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SUMMARY RECORD OF THE 38th MEETING

Chairman: Mr. BAVAND (Iran)

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The meeting was called to order at 10.55 a.m.

AGENDA ITEM 114: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS THIRTIETH SESSION (continued) (A/33/10, A/33/192 and A/C.6/33/L.4)

1. Mr. LUKASIK (Poland) said he would confine his remarks to some of the numerous topics considered by the International Law Commission at its thirtieth session. His delegation attached particular importance to the issue of the most-favoured-nation clause because of its impact on international legal order and international trade, its main function being to assure equal treatment for all States. As the ILC had stated, it should cover all major areas of co-operation and not only trade matters. However, under article 29, States themselves decided the substance of the clause and how it should be applied. It was to be hoped that that solution would prove beneficial to international economic relations, although it was difficult to predict the extent to which States would exercise goodwill. No doubt it would have been better to agree on a provision requiring States to agree on which States should benefit from the clause. He hoped that the freedom allowed to parties to deviate from the provisions of the draft would contribute to improving those provisions and to the further development of law.

2. His delegation welcomed articles 23 and 24 because they took into account those aspects of economic co-operation which had had a decisive influence on the establishment of the Charter of Economic Rights and Duties of States. Since Poland had consistently supported the economic development of the developing countries, it agreed in principle with articles 23 through 26. Any additional exceptions would weaken the scope of application of the draft and his delegation therefore considered that article 23 bis should not be incorporated. The article was based on the principle of an unconditional and bilateral clause, the primary purpose of which was to overcome the particularistic nature of the norms of international law in order to create a universal legal order. To introduce elements of compensation would interfere with the application of the clause. Both questions, exceptions to application of the clause and the existence of elements of compensation, were of crucial importance and required further careful study by Governments.

3. His delegation therefore reserved its right to express its views on the future programme of work of ILC and particularly, on the convening of a conference for adoption of a convention on the most-favoured-nation clause. However, if the majority of States so desired, it was prepared to support any proposal to submit the draft articles to the General Assembly for consideration and eventual adoption.

4. Although three new articles on State responsibility had been adopted, ILC should make an effort to speed up its work on the subject so that Governments could have a comprehensive view of the draft and be in a position to express their views on a complete text of parts I, II and III. Consequently, it should devote itself, as a matter of priority, to the presentation of a complete text on State responsibility. At the thirty-second session of the Assembly, the Sixth Committee

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had given careful study to article 22, on the exhaustion of local remedies, and had pointed out that it dealt with the specific case of the breach by a State of an international obligation requiring the achievement of a specific result. The newly adopted article 23 dealt with the same subject. Since some delegations had expressed doubts concerning the place of article 22 in the draft, he suggested that articles 22 and 23 should be redrafted and included, as subparagraphs, in article 21. The new article would be limited to the explanation and interpretation of that type of breach.

5. It was almost impossible to decide whether articles 24, 25 and 26 were needed because the draft was still incomplete. It might be left to a competent tribunal or other international institution to decide on the time and duration of the breach of obligation. With regard to article 27, the first article of part IV of the draft on State responsibility, it might be useful, for the remainder of the text, to clarify from the outset those cases where aid or assistance constituted the breach of an international obligation. Moreover, ILC should reconsider the provisions of paragraph 3 of article 19 at its next session, because they did not seem to be in full conformity with recognized norms concerning international crimes and delicts included in existing instruments of international law. In view of the complexity of the question of State responsibility for internationally wrongful acts, his delegation finally shared the view of ILC that the second reading of the draft articles should be done only after Governments had had time to submit observations and comments (A/33/10, para. 92).

6. His delegation hoped that ILC could complete the first reading of the draft on the succession of States in respect of matters other than treaties. The articles concerning State debts had been drawn up along the same lines as the articles on State property, each article dealing with a different type of succession. The three new articles (articles 23 to 25) should be seen in the light of article 22, which dealt with newly independent States, and it was important above all for the succession to State debts to be governed by an agreement among the States concerned. However, the present draft could be improved if the subject matter was confined to obligations incumbent upon the predecessor State under international law, thus avoiding possible conflict with the internal law of the successor State.

7. With regard to the question of treaties concluded between States and international organizations, his delegation agreed with the provisions of articles 34 to 38, which had been modelled on the Vienna Convention on the Law of Treaties. The ILC should bear in mind the major differences between a sovereign State and an international organization. His delegation considered that any action of an international organization which would imply impairment of the vital interest of a sovereign State was unacceptable and therefore could not accept article 36 bis in its present form. It might easily happen that an international organization would be empowered to conclude a treaty in the absence of a consensus among its States members, so that some would not observe the treaty. At present, the article would apply to a limited number of international organizations because in most

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cases, States members of international organizations retained full sovereignty. Nevertheless, the article should be given very careful consideration once the draft articles on the subject had been completed.

8. With regard to the status of the diplomatic courier and the diplomatic bag not accompanied by a diplomatic courier, his delegation had expressed its views in connexion with the discussion of agenda item 118 in the Sixth Committee. He stressed once again that elaboration of a protocol on the subject and its wide acceptance by States would contribute to the further promotion of international law and advance friendly relations among States. He concluded by expressing gratification that the question of the jurisdictional immunities of States and their property, which ILC had considered on various occasions, had once again been included in the Commission's programme of work.

9. Mr. SUCHARITKUL (Thailand) said that he would comment on the ILC report from the point of view of a developing country from Asia. Chapter II dealt with the most-favoured-nation clause. For the countries of Asia, that concept used to denote favourable treatment unilaterally extended by Asian countries to their partners from outside the region. As it was now understood, it was designed solely to achieve uniformity of favourable treatment or, at any rate, to ensure non-discrimination in trade and economic relations. In that respect, the Commission had tried to strike a proper balance between the interests of various countries with different levels of development and different economic structures. Most-favoured-nation treatment was not applied automatically; it derived from a clause freely agreed upon in an international agreement among the parties concerned. Article 29 of the draft clearly stressed that freedom of action.

10. Since the most-favoured-nation clause was not compulsory in every treaty, it followed that no exception to its application could be implied or presumed when it had been agreed upon. Nevertheless, in some circumstances, particularly geographical situation, certain exceptions proved inevitable. Thus, advantages extended to facilitate frontier traffic, as envisaged in article 25, had not given rise to any objection in practice; nor should the facilities extended to a land-locked third State under article 26. Article 23 dealt with an exception increasingly found in State practice in connexion with treatment within a scheme of generalized preferences. All the implications of the draft article had not been thoroughly assessed, but its text was sufficiently liberal to cover what was commonly known as a generalized system of preferences with all its variations and ramifications.

11. Another noteworthy exception related to arrangements between developing States, as stated in article 24. Since the scope of application of the article was very limited, it appeared to be an acceptable compromise which was wide enough to cover arrangements such as the Association of Southeast Asian Nations (ASEAN), the Mekong Committee and other similar regional and subregional organizations of developing countries. For those countries, the adoption of such an article was indispensable

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to the adoption of a workable international convention on the subject. Those new provisions gave additional strength to article 30, which confirmed, in a negative form, that all the provisions were without prejudice to the establishment of new rules of international law in favour of developing countries. Indeed, article 24 deserved mention in that connexion because it stated a new rule unequivocally in favour of those countries and should therefore gain wide acceptance.

12. His delegation noted with appreciation that progress had been made with regard to chapters III and IV of the draft articles, culminating in the adoption of articles 23-27. Article 23 determined the occurrence of a breach of an international obligation to prevent a given event. That was fundamentally an obligation of result which was determinative of the occurrence of a breach, while the adoption of a certain conduct was also relevant, since the State should act to prevent its occurrence. The occurrence of a breach depended, on the one hand, on the actual occurrence of a given event and, on the other, on the possibility of adopting a different conduct. Reasonable care was expected of a State under such an obligation of prevention; otherwise, the State could not disclaim responsibility if the event occurred.

13. Articles 24, 25 and 26 concerned the tempus commissi delicti, the moment and duration of the breach of an international obligation, which varied with the nature of the act in question. It could be a simple act, not extending in time or a composite or complex act, or indeed the breach could coincide in time with the occurrence and continuation of a given event. An interesting dimension had been introduced into the notion of State responsibility, that of time. The moment of occurrence of the breach or its commission was relevant to the questions of actionability, nationality of claims, jurisdiction or competence of international machinery of justice and the period of limitation. The duration of the breach on the other hand related to the nature of compensation or reparation, the measure of damages, and the possibility of restitutio in integrum, or the reversion to a status quo ante. In articles 24-26, an attempt had been made to classify with regard to time acts considered in various categories and taking account also of the concept of continuity in time, using Prof. Reuter's criterion of "thickness of time" in order to establish a set of precise rules which applied in each category.

14. Article 27, entitled "Aid or assistance by a State to another State for the commission of an internationally wrongful act", was the first article of chapter IV, which dealt with the implication of a State in the internationally wrongful act of another State. The difficulties inherent in the engagement of State responsibility under that article centred upon the element of intention. The sale of arms and military equipment, for instance, need not be a breach of an international obligation, unless otherwise prohibited by a convention. However, restrictive conditions in the contract of sale of such armaments could not preclude the responsibility of the State exporting the weapons, if there were no apparent means of enforcing such restrictions. It would be premature at the current stage to make further comments on the rest of the chapter. He simply expressed the hope that the Special Rapporteur, who had just been elected to the International Court of Justice, would be able to complete his report before his departure.

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15. His delegation noted with appreciation the progress made in regard to the question of the succession of States in respect of matters other than treaties, which had resulted in the adoption of articles 23, 24 and 25, concerning succession to State debts. Article 23 concerned the passing of State debts to the successor State where two or more States united and thus formed a successor State. The fact that the successor State might also attribute the whole or any part of the State debt of the predecessor States to its component parts might be viewed as providing for debts collection - which that provision facilitated - rather than a reservation. Articles 24 and 25, which confirmed the passage of State debts to the successor State in equitable proportion, taking into account all relevant circumstances, had not given rise to much controversy, as they had their counterparts in connexion with the succession to State property in articles 14, 15 and 16.

16. With regard to chapter V of the report, the Commission had had time at its most recent session to adopt the text of article 2, paragraph 1 (h) and articles 35, 36, 36 bis, 37 and 38. They were based on the text of the Vienna Convention on the Law of Treaties, with slight variations due to the essential differences between States and international organizations. In the articles dealing with treaties and third States or third international organizations (art. 34 et seq.), the rule pacta tertii nec nocent nec prosunt appeared to be of general application, subject to the expression of consent by a third State or third international organization, both in regard to obligations (art. 35) and rights (art. 36).

17. It was article 36 bis that was really the centre of attraction and equally of controversy. The crucial point was the extent to which members of an international organization could be bound by an agreement concluded by that organization without their being parties to it. Article 36 bis proposed two possible contingencies in which they could be bound: either if the relevant rules of the organization so provided, or if the States and organizations participating in the negotiation of the treaty as well as the States members of the organization acknowledged that the application of the treaty necessarily entailed such effects. The first possibility raised more controversies than the second, since it depended on the interpretation of the rules of the organizations. On the other hand, acknowledgement by third States members of the organization of such effect was closer to acceptance or acquiescence. The question was far from finally settled and would require further reflection.

18. With regard to the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, the Working Group concerned with that question had submitted a report which the Commission had approved and had summarized in paragraphs 137-144 of its own report.

19. His delegation also welcomed the progress made in regard to the second part of the topic "Relations between States and international organizations". A preliminary study had been made by the Special Rapporteur and submitted to the Commission, which had discussed the order of work on the topic and the advisability of beginning with the legal status, privileges and immunities of intergovernmental organizations.

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20. Chapter VIII of the report dealt with the Commission's other decisions and conclusions. His delegation noted with satisfaction the progress so far achieved in the study of the law of the non-navigational uses of international water courses, review of the multilateral treaty-making process, international liability for injurious consequences arising out of acts not prohibited by international law, and jurisdictional immunities of States and their property. With reference to the last topic, his delegation noted with interest the observations made by the representatives of Jamaica, Ethiopia, Spain, Austria, the United Kingdom and Poland. Since the latest session of the Commission, the practice of States had advanced in that regard. The United Kingdom, for instance, had adopted new legislation on State immunities in 1978, while the European Convention on State Immunities of 1972 had come into force in 1976, having received the required number of ratifications. That topic was admittedly delicate, since State immunity had two correlative aspects, according to whether the State was claimant or grantor of immunity. States could assist the Commission by furnishing information on their laws and practice relating to the subject.

21. His delegation also noted that, for the first time, the Arab Commission for International Law had sent an observer to the session of the Commission, at which were also represented the Asian-African Legal Consultative Committee, the European Committee on Legal Co-operation and the Inter-American Juridical Committee. It also noted that the International Law Seminar had become an institution which deserved to be further encouraged. Lastly, noting the importance of the Commission's work, his delegation considered that the Commission required as much support as possible, and he therefore stressed the need to reinforce the Codification Division of the United Nations Secretariat, which gave it valuable assistance without which it would not be possible to maintain the high quality of the Commission's work.

22. Mr. TUBMAN (Liberia) said that his remarks would deal only with the draft articles on the most-favoured-nation clause, on which the Commission had completed its work. In that connexion, statements made during the current discussion on the topic had implied that the Sixth Committee must now either accept the draft articles as a whole or reject them. His delegation held a different view: the Committee could still make changes, even basic changes, to the Commission's draft, which was only a point of departure. If there was some confusion on that point, the manner in which the Commission appeared to view its role might to some extent provide the explanation. Essentially, the Commission saw its talk as one of giving systematic form to rules of international law. Where no clear rules were discerned, the practice of States was examined by the Commission and new rules based on the practice were drawn up. Sometimes, where there were no clear instances of State practice, the Commission engaged in progressive development of the law. The Commission could not make law; it might only point the direction in which it considered the law should move. States might disagree with the Commission and reject the suggestion, but the possibility of such rejection should not discourage the Commission from making its considered and warranted suggestions.

23. That view of its role could be seen clearly in the commentary which accompanied articles 23, 24 and 30 of the draft articles; the Commission had clearly indicated its wish not to "enter into fields outside its functions and was not in a position

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to deal with economic matters and suggest rules for the organization of international trade". Thus, it came as no surprise when the Commission found, as indicated in paragraph 54 of its report, that the operation of the clause in the sphere of economic relations was not a matter that lent itself easily to codification of international law, because the requirement for that process, as described in article 15 of the Statute, namely, extensive State practice, precedents and doctrine, were not easily discernible.

24. The Commission had therefore attempted to enter into the field of progressive development of the law by adopting articles 23, 24 and 30. In that regard, his delegation would have been happier to see those draft articles contain comprehensive clear legal rules which would secure special treatment for developing countries in the field of international trade. Such clear rules, by their insertion in the draft, would not by that fact alone be turned into binding rules of law. But States would have been given greater encouragement to agree on the law in that area.

25. It was generally agreed that the principle of non-discrimination in international law followed from the principle of the equality of States. That principle notwithstanding, however, States were free to grant special favours to other States on the ground of some special relationship of a geographical, economic, political or other nature. Accordingly, ILC had made provision for exceptions to the principle of non-discrimination in the field of economic relations, where striking inequality existed among States. It was gratifying that within the sphere of its own competence, the Commission was endeavouring to combat economic inequality, which constituted one of the greatest challenges currently facing the world.

26. Since the first United Nations Conference on Trade and Development in 1964, the desire to provide special treatment to developing countries with a view to enabling them to develop their international trade had been reflected over the years, both in the measures adopted by such international organizations as GATT and in actions taken by individual States. In the view of his delegation, the time had come for that trend to be expressed in legal norms. Despite certain lacunae, the draft articles concerning the most-favoured-nation clause could lead to the subsequent adoption of appropriate and comprehensive rules of international law.

27. It might well be asked whether an international convention on the most-favoured-nation clause was the proper place to tackle the complex problem of international trade relations, and careful consideration should be given to that question. The problem of the economic disparity among States seemed to elude any simple solution. Such problems should, therefore, be tackled by all those whose role and training qualified them to resolve the difficulties which divided men and nations. In that connexion, lawyers could play a pioneering role and thus help solve outstanding economic, social and political problems.

28. Efforts to expand trade between developed and developing countries could serve more than merely the immediate ends towards which such efforts were directed. Legislation aimed at protecting trade and commerce had also helped to win recognition within States of a number of basic constitutional rights. There was no

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reason why the same could not happen in the international sphere. Action by ILC to advance the interests of the developing countries in the field of international trade was therefore significant, and his delegation was glad to see that such action seemed to have unanimous support.

29. It had been asserted, however, that the draft articles prepared by the Commission should have made an exception in the case of customs unions among developed countries, on the ground that treaties containing a most-favoured-nation clause that were concluded by a member State of a customs union among developed countries, such as EEC, with States not members of that customs union should not confer upon the beneficiary State the benefits members of the union enjoyed by virtue of their membership in it. But the principal aim of the most-favoured-nation clause was to eradicate State-imposed barriers to trade, and such a barrier certainly existed when some States were accorded advantages that were not extended to others. The reasons for exempting developing countries, on a temporary basis, from some of the effects of the clause were well known. Those reasons did not apply in the case of developed countries, and the fact that such countries might have joined together in customs unions did not change the situation. It was regrettable that the absence of any exemption covering customs unions among developed countries seemed to have led such countries to an almost total rejection of the draft articles, since it was essential for the developed countries to accept in a concrete way the principle of special treatment for developing countries if the latter were to benefit from international trade while their economies remained undeveloped.

30. It was necessary, therefore, to state the principles applicable to such matters in a manner acceptable to both developing and developed countries. That did not mean that the Commission's draft articles as they stood should be rejected. The draft articles had the advantage of bringing out clearly the conflicting considerations underlying that issue and represented valuable groundwork in a difficult area of law. Accordingly, Governments should be given the necessary time to study the draft articles. They could do that during the coming year, and a decision on what to do with the Commission's work in that important area could be taken at the next session of the General Assembly.

31. The International Law Commission had completed 30 years of service to the cause of international law. Each year, the consistently high quality of its work commanded the admiration of practitioners and students of international law alike. It was too early to judge whether the working groups which had been set up by the Commission would have the effect of speeding up its work, but it was clear that steps must be taken to strengthen the Codification Division of the Office of Legal Affairs and to increase the Commission's resources for discharging its duties. The Commission would be unable to carry out its task of codifying and developing international law if, in the still relevant words of an eminent jurist who had been a member of the Commission in its early years, it could rely only on "token forces".

32. Mr. BOLINTINEANU (Romania) said that his Government attached special importance to the elaboration of legal principles and rules whose universal observance was an essential condition for the protection of peace and the strengthening of international co-operation. The effectiveness of those principles and rules of international law would be enhanced if they reflected to the fullest extent

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possible the new structures of the international community and kept pace with changes occurring in the world. The rules of international law should be an instrument of justice and equity, and the elaboration of such rules was part of the process of establishing a new international economic, political and legal order. The rules of international law should therefore be improved, and new principles and new rules which were in keeping with the needs of peoples should be adopted. The establishment of a new international economic order could not be achieved without the development of international law. It was therefore necessary to set out the fundamental rights and duties of States in a universal code and to draw up a code on economic relations between States and international instruments embodying the basic principles of the new international economic order, the dominant principle being permanent sovereignty over natural resources.

33. His delegation was favourably disposed to the solutions adopted by ILC with regard to the definition of the most-favoured-nation clause, its legal basis and its source. It also supported articles 14 and 22, which guaranteed respect for the sovereignty of all States. It welcomed the changes introduced in the terminology relating to compensation and reciprocal treatment. It felt, however, that practice was at variance with one of the provisions of article 17 relating to the irrelevance of the fact that treatment was extended to a third State under a multilateral agreement. His delegation shared the reservations on that point expressed by a number of representatives. Moreover, it felt that the exception provided for in article 24 with regard to customs arrangements among developing countries might have been taken into account, mutatis mutandis, in article 17. After careful consideration of the articles relating to developing countries, his delegation had concluded that, while article 24 did fill a lacuna, it was drafted in unduly restrictive terms. Article 23 should likewise be redrafted in more general terms; furthermore, it would seem that article 30 could be improved in the light of ongoing negotiations relating to preferences.

34. His delegation wished to state once again that the multilateral convention on co-operation in commercial shipping signed at Budapest in 1971 did not grant most favourable treatment and national treatment simultaneously but provided that the contracting parties were free to choose between the two treatments on a basis of reciprocity. Also, it believed that the names of the countries which had issued the declaration quoted on page 157 of the English text of the ILC report should be indicated in the relevant foot-note. His delegation hoped that its comments would be taken into account when the Commission's report was re-issued in its Yearbook or in any other connexion.

35. With regard to State responsibility, ILC had, with its usual caution, adopted texts either reflecting existing norms (art. 23 to 26) or stressing the needs of the progressive development of international law (art. 27). As for article 23, it seemed essential to define an international obligation in order to emphasize the juridical character it derived from the norms of international law in force at the moment when the illicit act had been performed. It was important to avoid any confusion between juridical concepts and political concepts. In his delegation's view, therefore, the two conditions required for the attribution of international responsibility should be defined more clearly: (a) the occurrence of the event which it had been the State's obligation to prevent and (b) the establishment of the State's failure to prevent it. It also seemed preferable, in drafting that article, to avoid negative forms of expression and to follow the model of articles 21 and 22.

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36. His delegation also had some reservations concerning the term "event" used without any other qualification. In paragraph (5) of its commentary, ILC justified its choice of that term by citing the fact that a violation of the obligation referred to in the article could occur even where there were no injurious consequences. None the less, it seemed preferable to specify that the article related to an event which had or might have injurious consequences. The formulation of article 26 was such as to suggest that it referred only to the violation of an international obligation that had a continuing character, although the Commission affirmed that it had also taken into consideration events that were instantaneous in character. One might consider a formulation specifying that the violation of the obligation took place at the moment when the event occurred or when it began, the violation extending in the latter case over the entire period during which the event continued.

37. Article 27 constituted an important step towards including in the draft on State responsibility some international legal norms that were particularly important for the defence of international peace and security, in particular the interdiction and sanctioning of certain acts referred to in paragraph (13) of the commentary, such as the perpetration of an act of aggression in the sense of article 3 (f) of the Definition of Aggression of 1974, the lending of assistance to an apartheid régime, the maintenance of colonial domination by force, as well as violations of national independence and sovereignty. Relying on elements drawn from conventional practice and the practice of States in general, ILC had held that a State's participation in an internationally wrongful act of another State should be considered a wrongful act separate from the act of the latter State and should be classified differently. ILC noted, however, that an argument in favour of a different conclusion could properly be drawn from the Definition of Aggression. Therefore his delegation believed that in the case of the crimes enumerated in article 19, paragraph 3, it was important to classify the participation and the principal act in the same manner. It would be possible in that connexion to specify in article 27 that the gravity of the principal act also affected the classification of the act of assistance. The draft articles on State responsibility required close study on the part of Governments and his delegation therefore approved the Commission's decision to submit them to States for their comments.

38. Concerning the two topics to which ILC also proposed giving priority in 1979, namely, that of succession of States in respect of matters other than treaties and that of treaties concluded between States and international organizations or between two or more international organizations, there did not seem to be many substantive problems. It was therefore to be hoped that substantial progress could be made. The question of jurisdictional immunities of States and their property took on particular practical importance for relations between States. The Working Group's report showed that a distinction had been established between acts jure imperii and acts jure gestionis. Special prudence should be exercised in that matter, and the particular features of different legal systems and of the differing practice of States should be taken into account. In his delegation's view, a respect for those particular features should constitute a fundamental criterion for codifying rules governing that matter. His delegation reserved the right to speak again later on the report of ILC on the work of its thirtieth session.

39. Mr. RIOS (Chile) said that his delegation would have liked to receive the ILC report earlier, so that it might have analysed in greater depth the important results of the Commission's thirtieth session. His delegation found very interesting the Commission's commentaries on the draft articles, which allowed Governments to form a definitive opinion on the provisions with which they dealt.

40. With regard to the draft articles on the most-favoured-nation clause, his delegation felt that ILC had been right to consider that question not only in its economic aspects but also within the larger framework of the law of treaties, bearing in mind all the areas to which such clauses might apply. It had wisely omitted from its draft any provision on the obligations or rights of individuals, thus making the scope of the application of the draft articles coincide with that of the Vienna Convention on the Law of the Treaties.

41. In general, the draft articles on the most-favoured-nation clause should contribute to resolving any problems that the application or interpretation of such clauses might pose. Referring often to internal law, the proposed provisions would undoubtedly bring into play the rules applicable to the conflict of laws; such conflicts being inevitable in the matter, it was desirable to adopt general international legal norms governing the application of the clauses. Without prejudice to the definitive opinion of its Government, his delegation believed that the draft formed a harmonious whole, relevant to both the codification and the progressive development of international law, and that it offered a satisfactory basis for formulating a definitive convention on the subject.

42. Concerning articles 23, 24 and 30 in particular, his delegation believed that, although most-favoured-nation clauses should be aimed at encouraging equality among States and eliminating any discrimination, it must still be recognized that there were different degrees of development which had to be taken into account. A consideration of the exceptions to be made to the clauses had thus led ILC to draft the articles in question, after taking into account the relevant comments of Member States, United Nations bodies, specialized agencies, and the intergovernmental agencies concerned. Article 23, based on the principle that the granting State could freely choose the beneficiary developing States within a generalized system of preferences and exclude others, called for very close study. It was also necessary to examine more thoroughly article 24, which excluded a developed beneficiary State from any preferential treatment in the field of trade extended by a developing granting State to a developing third State. However, that provision was subject to a limitation which, as other delegations had already pointed out, might seem excessive, since it was stipulated that the preferential treatment must be in conformity with the relevant rules and procedures of a competent international organization of which the States concerned were members. Noting in particular the provisions of article 30, on the new rules of international law in favour of developing countries, his delegation hoped nevertheless that the question of the clauses would continue to evolve. On the whole, the ILC recommendation that the draft articles should serve as a basis for concluding a convention on the subject deserved to be received favourably.

43. With regard to the question of State responsibility, ILC had drafted three new articles, articles 24 to 26, on tempus commissi delicti. His delegation thought it proper that in article 24, relating to an instantaneous act, the expression

"act not extending in time" had been chosen, since it did not exclude a violation whose effects continued subsequently. Those three articles dealt with complex questions deserving a thorough analysis. At first sight, the proposed provisions seemed satisfactory and reflected a laudable effort to determine the moment when the breach of an international legal obligation took place juridically, with a view to establishing the moment when the corresponding responsibility arose.

44. Concerning the succession of States in respect of matters other than treaties, ILC had drafted three articles, articles 23 to 25. His delegation had already had occasion in 1977 to criticize the use in article 21 of the expression "an equitable proportion" repeated now in articles 24 and 25. It was a vague expression, likely to arouse feelings of insecurity and distrust. An effort should be made to find a more precise wording.

45. In conclusion, he said that his delegation approved of the programme and the methods of work ILC was proposing to follow.

46. Mr. MUDHO (Kenya) said that his delegation would confine itself to some preliminary remarks on the report of the International Law Commission on the important results achieved at its thirtieth session, until it had studied the report in greater depth. He welcomed the inclusion of the commentaries on the draft articles, which enhanced the ability of many States to follow the Commission's work, particularly States such as his own which did not yet have unlimited research facilities.

47. Regarding the draft articles on the most-favoured-nation clause, his delegation was concerned that putting the term "clause" into the plural in the title might create more difficulties than it solved. Articles 23-26 and article 30 on new rules of international law in favour of developing countries formulated exceptions to the application of the clause. Those provisions were well-conceived and justified both in legal theory and State practice. However, certain delegations had expressed reservations concerning those exceptions. It had been stated that it would not be easy to distinguish between "developed countries" and "developing countries". However, those terms were used in numerous economic and political texts to indicate different levels of development without creating any confusion. Moreover, there was no lack of generally accepted parameters for characterizing a country as belonging to one or the other of those categories.

48. Another argument that had been advanced was that those exceptions would only be valid in the future. That argument was used in particular in relation to draft articles 28 and 29. Yet, both those articles enunciated well-known principles of international law concerning non-retroactivity of treaties and the sovereign liberty of action of States. It had also been stated with reference to those exceptions that the results of ongoing negotiations might affect the most-favoured-nation clause. His delegation saw no incompatibility between the draft and the hoped-for outcome of those negotiations. His country was participating actively in the international trade negotiations at Geneva and Lomé and would not be privy to any action that might in any way prejudice those negotiations, to which it attached the greatest importance in the larger context of establishing a new international economic order. The results of the Commission's work should be seen as complementary to those negotiations and not as potentially prejudicial to them.

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49. It had also been stated that the list of exceptions was incomplete and that the non-inclusion of customs unions and free-trade associations constituted a glaring omission; that the exclusion of customs unions ignored regional economic relations and their impact on the operation of the most-favoured-nation clause; that that exclusion was inconsistent with GATT, which considered that the most-favoured-nation clause did not apply to customs unions and free trade associations; and that various regional economic groups were of the view that that clause was not applicable to their members. However, in the view of his delegation, there was nothing in the draft articles that went against the sovereign right of States to form themselves into regional or subregional economic groupings in accordance with the Charter of Economic Rights and Duties of States. The Commission had acknowledged that right of States and had taken a deliberate and reasoned decision regarding the application of the most-favoured-nation clause. The question was not whether States could form themselves into economic groupings but rather whether or not the most-favoured-nation-clause system applied in those circumstances. The Commission had answered in the affirmative, except for cases where a developed country conferred benefit on a developing country within the framework of a generalized system of preferences (art. 23) or where two or more developing countries agreed to extend certain privileges among themselves (art. 24). Moreover, in the latter case, the draft laid down two important conditions relating to the application of the exception by stating that the preferential treatment in question should relate to the field of trade and be in conformity with the relevant rules and procedures of a competent international organization of which the States concerned were members.

50. Non-acceptance of draft articles 23, 24 and 30 would be tantamount to saying that there was no such thing as different levels of development. However, recognition of such differentiation and the fact that foreign trade was a vital instrument in the economic development of developing countries must logically lead to the kind of exceptions reflected in those articles. While the draft articles as a whole enjoyed the full support of his delegation, he emphasized that the attitude that his Government would finally adopt to them would depend on the decision taken with regard to those three articles, retention of which it regarded as crucial. His delegation supported the idea of convening a conference of plenipotentiaries to adopt a convention on the subject. Although it had no fixed views regarding the timing of such a conference, it believed that States should be given sufficient time to study the matter carefully in order to ensure the success of the conference.

51. Chapter III of the Commission's report dealt with State responsibility. At its thirtieth session, the Commission had considered and adopted five new draft articles relating to four essential elements, namely: breach of an international obligation to prevent a given event (art. 23); moment and duration of the breach of an international obligation by an act of the State not extending in time (art. 24); moment and duration of the breach of an international obligation by an act of the State extending in time (art. 25); and moment and duration of the breach of an international obligation to prevent a given event (art. 26). It was evident that the Commission had sought to maintain a distinction between what had been decided as "obligation of conduct" and "obligation of result". While his delegation did

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not dispute the Commission's conclusions it wished to reflect further before pronouncing itself definitively on that distinction. However, it fully supported draft article 27 of the chapter on implication of a State in the internationally wrongful act of another State.

52. With regard to chapter IV of the report under consideration, his delegation believed that articles 23-25, adopted by the Commission at its thirtieth session, represented a fair balance between the interests of the successor State and the interests of creditors and fully supported them. With regard to article 18, in which the word "international" appeared in square brackets, he observed that, as his delegation had stated at the preceding session, State succession to debts should be limited to debts to other States or international organizations.

53. His delegation welcomed the progress achieved on the question of treaties concluded between States and international organizations or between two or more international organizations. Articles 35-38, which had recently been adopted by the Commission, were acceptable to his delegation, and it regarded as prudent the Commission's attempt to take into account and align the substance of those articles with the corresponding provisions of the 1969 Vienna Convention on the Law of Treaties. However, like some other delegations, it was of the view that the choice of the term "third States", used at the beginning of article 36 bis, was an unhappy one. With regard to subparagraph (b) of that article, it noted that the Commission had decided to defer a decision pending comments by the General Assembly, Governments and international organizations. It therefore reserved the right to comment further on that subparagraph at a later date.

54. His delegation noted with approval the Commission's decision to set up the Working Group on status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. It associated itself with other delegations that had emphasized the importance of that question and shared their view that the Commission should continue its work on that subject. Chapter VII of the report dealing with the second part of the topic "relations between States and international organizations" was of particular interest to his country, which was host to a number of international organizations. His delegation endorsed the Commission's intended course of action with respect to that subject.

55. With regard to the other matters dealt with in chapter VIII, his delegation hoped that the Commission would soon be in a position to report some progress, particularly with regard to the question of international liability for injurious consequences arising out of acts not prohibited by international law. It endorsed the decisions, contained in paragraphs E and F of chapter VIII, relating to the programme and methods of work of the Commission and welcomed its co-operation with other bodies engaged in the progressive development of international law and its codification at the regional level. It also welcomed the support given to the International Law Seminar and commended all those who had announced their intention to contribute to the financing of future sessions of the Seminar. In that connexion, his delegation strongly supported the strengthening of the Codification Division, which was making an invaluable contribution to the work of the Commission.

The meeting rose at 1.20 p.m.