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Statement by
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Mr. Chairman,

Allow me to congratulate you and the other members of the Bureau on your elections and on the remarkable manner in which you, Mr. Chairman, are conducting the work of this Committee.

I also wish to thank the Chairman of the International Law Commission, Mr. Pedro Comissário Afonso of Mozambique, for his presentation of this year's report.

Today I will address three topics: the "Protection of persons in the event of disasters"; the "Protection of the atmosphere"; and, on a more procedural aspect of the Commission's activity, the "Provisional application of treaties."

Mr. Chairman,

The International Law Commission's work on the **"Protection of persons in the event of disasters"** has reached a convergence embodied in the eighth report of the Special Rapporteur, which reviews the comments of States and international organizations, and in the 18 draft articles on the topic approved on June 3, 2016. Today I would like to make an initial assessment of this work and on the way forward for this challenging issue.

In the wake of the unprecedented array of recent natural disasters – including earthquakes floods, tsunamis and typhoons that have taken a large toll in human life and sparked massive international response efforts – Italy believes that the codification effort embodied in the Draft Articles **will deliver much-needed clarity, coherence, guidance and effectiveness** of action.

The need to address codification is self-evident. There is a growing number of bilateral, regional and multilateral instruments relating to disaster prevention, management and response. This has created a "spontaneous" legal framework that lacks uniformity in terminology, definitions, principles, and the nature and scope of obligations. The effects of such framework are also fairly unbalanced and much depends on regional practice. We therefore recognize the strong need for coordination to foster a greater degree of legal stability and to avoid ambiguity, confusion, and overlaps.

Mr. Chairman,

The Draft Articles are **underpinned by several principles that Italy considers fundamental**, and on which a broad consensus has emerged.

First, the Italian delegation recognizes the value of the **rights-based approach** embodied in articles 5 to 7. In a context of material loss, chaos and weak law enforcement as a result of a disaster situation, where there is a high risk of human rights violations and abuses, we support the recognition of human dignity and human rights as absolute principles that the humanitarian response must uphold. While protection must be extended to all persons affected by a natural disaster, we commend the **emphasis on the needs of the most vulnerable**, such as children, women, the elderly and people with disabilities, since disasters cause disproportionate disruption to the lives of specific social groups. This additional recognition complements the rights-based approach.

Second, the **issue of risk prevention** reflects advances in the practice of disaster law. Significant progress has been made since the Hyogo Framework (further developed in the Sendai Framework) in terms of risk reduction, early-warning mechanisms, enhanced cooperation, and information sharing, to name a few.

Italy is at a constant high risk of disasters. The recent earthquake in Amatrice, for example, claimed nearly 300 lives and displaced thousands of people. This is why Italy has had a national framework since 1992, when it adopted the law establishing the National Civil Protection Service, whose responsibilities include risk reduction, disaster management and resilience. The establishment of the Civil Protection Department was a milestone in our disaster-risk reduction policies and activities. Based on our national experience, we strongly believe in co-operation between Humanitarian and Civil Protection authorities in Disaster Risk Reduction, which was also one of the priorities of the Italian Presidency of the European Union in 2014.

As more countries develop and refine similar national instruments, the Draft Articles strengthen the link between risk reduction and the duty to cooperate among States set out in Art. 10: prevention earns formal recognition on an equal standing with response in disaster law. This is a significant achievement.

Third, the contingency posed by disasters **adds another dimension to the principle of cooperation among States**. In an emergency situation, legal instruments customarily emphasize information exchange and assistance request - and subsequent delivery - mechanisms, which must be activated by the affected State. Art. 13 of the Draft Articles takes a bolder approach and recognizes that States affected by a disaster exceeding their national capacity response have a duty to request assistance. On this issue the Draft Articles reach **a satisfactory compromise between the conflicting principles of a rights-based approach and State sovereignty**: while the determination of the capacity response rests solely within the sovereign prerogatives of the affected State, this provision demands that the protection of the universal rights I mentioned earlier cannot not be solely dependent on the capacity response of a State.

Mr. Chairman,

I commend once again the work of the Commission on the Draft Articles, which represent an invaluable asset in an area, disaster law, where there has been a relative lack of universal vision. **We do see room for improving the principles enshrined in the Draft Articles**, especially from a normative perspective, and I can assure the Commission that Italy, on

the strength of its practice and its legal and academic traditions, will continue to contribute to the consolidation of Disaster Law as a specific area of International Law.

Mr. Chairman,

The Italian Delegation has studied with great interest and appreciation the work on the "**Protection of the atmosphere."** We thank the Special Rapporteur, Professor Murase, for his work on the third report and commend him on the progress made in the preparation of the draft guidelines. In the year since the signature of the Paris Agreement on climate change, environmental issues have been high on the international agenda. In this framework, the draft guidelines on the protection of the atmosphere – although the Special Rapporteur's mandate is defined narrowly to avoid interfering with political negotiations or entering into environmental law – constitutes progress in this vast realm, a small tile in a complex mosaic.

We would like to focus on two features – one procedural and one substantive – of the work being done by the Special Rapporteur and the Commission pursuant to the 2013 mandate.

1) The **involvement of scientific experts** in the delicate field of international environmental law is very useful. Last year this dialogue proved useful when it came to defining the term "atmosphere" and the notions of atmospheric pollution and degradation - setting the scene for the subsequent guidelines. The participation of scientists demonstrated the need for expertise in various fields in order to draft an adequate legal response. The commentary to Guideline 7 makes this quite clear.
2) My Delegation warmly welcomes the progress made in the preparation of the draft guidelines on this topic. Particularly since the key issues of international environmental law are treated in a way that comprehends both scientific and legal sources while retaining a remarkable conciseness.

Despite the non-binding character of the future guidelines, the introduction of principles and concrete measures to address environmental problems that could endanger the atmosphere is noteworthy. Guideline 3, as a cornerstone of the draft text, capsulizes the role of **due diligence** as an obligation for States to "*prevent, reduce or control*" atmospheric pollution and degradation. The guidelines introduce **environmental impact assessment** to control public and private activities, while applying the principles of the sustainable and equitable use of the atmosphere in intentional large-scale modification. The work done takes stock not only of the relevant decisions of international tribunals – from the landmark case *Gabčikovo-Nagymaros* to the most recent *Pulp Mills* judgment – but also of the 2030 Development Agenda and the Paris Climate Agreement.

My Delegation attaches great importance to the activity of the ILC in this field and we are confident that we will soon see a final draft of useful guidelines, and look forward to the 69th session of the International Law Commission.

Mr. Chairman,

I would like to say a few words about the "Provisional application of treaties" in Chapter XII of the Report. In 2012 the Commission decided to include this topic in its programme of work and appointed Amb. Juan Manuel Gomez Robledo as Special Rapporteur. He has presented

four reports and prepared a set of draft guidelines. I take this occasion to thank Ambassador Gomez Robledo for his work and congratulate him on the results he has achieved.

This topic raises both theoretical and practical questions. The work done so far has sought a fair balance between the international rules of the Vienna Convention and the implications of the provisional application for domestic law. Ideally international rules should coexist with some accommodation for domestic law in order to create a balanced "two-tiered" legal framework. Within the European Union, we have been discussing how the provisional application fits into the general dovetailing mechanisms between EU and national law. I am sure that in this respect, the EU 'case study' will provide the debate with useful insights.

Apart from the specific dimension of Treaty-making within the EU, there is little doctrinal convergence within our own domestic legal system on the applicability of Treaties before the Parliament's formal ratification - which in Italy also encompasses the execution phase. Our Constitution sets a very strict threshold on Treaties that require parliamentary approval before gaining legal force. As we look for further guidance on this matter, we recognize the need to continue the work that has been done, and attempt to elucidate a particularly complex issue.

From a substantive perspective, we favor an approach rooted in practice, for example by providing States with a toolkit which they can use if and when appropriate. In this regard, "model clauses" could be particularly helpful.

A more thorough analysis of State practice is needed, but in any case, we encourage a prudent approach to the interpretation of such practices.

Finally, we would flag draft guidelines 7 and 8 as among the most contentious from a theoretical perspective: more nuanced language should be considered, but much will depend on the consensus that States reach on the overall scope of "provisional application."

We look forward to the future work of the Special Rapporteur and the Commission on this topic in the next stages of deliberation and in particular to the Commentaries that the Commission will examine in more detail at the next session.

Thank you, Mr. Chairman.