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Summary record of the 1482nd meeting

Topic:
State responsibility

Extract from the Yearbook of the International Law Commission:-
1978, vol. I

purposes of presentation of the Commission's report to the General Assembly. It was a highly controversial subject and not everybody would accept the right to full compensation as being axiomatic. At the same time, it would be a pity if the whole of the argument were based on the *Phosphates in Morocco* case. The Permanent Court of International Justice had considered the time element and the exception *ratione temporis* in the *Mavrommatis Palestine Concessions* case and the *Electricity Company of Sofia and Bulgaria* case, and the International Court of Justice had done the same in the *Interhandel* case and the *Rights of Passage over Indian Territory* case. After all, as the report indicated, the question of the *tempus commissi delicti* really arose only indirectly, for normally the exceptions dealt not with the commission of the breach, but with the date on which the dispute occurred, or the date of the facts or acts concerning the dispute. Reference to the more recent jurisprudence of the Court would help to restore the balance; for the purpose of achieving a rather wider perspective, reference could also be made to arbitral awards, in which the time element was frequently very important.

38. Great care should be taken in defining a single act which constituted a breach. Mr. Calle y Calle had referred to the sinking of a ship by gun-fire. A more obvious example was a case of murder, where death might occur a considerable time after the act had been committed. Indeed, in some cases, a charge of grievous bodily harm might not become a charge of murder until some weeks after the act in question. In that case, it was not the act itself that determined the time, but the date of death. He mentioned that example simply to illustrate the great care that would be required in the entire drafting of article 24.

The meeting rose at 1.10 p.m.

1482nd MEETING

Friday, 19 May 1978, at 10.10 a.m.

Chairman: Mr. José SETTE CÂMARA

Members present: Mr. Ago, Mr. Calle y Calle, Mr. Castañeda, Mr. Dadzie, Mr. Díaz González, Mr. El-Erian, Mr. Francis, Mr. Jagota, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sucharitkul, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta.

State responsibility (*continued*) (A/CN.4/307 and Add.1)

[Item 2 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR (*continued*)

ARTICLE 24 (Time of the breach of an international obligation)[1] (*concluded*)

[1] For text, see 1479th meeting, para. 1.

1. Mr. TSURUOKA thought article 24 was in its proper place in the general economy of the draft. However, the debate clearly showed that it dealt with very sensitive questions and that its practical application might prove difficult. In order to be useful, the rule to be established must not be too flexible, because it had to define a precise time or moment; at the same time, however, it must take account of the various possible types of obligations, because the *tempus commissi delicti* varied according to the actual nature of the obligation and according to the circumstances that had provoked the breach. What was needed, therefore, was a rule that was precise, but easy to apply in international practice.

2. Mr. RIPHAGEN wished first to express his admiration for the Special Rapporteur's report and oral introduction, which had brought such clarity to a difficult subject.

3. As he had said in connexion with article 23 (1478th meeting), if the content of an obligation was clear, the question of a breach of the obligation did not present any great problem. The time of the occurrence or period of duration of the breach usually involved straightforward fact-finding, for that moment or period was simply part of the facts of the case. However, the legal relevance of that moment or period for the purposes of the application of rules other than those that established the obligation was quite another matter. Even in respect of the relationship between articles 18[2] and 24 of the draft articles, some members had already referred to article 28 of the Vienna Convention on the Law of Treaties,[3] which made provision for the possible retroactive effect of a treaty obligation. At the same time, it could be claimed that the performance in good faith of a treaty obligation might imply that a party to the treaty remained bound by provisions of the treaty concerning facts or situations existing even after the treaty was no longer in force for the party in question. In other words, article 28 of the Convention provided not only for the retroactive but also for what might be called the "prospective" effect of a treaty.

4. Consequently, the text of draft article 24 should make it clear that the article did not prejudge the possibility that a treaty might be binding on a party "in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party", to use the terminology of article 28 of the Convention on the Law of Treaties, and that it did not prejudge the possibility that a treaty might be binding on a party in relation to any act or fact that took place or any situation that existed after the date of the expiry of the treaty with respect to that party.

5. Article 18, paragraph 2, of the draft expressly provided for the retroactive effect of an international obligation—admittedly, not on the basis of a treaty

[2] See 1476th meeting, foot-note 1.

[3] See 1478th meeting, foot-note 3.

but on the basis of a peremptory norm of general international law, and presumably one that was intended to have a retroactive effect. Article 18, paragraph 1, stated the general rule that an act of the State constituted a breach of an international obligation only if it were performed at the time when the obligation had been in force for that State. Article 24 in its existing formulation flowed directly from that provision. However, the time or period of an act or omission might be important for other rules, such as those concerning the nationality of claims, those concerning the competence of an international tribunal and, it might be added, those concerning the exhaustion of local remedies.

6. He was not fully convinced that the moment or period of the breach was relevant to the question of the amount of compensation payable, although it might be relevant to the question of other sanctions applicable in connexion with the breach. There again, it should be made quite clear that article 24 did not prejudge the relevance of the moment or period of the breach to those three types of rules—the rules on the nationality of claims, on the exhaustion of local remedies and on the competence of an international tribunal—for they involved considerations different from those determining the relevance of the moment or period of the breach to the rules concerning the obligation itself. Indeed, the rules relating to the competence of an international tribunal frequently dealt with facts or situations before or after a given date, rather than with acts, let alone breaches of obligations as such.

7. Even if the Commission confined itself to the question of the application of article 24 in relation to article 18, it still encountered the perennial difficulty of having to avoid prejudging the content of the primary rules. One way of overcoming that difficulty was to impart a certain tautological character to the provisions of article 24. Fortunately, a more or less tautological character was already apparent in the existing formulation, since the concepts employed in the text—the concepts of an instantaneous act, an act having a continuing character, and so on—were nowhere defined. Paragraphs 1 and 3 of the article specified tha the time of the breach was the moment at which an act or event occurred, while paragraphs 2, 3 and 5 related to a longer period. If it was the Special Rapporteur's intention that the longer periods involved in the cases covered by paragraphs 2, 4 and 5 should fall within the period during which the obligation was in force for the State concerned, he had some hesitation in view of the possible reroactive and "prospective" effect of the treaty obligation. The moment of a so-called "instantaneous" act and the moment of the occurrence of an event were relevant if the obligation specifically related to such acts and events, as individualized elements in a continuous chain of facts. In the cases covered by paragraphs 2, 4 and 5, however, the nature of the obligation, and therefore the nature of the breach, meant that the acts and facts could not be broken down into separate elements. For instance, paragraph 2 spoke of an act that subsisted, thereby pointing to a continuous chain of facts.

8. In order to retain the tautological character of article 24, any reference to substantive legal evaluations should be avoided. Consequently, the phrases "and remains in conflict with the international obligation" (paragraph 2), "although prevention would have been possible" (paragraph 3) and "in conflict with the international obligation" (paragraph 4) should be deleted, so as to avoid introducing substantive elements that fell within the realm of primary rules into the deterination of the moment or period of a breach.

9. The CHAIRMAN, speaking as a member of the Commission, agreed that article 24 was necessary and well placed. It obviously had an intimato relationship with article 18, since both dealt with the problems of intertemporal law involved in the breach of an international obligation. Indeed, it could be said that article 24 was based on the principle embodied in article 18, paragraph 1, namely, that an act of the State contrary to an international obligation constituted a breach if it was committed at a time when the obligation had been in force for that State. The crucial point was the validity of the obligation at the time when the act was committed. The contemporaneity of the perpetration of the act and of what the Special Rapporteur had called the "force" of the obligation was thus the decisive factor for the genesis of the breach. That illustrated the importance of the time element, which was relevant not only to such practical problems as the determination of the amount of reparation payable, the establishment of jurisdiction and the ascertainment of the national character of claims, but also in determining the existence of the breach of the international obligation. The provisions of article 18 and of article 24 reflected the proposals contained in paragraphs 1 and 2 (*f*) of the resolution on "The intertemporal problem in public international law", adopted by the Institute of International Law in 1975, to which the Special Rapporteur had referred in his fifth report.[4] Thus, in all the intricate situations arising from the various applications of the rules of intertemporal law, the underlying principle was that any act must be assessed in the light of the rules of law which generated obligations and which were contemporaneous with it.

10. The Commission should therefore endeavour, as other members had suggested, to maintain the parallelism between the wording of article 18 and that of article 24. Although he would not go as far as Mr. Verosta, who had said (1480th meeting) that the set of draft articles under consideration should be entirely rearranged, he thought there were a number of problems for the Drafting Committee to consider. For example, paragraphs 3, 4 and 5 of article 18 did not refer to the case of an obligation to prevent an event, which had rightly been included in the list of

[4] *Yearbook... 1976*, vol. II (Part One), p. 21, doc. A/CN.4/291 and Add.1 and 2, para. 60.

situations covered in article 24. In addition, since article 24 related to problems of the *tempus commissi delicti,* it might be advisable for it to deal with the question of a peremptory norm of international law excluding the wrongful character of an act or, indeed, making it compulsory.

11. With regard to article 24 itself, he agreed with Mr. Pinto (1480th meeting) regarding the problem of omissions. According to article 3, the wrongful conduct of a State might consist either of an action or of an omission. In other articles, however, the word "act" was understood to cover the concept of an omission. In the situations referred to in article 24, it was obvious that wrongful conduct might consist either of an action or of an omission, not only under paragraph 5, where explicit reference was made to "the action or omission which initiated the breach and that which completed it", but also under paragraphs 1, 2 and 4, relating to instantaneous, continuing and aggregate acts, and under paragraph 3, relating to failure to prevent an event from occurring, where omissions were of paramount importance. The Drafting Committee should take account of that comment and see whether it would be possible to include a reference to the concept of actions and omissions in all the paragraphs of the article.

12. With regard to the arrangement of the article, he disagreed with some other members of the Commission who thought that the positions of paragraphs 2 and 3 should be reversed. He saw a necessary link between paragraph 1, which referred to "an instantaneous act", and paragraph 2, which referred to "an act having a continuing character"; that contrast of situations should be preserved.

13. Much had been said about the use of the word "instantaneous", in paragraph 1. His own view was that it might be misleading and should be deleted, since very few international acts had the duration of a flash of lightning. When the Special Rapporteur had described "instantaneous acts" during his 1939 course on "le délit international", he had said that:

> Most writers divide delicts into two possible categories: those made up of offences which, once committed, cease *ipso facto* to exist and cannot continue subsequently; and those made up of offences which, after their first commission, are of such a nature that they continue in exactly the same way for some time.[5]

In keeping with that view, the Commission might well consider the following wording for the beginning of paragraph 1: "If a breach of an international obligation is constituted by an act which, once committed, ceases to exist...". Such wording would eliminate the idea of instantaneousness, which some members of the Commission had rejected on sound philosophical grounds.

14. As to the words "even if the effects of the act continue subsequently", at the end of paragraph 1, he was of the opinion that, if they were retained in paragraph 1, they would also have to be added in the other paragraphs of the article. The easiest solution would be simply to delete them from paragraph 1, because every act constituting a breach, whether instantaneous, continuing, composite or complex, had a duration, but there came a tie when the act ceased to exist, even though its consequences or effects might continue.

15. Mr. AGO (Special Rapporteur), replying to the comments on article 24, said that the content of that article in no way called into question that of the preceding articles, despite the links that existed between some of them and the article under consideration. It was true that article 18 contained a list of situations similar to those referred to in article 24, but the purpose of the two articles was not the same. Article 18 was intended to establish the consequences, in those situations, of the basic principle that the "force" of an international obligation and the conduct of a certain State must be contemporaneous for such conduct to be considered as entailing a breach of that obligation. It sometimes happened, indeed, that the breach of an international obligation occupied a certain "depth of time", to quote the expression used by Mr. Reuter.[6] How, then, was the coincidence between the "force" of the obligation and the perpetration of the action or omission, or actions or omissions, of the State, to be understood? As he had already pointed out, that was a separate question from the one dealt with in article 24. Nevertheless, mutually compatible solutions must be found for both. The application of the criteria set out in article 18 was obviously not sufficient to resolve the problems raised by article 24, but those criteria must be taken into account in the solution of those problems. Since, for example, the draft provided, in article 18, that a continuing act constituted a breach of an international obligation if that obligation had been in force at any time during the performance of that act, it could not now decide that the breach was perpetrated only at the initiation of that act. Similarly, after expressing the opinion that, in the case of a complex act, there was breach of an international obligation only if that obligation had been in force from the beginning of the performance of that act, the Commission could not now say that, in the event of a denial of justice, for example, the decisions of the courts of first and second instance were not included in the time of the perpetration of the breach, and that only the decision of the Supreme Court was so included.

16. Some members of the Commission had also expressed concern about the relationship between article 24 and articles 20 and 21. In articles 20 and 21, the Commission had drawn a distinction between a breach of obligations of conduct and that of obligations of result. The distinction between those two categories of obligations had been clearly established, and the conditions for the existence of a breach had been specified in relation to both the former and the latter. The two articles thus answered the question

[5] R. Ago, "Le délit international", *Recueil des cours de l'Académie de droit international de La Haye,* 1939-II (Paris, Sirey, 1947), vol. 68, p. 519.

[6] See A/CN.4/307 and Add.1, foot-note 33.

whether or not there had been a breach. The article under discussion, on the other hand, had to answer the question as to when the breach took place. In that connexion, Mr. Ushakov had rightly pointed out (1480th meeting) that international law could endeavour to attain a certain goal—non-discrimination, for example—in different ways. A State might be specifically required, to that end, to introduce certain legislative provisions in its legal order; an obligation of conduct then arose, and, if the State did not adopt such provisions, that fact alone constituted a breach of its international obligation. If it were required only to ensure that no discrimination took place within its borders, the obligation was one of result, and there was no breach of its obligation if it achieved the required result, namely, non-discrimination, whatever the means—legislative, administrative or judicial—it employed. Some members had wondered whether the adoption of a law that made acts of discrimination possible did not already constitute a breach of the latter obligation. However, the Commission had rightly answered that question in the negative. Even a law creating an obvious obstacle to the achievement of the required result would not suffice to entail a breach of the obligation, provided acts of discrimination did not in fact take place. A preparatory act alone was not sufficient; it was necessary to wait until it could be stated with certainty that the result had not been achieved.

17. Articles 20 and 21 were complementary. In paragraph 1 of article 21, relating to obligations of result, the Commission had used the conjunction "if" in preference to "when", since the latter term could have a temporal sense that should be avoided in that provision. As he had said before, the purpose of that provision was to establish whether a breach of an obligation existed, not when the breach occurred. Paragraph 2 of article 21 introduced another element, but which also concerned the existence of the breach. The case envisaged was that of an obligaion that allowed a State to carry out its duty by ensuring, by subsequent conduct, the result that it might have failed to ensure by its previous conduct, or even by ensuring an equivalent result. As for article 22, it related to obligations of result whose breach entailed, in addition, lack of co-operation on the part of individual beneficiaries of the obligation. In the absence of such lack, the breach of the obligation could not be established. Since the provisions followed logically upon one another, there would be no reason to modify their sequence. Article 22 defined the content of paragraph 2 of article 21 more precisely by reference to a special case. In any event, not until it had examined the observations of governments could the Commission possibly consider changing the order of those articles.

18. In particular, he would not favour the introduction in the text of article 21 of the concept of a "situation... that is not in conformity with the situation required by the obligation" to define the situation in which the required result was not achieved. In the case of a complex act, for example, the decision of the court of first instance created a situation that was not in conformity with the required result, but it could not be said at that early stage that the State would not ultimately achieve that result.

19. Recalling that Mr. Verosta had raised the question (1480th meeting) of the advisability of providing, in each of the articles relating to the various categories of breaches of international obligations, that account be taken of the temporal element, rather than devoting a separate article to that element, he feared that that solution would create many difficulties. There was no reason at all for the temporal aspect to be differently characterized according to the characteristics of the obligation that was breached. The breach of an obligation of conduct, like that of an obligation of result, could depend on a continuing act as much as on an instantaneous act. The breach of an obligation of result, in turn, could be accomplished by an act occupying a "depth of time", but also, perhaps more seldom, by an act that was not of that nature. Article 21 should therefore deal solely with the existence of a breach of an obligation of result, and not with the time of the perpetration of that breach. The situation would become even more complicated if it were necessary to cover in that rule the case of composite acts and complex acts. In the final analysis, the solution suggested, far from simplifying matters, would only create difficulties. Moreover, the temporal element was so important, and the Sixth Committee had been so insistent that the Commission should study it, that it deserved an article to itself instead of brief additions to other articles.

20. On the question of a possible definition of the temporal element, he thought the Commission would be well advised not to embark on that task, of which he did not see the utility—at least at that juncture.

21. It was not easy to translate the expression *tempus commissi delicti* into French. Since the term "commission" was now little used in French as a substantive derived from the verb "commettre", and since the term "perpétration" generally had a pejorative connotation, he had opted for the time being for the expression "time of the breach of an international obligation", by which he meant the time during which the internationally wrongful act had been committed or perpetrated. It was quite true, as Mr. Ushakov had noted, that he had sometimes used the word "moment" and sometimes the word "duration" in his report. In fact, he had been looking for a term that would cover both those concepts, although in certain cases it was necessary to distinguish between "moment" and "duration". In some cases the two concepts coincided; in others there was no such coincidence. However that might be, his object, in that article, was the determination of the *tempus commissi delicti*—the time during which the internationally wrongful act was perpetrated—rather than of the time at which the breach of the obligation was established and responsibility was therefore created. In the case of a complex act, for example, the breach was established and responsibility origi-

nated only at the time when the conclusive element of that act completed the breach. But the time of the perpetration of the internationally wrongful act was the whole of the period during which the various elements constituting the complex act occurred. In the case of a continuing act, responsibility originated at the very beginning of the act. If a State illegally occupied the territory of another State, for example, there was a breach, and responsibility originated immediately, but that did not mean that the duration of the internationally wrongful act did not extend beyond that initial time. Moreover, the wrongful situation could terminate in some other way than through the cessation of the act in question. A treaty might be concluded under which the State that had been the victim of the occupation accepted a situation that had originally been wrongful. It was therefore necessary to distinguish clearly between the time at which responsibility originated and the time of the perpetration of the internationally wrongful act, which could be a point in time or a period of time. The wording of the article could of course be adjusted to allow those two aspects to stand out more clearly.

22. Sir Francis Vallat (1481st meeting) had rightly singled out three aspects of the problem under consideration: the justification for inclusion of the rule in the draft, the actual content of the article, and its structure. With regard to the first point, the Sixth Committee had placed such great emphasis on the need to study that rule that that in itself might be regarded as sufficient justification. Obviously, however, the Commission should not underestimate the importance of the question. With regard to the nature of the rule, Mr. Pinto had spoken (1480th meeting) of a rule of interpretation, whereas he personally had always regarded it as a substantive rule. On the other hand, the examples he had given in his report made no claim to be exhaustive, and the only reason he had given them was to show that the question was by no means a theoretical one. But it should not be inferred from that, as Mr. Ushakov had feared, that the Commission would have to deal with the scope of declarations of acceptance of the jurisdiction of international tribunals accompanied by a reservation *ratione temporis*, with the national character of international claims, or with the amount of reparation.

23. Mr. Reuter had also referred (1479th meeting) to prescription. The *tempus* of an internationally wrongful act could indeed be important from the standpoint of prescription although it was necessary to make it clear what prescription was at issue. There could be prescription for the consequences of an internationally wrongful act, and in particular for the possibility of invoking responsibility. In that case, the potential period of time of prescription could not begin until after the wrongful act had ceased. In some cases, prescription could serve to make lawful a situation that had originally been unlawful. That was why he had avoided entering upon a subject that was still very controversial in international law. The examples he had provided came within the ambit of international law of the most traditional kind. Nevertheless, the Commission might consider it necessary to add further examples in the commentary to article 24; he would have no objection to such a step.

24. As had been noted, the temporal element could play an important role in the interpretation of article 19, relating to international crimes and delicts. In that provision, the Commission had stressed the seriousness of the breach of certain international obligations, a seriousness that could also be estimated in terms of the duration of the internationally wrongful act. The concepts of "maintenance by force of colonial domination", of breach "on a widespread scale" of certain international obligations and of international obligations "of essential importance for the safeguarding and preservation of the human environment" could also involve that temporal element. It was thus clear that the *tempus* had even more repercussions than those he had mentioned as examples. He had confined himself to showing that the rule he was proposing to define was of obvious importance in several respects. He could have added that it would also be of undoubted importance when the time came to determine the penalty to which the State that was the author of a breach of an international obligation would be liable.

25. Mr. El-Erian's syggestion[7] that several articles should be devoted to the various cases dealt with in article 24 had both advantages and disadvantages. Everything depended on the importance the Commission wished to attach to the question. Conceivably, it could devote a separate chapter to it, thereby isolating from chapter III (Breach of an international obligation), a chapter IV, concerned specifically with the *tempus commissi delicti*. Without going so far as to suggest that solution, he would advise that the Drafting Committee consider the possibility of dividing article 24 into several articles.

26. Several members of the Commission had commented on the English version of article 24. With regard to the term "comportement", in paragraph 5, which had been translated into English as "action or omission", he agreed that in practice there was often a combination of actions and omissions, and that any omission, even in the case of a crime relating to an event, had certain aspects that were in the nature of an action.

27. With regard to the form of article 24, Mr. Tsuruoka had stressed the need to draft a text that would be easy to apply, while Mr. Riphagen had warned against the temptation to venture into the area of primary rules. Mr. Quentin-Baxter (1481st meeting) had considered it essential to specify that the effects of an instantaneous act must be distinguished from an act having a continuing character. As Mr. Calle y Calle had observed (*ibid.*), the term "instantaneous" was not, in fact, always appropriate. Since a distinction was drawn between an "instan-

[7] 1481st meeting, para. 29.

taneous act" and an "act having a continuing character", and since the former expression was a recognized term in general legal theory, he had made shift with it for the time being, but he was open to other suggestions that were less likely to give rise to controversy.

28. The order of paragraphs 2 and 3 of article 24 could be left unchanged. As it stood, the article brought out fairly clearly the difference between insantaneous acts and continuing acts. He would agree, however, that there were advantages in dealing successively, in paragraphs 3, 4 and 5, with continuing acts, composite acts and complex acts, in other words, with all acts having the common characteristic of occupying a "depth of time". It would then be necessary to provide separately for the paragraph concerning the *tempus commissi delicti* in cases of breach of obligation to prevent an event from occurring.

29. He thought Mr. Riphagen had been right to observe that the words "the act subsists and remains in conflict with the international obligation", in paragraph 2, were not absolutely indispensable, since the clarification they provided already followed from paragraph 3 of article 18. However, he wondered whether such repetition might not be useful. With regard to the words "although prevention would have been possible", in paragraph 3 of article 24, some members favoured their retention, others their deletion. In the end it might be best to delete them, since they related to the existence of the international obligation rather than to the temporal element. In that case, the Drafting Committee should consider the connexion between that paragraph and article 23. Lastly, paragraph 5 of article 24 should be redrafted in the light of paragraph 5 of article 18, since the actions or omissions constituting a complex act need not necessarily originate from different organs of the State, as had been noted by Mr. Calle y Calle (1481st meeting) and Mr. Francis (1480th meeting).

30. The CHAIRMAN suggested that article 24 be referred to the Drafting Committee for consideration in the light of the discussion.

It was so agreed.[8]

The meeting rose at 1.05 p.m.

[8] For consideration of the text proposed by the Drafting Committee, see 1513th meeting, paras. 1 and 2, 5-8, and 19 *et seq.*, and 1518th meeting, paras. 1 and 2.

1483rd MEETING

Monday, 22 May 1978, at 3.05 p.m.

Chairman: Mr. José SETTE CÂMARA

Members present: Mr. Ago, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. El-Erian, Mr. Francis, Mr. Jagota, Mr. Njenga, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sucharitkul, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta.

The most-favoured-nation clause (A/CN.4/308 and Add.1 and Add.1/Corr.1, A/CN.4/309 and Add.1 and 2)

[Item 1 of the agenda]

INTRODUCTORY STATEMENT BY THE SPECIAL RAPPORTEUR

1. The CHAIRMAN invited the Special Rapporteur to introduce his first report on the most-favoured-nation clause (A/CN.4/309 and Add.1 and 2), which had been prepared with a view to the second reading by the Commission of the draft articles adopted at its twenty-eighth session.[1]

2. Mr. USHAKOV (Special Rapporteur) said that, in its resolutions 31/97, of 15 December 1976, and 32/151, of 19 December 1977, the General Assembly had recommended that the Commission should complete at its thirtieth session the second reading of its draft articles on the most-favoured-nation clause, taking into account the written comments of Member States of the United Nations and the oral comments made by them in the course of the discussion of the draft articles in the Sixth Committee and the General Assembly, as well as the comments made by the appropriate United Nations organs and intergovernmental organizations. The generally positive response to the Commission's draft articles was mainly attributable to the knowledge and competence of Professor Endre Ustor, the previous Special Rapporteur. Written comments on the draft articles had been received from a number of Member States, organs of the United Nations, specialized agencies and other intergovernmental organizations; they were reproduced in document A/CN.4/308 and Add.1/Corr.1.

3. The report under consideration (A/CN.4/309 and Add.1 and 2) was divided into four sections. Section I contained an introduction, while sections II, III and IV dealt, respectively, with comments on the draft articles as a whole and comments on individual provisions of the draft articles, and with the problem of the procedure for the settlement of disputes relating to the interpretation and application of a convention based on the draft articles. The comments on the draft articles as a whole had been classified under four headings: importance of the problem and of the work of codification; relationship between the most-favoured-nation clause and the principle of non-discrimination; the clause and the different levels of economic development of States; general character of the draft articles.

4. With regard to the last of those headings, he noted that the Commission had several times considered the question whether the draft should be an auton-

[1] *Yearbook... 1976*, vol. II (Part Two), pp. 11 *et seq.*, document A/31/10, chap. II, sect. C.