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STATEMENT BY
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On the occasion of the seventieth session of the General Assembly

Sixth Committee
Agenda item 83
Report of the International Law Commission
Part 1

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KINGDOM OF THE NETHERLANDS
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PART 1

Chapters I – III, IV, V, and XII

Mr. Chairman,

1. Let begin by expressing my Governments appreciation to the International Law Commission for the work achieved during its sixty-seventh session. The Special Rapporteurs have presented reports on a wide range of topics leading to equally diverse debates in the Commission. My Government continues to support the work of the ILC and its role in the codification and progressive development of international law.

2. We would also like to congratulate the Commission for the excellent work on its website. It has improved markedly. We consider the accessibility of the website and the availability of the work of the Commission to the public at large of the utmost importance. The same applies to the external links relevant to the broader topic of the codification of international law and its progressive development. The Commission has succeeded in facilitating both by its new website, which is much appreciated.

3. May I add, perhaps, that the same cannot be said of the current website of the United Nations in general, which in its new form reduces the visibility of UN's work on international law. This we regret and we would call on the Legal Counsel to ensure that information on international law remains easily accessible.

4. As to the members of the Commission, we would like to congratulate Mr Kolodkin on his return as a member of the Commission. I am sure the work of the ILC will benefit from his participation.

5. As to the organisation of work of the 6th Committee, I note the organisation of the clusters we are discussing this week. These discussions here are important as the presence of the legal advisors from capitals allows for an in-depth sharing of views. The division of the subjects over the three clusters appears somewhat unbalanced, and regretfully this year, some of the most important topics about which we would particularly appreciate hearing the views of others, have been scheduled for next week. Most legal advisors will by then have left New York. Perhaps more consideration could be given to the planning of our discussion on the various topics next year.

Chapter IV
(The Most Favoured Nation Clause)

6. Turning now to the final report of the Study Group on the MFN clause, we would like to congratulate the ILC for having finalised its work on this topic. The Report of the Study Group provides an overview of the development and practice concerning MFN clauses and describes its

application in the various relevant contexts such as the WTO and investment treaties.

7. As to the conclusions of the Study Group, my Government notes that no significant changes to the 1978 draft articles have been deemed necessary and that the report's focus, therefore, is on guidance with respect to the application and interpretation of said draft articles. We also agree that this guidance, in turn, should be based on the Vienna Convention on the Law of Treaties of 1969.

8. The report helpfully concludes that the general rules of interpretation as codified in the VCLT also apply to provisions in treaties constituting an MFN-clause, the starting point being the actual wording of the clause, in the light of the object and purpose of the treaty. Due to this general rule of interpretation, my Government would concur with the conclusions of the Study Group that no general rules on the interpretation and application of MFN-clauses exists but that MFN-clauses must be interpreted individually.

9. However, my Government would like to stress that it attaches much importance to the *ejusdem generis* principle and that the treatment to be claimed on the basis of an MFN clause has to be determined on a case-by-case basis.

10. In the Netherlands, bilateral investment agreements are based on a Model Bilateral Investment Agreement. On basis of this Model BIT, MFN clauses are usually specified in that they are limited to treatment for "investment" and not applicable to provisions regarding dispute settlement. My government is of the opinion that dispute settlement clauses are individual to each bilateral investment treaty and that, therefore, they should not be covered by MFN-clauses.

Chapter XII

(Other decisions)

11. In closing, I note that we remain unconvinced that the topic of *jus cogens* must be included in the programme of work of the Commission, for reasons stated extensively last year. The need for a study on the very notion of *jus cogens* continues to elude us, as there are no signs from States that any codification of this topic is needed. We do not see a need for progressive development on this topic either. In addition, we think the timing is also suboptimal in view of the fact that the project on customary international law is still ongoing and that, for good reasons, the topic of *jus cogens* has been excluded from the project on customary international law.

Thank you, Mr. Chairman.