims, witnesses and other persons", we see merit in both the duty of protection to be exercised by States, but also in establishing the right to reparation for material and moral damage that may have been caused to victims, either individually or collectively.

We welcome the detailed and thorough content of draft article 14 on "Mutual legal assistance", which includes an even more detailed annex, referred to in its paragraph 8. The standardization of the rights and duties of States in these matters is a priority which States must not underestimate. Often, failed investigations into crimes against humanity are marked by poor cooperation and excessive bureaucracy in States that are required to provide such assistance.

Lastly, we see merit in granting competence to the International Court of Justice in article 15, as a body called upon to settle disputes that may arise concerning the interpretation or application of the present draft articles, although paragraph 3 of the draft article in question gives States the option to decline this competence, by making an express declaration to that effect. This gives flexibility to the draft, as States could opt for other means of resolving such conflicts of interpretation or implementation.

Finally, in the area of international cooperation relating to crimes against humanity, we wish to highlight the initiative of pushing ahead with a multilateral treaty of universal scope, on mutual legal assistance and extradition, for the domestic prosecution of the most serious international crimes, as promoted by Argentina, Belgium, the Netherlands, Senegal and Slovenia. This initiative is endorsed by our country, along with other States, and we believe that a dialogue should be launched between the sponsors of this initiative and the Special Rapporteur.

We commend the work of the Special Rapporteur, Mr. Sean Murphy, and we look forward to a detailed analysis of the draft adopted at first reading, with a view to providing our comments during the coming year.

I turn now to the fifth chapter of the report on the "Provisional application of treaties", a topic entrusted to the Special Rapporteur, Mr. Juan Manuel Gómez Robledo. At the current session, the Commission referred draft guidelines 1–4 and 6–9, provisionally adopted by the Committee in 2016, back to the Drafting Committee, with a view to preparing a consolidated set of draft guidelines, as provisionally worked out thus far. The Commission subsequently provisionally adopted draft guidelines 1–11, as presented by the Drafting Committee at the current session, with commentaries thereto.

The Commission also had before it a further memorandum, prepared by the Secretariat, reviewing State practice in respect of treaties deposited or registered in the last 20 years with the Secretary-General, that provide for provisional application, including relevant treaty actions. The consideration of the memorandum was deferred to the next session of the Commission.

While, as noted above, the Commission adopted draft guidelines 1–11, with commentaries, draft guidelines 5, 10 and 11 had not previously been considered.

On draft guideline 5 referring to the "Commencement of provisional application", although it might seem self-evident, we believe it appropriate to specify the moment when this occurs, which, as stated in the draft guideline, "takes effect on such date, and in accordance with such conditions and procedures, as the treaty provides or as are otherwise agreed" by States or international organizations concerned, which, as rightly noted in the commentaries, was based on article 24, paragraph 1, of the 1969 and 1986 Vienna Conventions on the Law on Treaties, on entry into force.

Draft guideline 10 on "Provisions of internal law of States or rules of international organizations regarding competence to agree on the provisional application of treaties", is fully in line with the provisions set forth in the Vienna Conventions and with the well-known principle of international law that a State may not claim violation of a provision of internal law as invalidating its consent or that of international organizations, unless it can be shown that violation was manifest and concerned a rule of its internal law of fundamental importance in the case of States or a rule of fundamental importance for the international organization.

We also support the draft guideline 11 referring to the "Agreement to provisional application with limitations deriving from internal law of States or rules of international organizations", insofar as it grants the right to States and international organizations to agree in the treaty itself or otherwise to the provisional application of the treaty or a part of the treaty, with limitations deriving from the internal law of the State or the rules of the organization. This unquestionably gives flexibility to the draft guidelines.

Since March this year an interesting memorandum prepared by the secretariat of the Commission has been at our disposal, which examines in detail the practice of States in respect of the provisional application of treaties, taking as a basis the bilateral and multilateral treaties deposited and registered with the Secretary-General of the United Nations since 1 January 1996, which provide for their temporary implementation. Treaties which have not yet entered into force were also analysed. While the Commission has decided to defer the analysis of this important document to next year, I would like to commend the Secretariat on its rigorous work and the significant contribution that the drafting of this document represents in the development of this topic.

Lastly, I must commend the work done by the Special Rapporteur, Mr Gómez Robledo, who knew the best way to navigate this complex subject of international law. We very much look forward to studying his fifth report next year. Thank you.