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SUMMARY RECORD OF THE 20th MEETING

Chairman: Mr. GASTLI (Tunisia)

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The meeting was called to order at 10.45 a.m.

AGENDA ITEM 126: REPORT OF THE SPECIAL COMMITTEE ON ENHANCING THE EFFECTIVENESS OF THE PRINCIPLE OF NON-USE OF FORCE IN INTERNATIONAL RELATIONS (continued) (A/38/41, A/38/61-S/15549, A/38/106-S/15628, A/38/135-S/15678, A/38/155-S/15699, A/38/325-S/15905, A/38/327-S/15911, A/38/357 and Add.1, A/38/432-S/15992, A/38/509)

1. Mr. ROSENNE (Israel), speaking in exercise of the right of reply, said he wished to place on record his delegation's understanding that, according to the rules of procedure and the current practice of the General Assembly, the right of reply was to be exercised at the end of the debate on the item in question. He agreed with the Syrian representative's description of the function of the Sixth Committee in terms of harmonization not of confrontation; it was therefore regrettable that statements by that representative's other Arab colleagues compelled Israel to exercise its right of reply.

2. Israel too regretted the existing situation of violence in the Middle East. His delegation wished to emphasize that if and when Israel had had to resort to the use of force, that had only been in exercise of its right of self-defence. It did not accept the superficial analyses which some speakers had made. The kind of debate that had taken place, with its emphasis on confrontation, was another example of the manner in which the General Assembly managed to waste time and money for mere propaganda purposes.

3. Mrs. NUÑEZ (Cuba), speaking in exercise of the right of reply, said that the United States delegation had taken some time to respond. Some questions were so important that they merited a prompt response. The very allies of the United States had been perplexed by its clumsy and unethical approach. Many delegations were in possession of the document in question, the content of which, whatever the United States representative might say, was very far from reflecting a serious attitude towards the United Nations. Such an attitude could not exist when pressure, blackmail and threats were used.

4. The most important aspect of the response made by the United States representative was the acknowledgement before the Sixth Committee of the existence and authenticity of the document. The United States had thus accepted responsibility for the document.

5. Mr. TELLEZ (Nicaragua), speaking in exercise of the right of reply, said that the United States delegation had sought to dismiss Nicaragua's statement by claiming that it did not refer to legal aspects. That was an attempt to deny the existing relationship between those aspects and the reality of the aggression being experienced. Such relationships were precisely the justification for the existence of the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations. As for the allegation that Nicaragua was destabilizing the Central American region, he had amply demonstrated just the opposite the previous day. To that statement should be added what President Reagan had said at a press conference held the previous day and the letter from the

(Mr. Tellez, Nicaragua)

Secretary of State addressed to the United States Congress frantically requesting funds to continue aiding to the murderers, the former Somoza guards. It would be useful for the United States representative to indicate whether that was an initiative for peace or for war in the Central American region.

6. Mr. ALAKWAA (Yemen), speaking in exercise of the right of reply, stated that what he had said in the Sixth Committee was relevant to the discussion of the principle of non-use of force in international relations. By using military force in pursuit of illegitimate objectives, Israel was in violation of that principle, which was embodied in Article 2 of the charter, and in violation of resolution 181 (II), adopted at the second session of the General Assembly. The appropriation by Israel of other territories on the pretext of exercising the right of self-defence was unjustifiable.

7. Mr. KAHALEH (Syrian Arab Republic), speaking in exercise of the right of reply, said he doubted that anyone would agree with Israel's statement that the sending of Israeli forces into Lebanon had been in exercise of the right of self-defence under Article 51 of the Charter. The invasion of Lebanon, which had caused the loss of hundreds of lives, could not be justified on that basis. One had only to refer to Security Council resolutions 508 (1982) and 509 (1982), which condemned Israel's actions as unlawful and not constituting self-defence.

8. Mr. ROSENNE (Israel), speaking in exercise of the right of reply, said that two Latin words would suffice to respond to the representative of the Syrian Arab Republic: tu quoque.

9. Mr. MAPANGO MA KEMISHANGA (Zaire) said that the corner-stone of Zaire's foreign policy was the non-use of force in international relations and the peaceful settlement of disputes. Accordingly, Zaire devoted a substantial part of its resources to the maintenance and smooth development of relations of frienship and co-operation with its neighbours, on the basis of mutual respect and non-interference in internal affairs. It followed a policy of co-existence within a framework of tolerance with regard to all the peace-loving countries.

10. Zaire believed that world peace was a prerequisite for social development. That belief was behind all its initiatives in the Chad crisis. Zaire, which had twice been obliged to go to the support of Chad, had no other ambition in that country than to defend the legitimate interests of the people and Government of Chad, namely, the territorial integrity and sovereignty of that State. Once those objectives were achieved, the presence of the Zairian troops in Chad would no longer be required.

11. It was in that light that Zaire's condemnation of the attack on a South Korean aircraft by a Soviet combat aircraft was to be interpreted. It was also in that light that Zaire's support for any peace initiative, whatever its origin, was to be viewed. In that connection, it was regrettable that, six years after its establishment, the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations was simply speculating on what was the real objective of its mandate.

(Mr. Mapango ma Kemishanga, Zaire)

12. Even if, in the light of all the world's conflicts, a treaty on the non-use of force were more indispensable than ever, his delegation was afraid that a treaty which was of limited scope because some States were unwilling to apply its provisions could weaken the relevant provisions of the United Nations Charter.

13. Instead of concentrating on the form of the future instrument, the Special Committee should first focus on substantive questions. Zaire wished to reiterate its support for the views expressed regarding the definition and scope of the concept of non-use of force. That concept had to be updated and given a broader scope than it had in the Briand-Kellogg Pact of 1928. The concept encompassed all forms of force, not just armed force. The updating of the concept would serve to strengthen the system envisaged in Article 2, paragraph 4, of the Charter, which meant that the Special Committee would not be exceeding its mandate. It would also be important to elaborate a comprehensive text, without omissions that could provide loopholes.

14. His delegation agreed that the international community should categorically reject, on the basis of the principle of ex injuria non jus oritur, the claims of a State which resorted to the use of force. Zaire firmly supported the paragraphs under "heading" D concerning the right of self-defence and the right of self-determination. It welcomed the inclusion in the Working Group's working paper of questions related to the principle of non-use of force, such as disarmament and the peaceful settlement of disputes. It endorsed the general direction taken by the Special Committee at its 1983 session and believed that its mandate should be renewed.

15. The Chairman said that, now that consideration of agenda item 126 had been completed, it was up to the Committee to decide whether the Special Committe's mandate should be extended, what powers it should be given, if any, and what its methods of work should be.

AGENDA ITEM 120: CONSIDERATION OF THE DRAFT ARTICLES ON MOST-FAVOURED-NATION CLAUSES: REPORT OF THE SECRETARY-GENERAL (A/38/344)

16. Mr. RAMADAN (Egypt) said that the international community was aware of the need to establish a new international economic order so as to remedy the imbalances in the relationship between poor and rich countries, but there had been no adequate response from the developed countries in that regard. There was a lack of political will to implement the programmes and declarations that had been adopted, and it was even being said that those programmes and declarations were no more than recommendations without any binding legal force.

17. His delegation supported the recommendation made by the International Law Commission that an international convention on the question of most-favoured-nation clauses should be concluded. The draft articles prepared by the Commission dealt with the various legal issues that had to be taken into account when such clauses were used in treaties. Moreover, his delegation regarded the draft articles as an acceptable basis for consideration of an agreement on the establishment of the new

(Mr. Ramadan, Egypt)

international economic order. With regard to the draft articles themselves, it believed that draft article 1 should be amended so as to include the draft article on international agreements between States to which other subjects of international law were also parties, since countries were establishing a steadily increasing number of organizations aimed at promoting regional economic interdependence that were being authorized to grant most-favoured-nation treatment.

18. The right of developing countries to enjoy preferential treatment was recognized in many international instruments. That fact could be reflected in the draft articles through the addition of the following sentence at the end of draft article 7: All countries should automatically grant, on a non-reciprocal basis, most-favoured-nation treatment to developing countries periodically designated by the General Assembly of the United Nations in accordance with agreed criteria.

19. His delegation rejected the view expressed in document A/38/344 that there were no objective criteria for establishing whether a State belonged to the group of developing countries. As pointed out in the study prepared by Professor Verway of the Netherlands, which had been submitted to UNITAR, there were in fact many objective criteria. Furthermore, he did not agree with the view that the developing countries had differing and sometimes conflicting aspirations. Those countries had identical aspirations, as they had themselves demonstrated at the Cairo Conference held in 1964. The solidarity among the countries of that group represented their bargaining power in international forums, and any endeavour to divide them or reduce their bargaining power must be countered.

20. He believed that draft article 12, concerning compensation, conflicted with draft article 5 and should therefore be reconsidered. With regard to draft article 14, the agreed provisions, which must not be used for disguised discriminatory purposes, should be retained. The draft articles should incude customs unions and free-trade areas, as well as cases where there was economic complementarity between countries, through the addition of an article encompassing all the régimes in question.

21. As it stood, draft article 29 gave too much freedom to the granting States, which were in a better bargaining position, and it should therefore be deleted. The wording proposed in paragraph 68 of the report for article 28, concerning settlement of disputes, should be adopted, in other words, there should be recourse to compulsory arbitration or to the International Court of Justice.

22. The granting of the most-favoured-nation clause strengthened economic co-operation among countries, since it took account of the particular circumstances of the developing countries.

23. Mr. IDREES (Pakistan) said that the draft articles should recognize and reflect the developing countries' right to preferential treatment. Currently there were only a few specific manifestations of the recognition of that right, except in the form of the generalized system of preferences. The rule laid down in draft article 7 did not reflect that right of the developing countries, although the

(Mr. Idrees, Pakistan)

provisions of other articles, for example, draft article 23, did try to accommodate it to some extent in the context of the generalized system of preferences. However, that endeavour did not suffice, and a new rule should be incorporated into draft article 7, stating that certain categories of States, to be determined by the General Assembly, should be entitled to automatic most-favoured-nation treatment.

24. Draft article 23 was too specific, and the scope was extremely limited, since the generalized system of preferences was neither a system nor generalized. That system consisted solely in the provisional granting of preferences by the developed countries, mainly in the field of tariffs. The current wording of that draft sanctified the temporary granting of specific preferences and fell short of the developing countries' expectations.

25. His delegation endorsed the view expressed by the representative of Egypt that, as it stood, draft article 29 provided a loophole allowing States to nullify the effect of the rules designed to guarantee preferential treatment. It should therefore be deleted, but, if it could not be deleted, adequate safeguards for the developing countries' interests should be incorporated into it. He hoped that the amendments he had proposed would be taken into account in the final codification of the draft articles.

26. Mr. VIÑAL (Spain) said that his delegation attached great importance to any instrument that would facilitate international trade and the promotion of economic co-operation among all States. The draft articles provided a good starting point in that regard, which however, did not mean that the goal that had been set had been achieved. The comments and observations made in that connection by States organs of the Unied Nations and intergovernmental organizations reflected considerable differences of opinion regarding both form and substance.

27. With regard to the substance of the draft articles, his delegation was chiefly concerned at the fact that a number of provisions that ought to be included in the draft were missing. In that connection, he wished to stress the need to establish objective criteria for the inclusion of a State in the group of developing States, since the only system available as yet was an unsatisfactory empirical one. Furthermore, the concepts of the "beneficiary State" and "persons or things in a determined relationship with that State" must be defined clearly, since they were so vague that they would give rise to difficulties when it came to implementation of the draft articles. Moreover, an article specifying that customs unions were exceptions should be included in order to prevent advantages instituted for members of customs unions and free-trade areas from unjustifably being made available to non-member States.

28. With regard to the recommendation made by the International Law Commission concerning the conclusion of a convention on the question under consideration, judging from the comments and observations received so far from States, organs of the United Nations and intergovernmental organizations, it would be premature to convene an international codification conference immediately. It was essential that further preparatory work should be carried out with a view to reaching general

(Mr. Viñal, Spain)

agreement either on the form and substance of the draft articles or on any alternatives that might be proposed.

29. His delegation therefore believed that the existing differences of opinion should be dealt with by means of a process of elimination in order to decide what the most appropriate or most feasible approaches would be. General agreement was a necessary evil; it was an evil because it entailed a protracted process of seeking the consent of all States; and it was necessary because, if that factor was ignored, a consensus decision lacking any real weight would be adopted.

30. Mr. ASTAPKOV (Byelorussian Soviet Socialist Republic) said that the discussion of the system of most-favoured-nation clauses held at the sessions of the General Assembly and the comments made by Governments in accordance with General Assembly resolutions 35/161 and 36/111 showed that many States favoured the speedy completion of the draft articles on most-favoured-nation clauses. The most effective form of codification for the draft articles would be the preparation of an international convention. Adoption of a legal instrument on most-favoured-nation clauses would help to eliminate the inequality and discrimination existing in relations between States, to remove the obstacles to international trade and to facilitate the implementation of the principles of the Charter, for the benefit of the progressive development and codification of international law.

31. The draft articles prepared by the International Law Commission provided a good basis for an international legal instrument, since they took into account the interests of all States, particularly the developing countries, in the sphere of trade. Their adoption would be a step towards implementation of the new international economic order. The draft contained provisions designed to promote frontier trade and took into consideration the interests of land-locked countries. The different approaches adopted by States were reflected in some provisions, but the Byelorussian delegation believed that it was possible to find mutually acceptable solutions.

32. With regard to the question of the appropriate procedure for the completion of the draft articles, his delegation suggested that a working group be established under the auspices of the Sixth Committee, with due consideration for the Committee's work programme and schedule. In addition, the Secretariat should prepare an analytical report based on the comments of Governments, the remarks made in the Committee and the opinions expressed by the competent United Nations organs. The Byelorussian delegation welcomed other constructive proposals designed to achieve that goal, including the proposal that a special conference be convened.

33. Ranking equally in importance with the codification and progressive development of international law were the strengthening of the existing norms of international trade law and their scrupulous observance by all States, since otherwise there could be no development of trade and economic relations between States. Recent practice showed, unfortunately, that international trade was increasingly subject to arbitrary actions and discrimination, boycotts, sanctions and acts of political domination that undermined the norms of international trade law, to the detriment of the interests of States.

(Mr. Astapkov, Byelorussian SSR)

34. The Conference of Heads of State or Government of Non-Aligned Countries, held in New Delhi, had rejected acts of economic aggression, sanctions, blockades, pressure, and measures of blackmail, of political pressure and of interference in the internal affairs of States. The Conference on Security and Co-operation in Europe, held in Madrid, had stressed the need for efforts gradually to reduce or eliminate the obstacles to the development of trade and to expand technological and scientific ties among nations. The United Nations should appose all acts that undermined international trade law, by adopting measures designed to strengthen economic and trade relations among States on a basis of equity.

35. Mr. OUYANG Chuping (China) said that it was regrettable that, because of the divergence of views among Member States, the General Assembly had still not taken a final decision on the recommendation of the International Law Commission concerning the draft articles. It was to be hoped that, at its current session, the Assembly would decide on the procedure to be followed and on the final form to be assumed by the draft articles.

36. The most-favoured-nation clause facilitated co-operation among States, particularly in the economic and trade sphere, and was a means for the promotion of world trade, on the basis of non-discrimination and equality of States, and for the elimination of discriminatory treatement and the lowering of tariffs.

37. The draft articles were generally acceptable, since they reflected State practice, conformed to the existing legal régime and took into account the interests of developing States. For example, draft articles 23 and 24 provided, respectively, that the generalized system of preferences and the trade preferences that developing countries granted to each other should be exceptions to the operation of the most-favoured-nation clause. Those provisions would help to eliminate the inequality existing between developed and developing countries.

38. Some developed countries had opposed the provisions of article 23 on the ground that multilateral trade negotiations were being conducted within the context of GATT. That objection was no longer valid, since the "enabling clause", which was a result of the Tokyo Round negotiations, formally recognized the generalized system of preferences as a legal régime. As the Director-General of GATT had stated, the "enabling clause" marked an historic turning-point in international trade relations by recognizing the preferential treatment granted to developing countries as a permanent legal feature of the world trading system.

39. The greatest shortcoming of the draft was that the text did not clearly reflect the principle of equality and mutual benefit as the basis of the most-favoured-nation clause, although the International Law Commission had stated in its commentaries on the draft articles (document A/33/10) that the most-favoured-nation clause could be considered as a technique or means for promoting the equality of States or non-discrimination. In the past, the Powers had used the most-favoured-nation clause, and particularly the so-called unilateral and most-favoured-nation clause, as a means for seizing political and economic privileges from weak countries, as the Chinese people well knew from experience.

(Mr. Ouyang Chuping, China)

The Chinese delegation suggested that draft article 5, which contained the definition of most-favoured-nation treatment, should explicitly provide that the treatment accorded by the granting State to the beneficiary State should be no less favourable than the treatment extended by the granting State to a third State on a voluntary basis and in accordance with the principle of equality and mutual benefit.

40. Article 7, concerning the legal basis of most-favoured-nation treatment, should be supplemented by a clause to the effect that the international obligations mentioned in the first paragraph should be based on the principles of State sovereignty and equality and mutual benefit and should be interpreted in accordance with those principles. With regard to article 23, the replacement of the words "beneficiary State", in the first line, by the words "developed beneficiary State" would make the article reflect better the original intention of the generalized system of preferences, namely that the preferential treatment should not be discriminatory among the developing countries.

41. With regard to the scope of application of the draft articles, there was no need to make the articles correspond to the Vienna Convention on the Law of Treaties, by restricting their application to most-favoured-nation clauses contained in treaties concluded between States. The draft articles should take into account their application to international organizations, whose member States often conferred on them powers to conclude and apply trade agreements. The Chinese Government had concluded with the European Economic Community a trade agreement that contained the most-favoured-nation clause.

42. With reference to the question of the conditional form of the most-favoured-nation clause, the International Law Commission had admitted in its report (document A/33/10) that the conditional form was largely of historical interest but had added that the possibility could not be excluded for States to agree on clauses subject to conditions of compensation. In the opinion of the Chinese delegation, the draft articles might include provisions on the conditional form of the most-favoured-nation clause, but the relevant article of the draft should explicitly provide that the conditions of compensation might not derogate from the fundamental principles of international law.

43. His delegation was of the view that international commodity agreements were trade arrangements that should benefit developing countries and should therefore constitute an exception to the operation of the most-favoured-nation clause. However, the draft text proposed by the French member of the International Law Commission was unclear, since it made no distinction between developing beneficiary States and developed beneficiary States, or between producer countries and consumer countries.

44. The Chinese delegation approved in principle of the idea that the treatment granted by treaties concluded according to the Charter of Economic Rights and Duties of States constituted an exception to the operation of the most-favoured-nation clause, but doubted whether the idea was realistic. Moreover, draft article 30 left room for the establishment in the future of new rules of international law in favour of developing countries, so that perhaps the proposal should not be included in the draft articles.

(Mr. Ouyang Chuping, China)

45. Customs unions and free trade areas should promote international trade; so long as that principle was respected, the Chinese delegation agreed that the draft articles could allow such unions and areas to constitute an exception to the operation of the clause.

46. The question whether the draft articles should include clauses on the settlement of disputes depended on the final form to be assumed by the draft. There was no point in discussing that question unless the draft articles were to take the form of an international convention. If they were, such clauses could be included in an optional protocol, in accordance with the approach adopted in the case of the Vienna Conventions on Diplomatic Relations and on Consular Relations.

47. With regard to the procedure to be followed and the final form to be assumed by the draft articles, the Chinese delegation adopted a flexible position and would consult with other delegations in order to resolve that question in accordance with the principle of equality and mutual benefit.

48. Mr. ROBINSON (Jamaica) said that, even though the provisions of the draft articles were intended to be of a residual character, the formulation of article 29 was too broad and general. As in the case of the Vienna Convention on the Law of Treaties and its companion instruments, it would be preferable if the residual character related to specific provisions instead of the entire text, since some provisions might be so basic and fundamental that their application was mandatory for the parties and could not be set aside by a contrary agreement. There was therefore a need to separate those articles which were properly residual from those which were not.

49. The Commission was to be commended for not shying away from the economic aspects of the subject, particularly in so far as they affected developing countries. While his delegation sympathized with the substance of article A, it nevertheless believed that in articles 23 and 24 the Commission had taken an important step forward in the progressive development of law for the benefit of developing countries. Article 30, which, strictly speaking, was not necessary, pointed to the possibility of establishing new rules in favour of developing countries.

50. The fact that the draft articles would be limited in their application to most-favoured-nation clauses in treaties between States had its greatest impact in the field of relations with international organizations. Presumably the Commission would, at a later stage, take up the subject of most-favoured-nation clauses in treaties concluded between a State and an international organization or between two or more international organizations.

51. The question of the relationship between the most-favoured-nation clause and international organizations also arose in cases where such organizations constituted customs unions or free trade associations. Although the practice of excepting from the scope of the most-favoured-nation clause benefits which States Members of a free trade association or customs union granted to each other was fairly widespread,

(Mr. Robinson, Jamaica)

there was a legitimate doubt as to whether that practice amounted to a rule of customary international law. The Commission appeared to have gone in the opposite direction in articles 17 and 18. Those articles were bound to be controversial, and those who supported the proposal concerning article 23 bis might wish to amend them. Article 23 bis itself raised the question whether developed States in their relations with developing States should also be entitled to the exception incorporated in that proposal.

52. Paragraphs 5 to 8 of the commentary on article 4 made the point that most-favoured-nation treatment was usually granted by States parties to a treaty on a reciprocal basis. Although he was not in favour of a return to the former capitulatory régimes, he considered that there were situations in which reciprocity was not of real benefit to a developing country in its dealings with a developed country under a treaty. That was the case, for example, if the developing country was not in a position to take advantage of a most-favoured-nation clause owing to the level of its economic development, or if the developed country negotiated concessions from the developing country on the basis of a clause whose reciprocity was nugatory and meaningless for the latter country.

53. Although it was perhaps true that treaties were the only legal foundation of most-favoured-nation treatment, the Commission was correct in drafting the articles in such a manner as to cover the possibility of the development of a rule of customary international law. However, article 7 was perhaps not necessary and could be omitted. Articles 11, 12, 13 and 14 appeared to state rules which followed logically from articles 26, 31 and 32 of the Vienna Convention on the Law of Treaties.

54. Article 20 and the commentary thereon did not satisfactorily resolve the question whether the operation of a most-favoured-nation clause was contingent upon the actual extension of benefits by a granting State to a third State or whether it operated merely upon the existence of a legal obligation on the part of the granting State to extend such benefits. Although the use of the word "extended" suggested that the operation of the clause was set in motion by the actual extension of the benefit rather than the mere existence of the obligation to extend the benefit, the draft would gain in clarity if another word was used in article 20 and other relevant articles.

55. His delegation would support any consensus that might emerge in favour of the adoption of an international convention on the subject.

56. MR. HARDY (Observer, European Economic Community) reaffirmed the written observations submitted by the European Community (A/CN.4/308, A/35/203 and A/36/145) and the statements made by it in the Sixth Committee. He emphasized that any general rules on most-favoured-nation clauses, regardless of their final form and even if they were only of a supplementary nature, could not be accepted by the Community unless they constituted a well-balanced set of rules which as a whole reflected practical realities and took account of the observations and amendments which the Community had submitted in its various communications.

(Mr. Hardy, Observer, EEC)

57. The Community had proposed for insertion in the text of the International Law Commission a new article 23 bis (contained in document A/36/145), which took into account the need for a clear statement of the exemption from the application to third States of a most-favoured-nation clause, or of a clause assuring national treatment to a beneficiary State and its citizens, in respect of a system created by a customs unit or similar arrangement of regional economic integration. Regarding the inclusion of that article, the Commission had stated that the ultimate decision would have to be taken by States at the final stage of the codification of the topic.

58. The fact that the draft articles were restricted to clauses contained in treaties between States greatly limited the value of the draft, which did not take account of the fact that, through the establishment by sovereign States of regional economic integration bodies in various parts of the world, preferential treatment, which might or might not be in the form of a most-favoured-nation clause, might be granted under agreements concluded by such unions or groups of States. It must also be recalled that articles 23, 24 and 30 of the draft provided exceptions to the application of a most-favoured-nation clause in respect of developing countries without giving an objective criterion for deciding which countries would be entitled to benefit from those exceptions.

59. Preferential treatment for developing countries in their commercial dealings with the European Community did not necessarily operate through the inclusion of a most-favoured-nation clause. Inadequately formulated rules on most-favoured-nation treatment could severely damage the preferential treatment which was currently accorded to a beneficiary State in order to facilitate its access to consumer markets.

60. An important mechanism for expanding exports from developing countries into the Community was the Generalized System of Tariff Preferences (GSP), which allowed the entry of imports free of duty either on an unlimited basis or, for specific products, within a specific quota. In the case of imports from the Mediterranean area, goods covered by GSP formed the overwhelming majority of the exports of the countries concerned. It would obviously be against the interests of those countries if a third State, which was perhaps more competitive but less in need of gaining export earnings, were able to take advantage of a most-favoured-nation clause to obtain duty-free access to the Community market.

61. A further example of preferential treatment in the Community's trade arrangements with developing countries was the Stabex system, which had been established to reduce the effect of fluctuations in the prices of commodities. In that instance also it was necessary to avoid disturbing a price stabilization system that included preferential treatment for a group of countries which were in need of such stability in order to develop their economies.

62. The European Community expressed its appreciation to the International Law Commission for the work accomplished. It considered, however, that if a legally binding instrument was to be elaborated on the subject, it would be essential to

(Mr. Hardy, Observer, EEC)

incorporate in the text the important developments which had taken place in the operation of most-favoured-nation clauses in the field of international trade, on the lines which the community had set out in its various statements.

63. Mr. ECONOMIDES (Greece), speaking on behalf of the ten member States of the European Economic Community, said that the States concerned had already had occasion to express their opinions on the draft articles on most-favoured-nation clauses adopted by the International Law Commission, and he again expressed his gratitude to the Commission for the work carried out. In the spirit of constructive dialogue, the ten member States of the European Community had also made some criticisms and drawn attention to some major gaps in the draft articles. In that connection, he endorsed the comments just made by the observer for the European Community and said that similar observations could be made about areas other than that of international trade to which the most-favoured-nation clause was applicable.

64. Bearing in mind that the draft articles as a whole did not in any way reflect the new forms of international co-operation, especially those aimed at according preferential treatment to developing countries, the ten States, in the light of General Assembly resolution 36/111, considered that codification work on the subject should be suspended for the time being and were in favour of the adoption by the General Assembly of a resolution which would merely draw the attention of States to the draft articles of the International Law Commission and the amendments proposed thereto, so that States would be able to take them duly into account when negotiating treaties containing a most-favoured-nation clause or when considering questions concerning the application of that clause. Subsequently, when practice in that area was firmly established, work on the topic could be resumed with a view to completing codification. In that connection, the ten States reserved the right to submit specific proposals at the appropriate time.

The meeting rose at 1 p.m.