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Chairman: Mr. CALLE y CALLE (Peru)

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The meeting was called to order at 11 a.m.

AGENDA ITEM 120: REVIEW OF THE MULTILATERAL TREATY-MAKING PROCESS: REPORT OF THE SECRETARY-GENERAL (continued) (A/35/312, Add.2, A/36/553 and Add.1 and 2)

1. Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) said that his delegation had outlined its basic position on the item concerning review of the multilateral treaty-making process in the Sixth Committee at the previous session of the General Assembly.

2. The first report of the Secretary-General (A/36/312) on the topic contained a detailed and faithful account of State practice with regard to the multilateral treaty-making process, and provided valuable information which could be used in the context of question 3 in section A of annex I of document A/36/533. In connexion with the questions considered in section B, his delegation felt that the United Nations already had at its disposal adequate facilities and procedures by which States could exchange views as to the need to conclude a particular multilateral treaty and the topics to be selected for consideration in United Nations bodies or at international conferences. In that context, questions relating to the maintenance of international peace and security were obviously of special importance. A review of the diversified procedures by which treaties were concluded could and should help to enhance the effectiveness of the treaty-making process. It would be both undesirable and impractical to attempt to impose uniformity on that process.

3. In connexion with the questions considered in section C, it was important to stress the relevant functions of the General Assembly. The Assembly's role in respect of treaties elaborated in other intergovernmental organizations could be restricted to the collection of information and its dissemination through the Sixth Committee.

4. Similarly, in connexion with section D, "General improvements of the treaty-making process in the United Nations", the function of the United Nations Secretariat might be to accumulate legal and other information regarding a projected treaty and to prepare appropriate ancillary materials as required.

5. It did not seem worthwhile to determine in advance which body should be entrusted with the preliminary drafting of a multilateral treaty. In that regard, both the International Law Commission and the Sixth Committee could play a useful role. There was certainly no need to convene special international conferences to finalize and adopt the texts of treaties drafted by the International Law Commission, since that was a task best entrusted to the Sixth Committee. Nor, in connexion with the questions to be considered in section E, did there seem to be any need to reorganize the work of the Commission. In choosing topics for consideration, and in establishing time-limits, the Commission should continue to be guided by the recommendations of the General Assembly.

6. Both the Sixth Committee and the other Main Committees of the General Assembly should play a major part in the final negotiation and adoption of

(Mr. Kachurenko, Ukrainian SSR)

multilateral treaties (section F). If a special conference were needed, the schedule for that conference and other relevant matters should be determined by a General Assembly resolution.

7. In connexion with the questions raised in section G, it should be noted that there was no need to establish a bureau for the drafting of international treaties or to diversify the functions of drafting committees. The established drafting procedures in the United Nations were quite adequate. Existing practice was also satisfactory in respect of records, reports and commentaries (section H).

8. His delegation's views with regard to post-adoption procedures (section I) were based on the conviction that the United Nations should not undertake consideration of questions relating to the procedures by which individual States ratified and gave effect to multilateral treaties. States should not be required to give reasons for not acceding to a multilateral treaty, and no attempt should be made to provide for the automatic entry into force of any treaty. Such attempts were contrary to the principle of respect for the sovereignty of States and non-interference in their internal affairs.

9. His delegation felt that the procedures for amending treaties (section J) and the nature of those amendments should be determined in United Nations bodies or at international conferences, with due regard for the specific features of the treaty under consideration. His delegation saw no need to change existing practice in that regard.

10. On the matters considered in chapters II and III of the Secretary-General's report, his delegation wished to point out that there was no justification for issuing documents of 700 pages or more when most of the constituent materials were already available.

11. His delegation considered that, while an updated version of the Handbook of Final Clauses could be worthwhile, provided it was paid for from regular budget allocations, the same could not be said for the Summary of the Practice of the Secretary-General as Depository of Multilateral Agreements, since some aspects of those functions were already dealt with in the report of the Secretary-General on registration and publication of treaties and international agreements pursuant to Article 102 of the Charter of the United Nations (A/36/570). For that reason, his delegation opposed the proposal to set up a working group to discuss the question. Such a working group would merely serve to distract the Sixth Committee from consideration of more pressing matters, and was unlikely to achieve substantive results.

12. Mr. FRANCIS (Jamaica) said that in 1980 the International Law Commission's views on the subject of multilateral treaty-making had been given in document A/35/312/Add.2. Although those views were useful as background material, they fell short of what was needed; that was not the fault of the Codification Division, but was attributable solely to the Commission. The Commission, as the senior codification partner, could have been expected to take a close look at its

(Mr. Francis, Jamaica)

work in relation to the increased volume of codification work being undertaken in the United Nations, sometimes by organs that did not have as much expertise as the Commission. It could have considered such questions as how in the existing circumstances it could become more actively involved with more of the contemporary legal issues under discussion in the United Nations with a view to codification; unfortunately it had not done so. It should have expressed frank views regarding the factual situation, its own capacity, the need to redress the imbalance in its membership and its inability to deal with more of the significant contemporary issues.

13. The Sixth Committee now had the opportunity of filling the gap left by the Commission. According to article 18 of its statute the Commission was required to engage independently in codification, but in practice the General Assembly and the Sixth Committee reviewed the Commission's work and established its priorities. In the modern world, codification was making increasing demands on the Sixth Committee. The Commission could not be more effective, or work faster, than the Sixth Committee wished. In considering agenda item 120 the Sixth Committee had the opportunity to give the Commission new impetus, and he could assure the Committee that the Commission would be fully prepared to respond to the Sixth Committee's demands in 1982. It would have been impossible for the Commission to move any faster with its existing heavy agenda. He had been a member of the Commission for the past five years, and felt that some of the criticisms that had been levelled against it, even those coming from his own delegation, were not justified in the light of the day-to-day working of the Commission. One step that the Committee could take to help the Commission to move faster would be to allow it to complete some of the topics currently on its agenda. If the Committee really wanted the Commission to expedite its work and to be more involved with current issues, it must resist the temptation to refer to the Commission a number of topics likely to remain on its agenda for a long period.

14. He referred to a study published by UNITAR entitled "The International Law Commission - the Need for a New Direction", which adopted a rather simplistic approach. The Commission worked within a political framework, under the guidance of the Sixth Committee, and the suggestion in the study that it was unwilling to become involved with political issues was untrue. The Commission was ready to undertake any work that the Sixth Committee or the General Assembly asked it to do. Even if one or two members of the Commission suggested that it should not become involved with political questions, that did not show that the Commission as a whole was not ready to respond to such challenges. The UNITAR publication could not have been based on practical observation of the Commission at work and in its relations with the Sixth Committee, otherwise it would not have embodied such incorrect conclusions.

15. Turning to the questions to be considered, reproduced in annex I to document A/36/553, and in particular to section E, entitled "Work of the International Law Commission", he said that questions 1 (c) (should the Special Rapporteurs work and be remunerated on a full-time basis?), 1 (d) (should they occasionally be drawn from outside the Commission?) and 1 (e) (should they be supported by experts working under their direction on a full-time basis?) should all be answered in

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the negative. However, he believed, from seeing the Commission at work, that it should occasionally appoint a full-time Special Rapporteur for a fairly long period, such as a year. Once the guiding lines of a topic had been laid down by the Sixth Committee or the General Assembly, a Special Rapporteur could be asked to work on it full-time until the draft had been completed. That would enable the Commission to progress more quickly.

16. Three of the items on the Commission's current agenda could be concluded fairly rapidly, namely the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, jurisdictional immunities of States and their property, and the law of the non-navigational uses of international watercourses. Those items could be concluded promptly if the Commission were allowed to extend its session slightly beyond the usual 12 weeks.

17. With respect to possible ways of accelerating the ratification of multilateral treaties by States, he said that consideration should be given to the idea of using the various regional arrangements. The relevant regional associations could inspect a list of outstanding treaties that had been signed but not ratified and that were of particular interest to them, and then take steps to urge ratification by individual States.

18. Mr. CALERO RODRIGUES (Brazil) referred to the comments his delegation had made on the item at the previous session, and to its written comments, reproduced in document A/36/553. The Secretary-General had provided most useful material in the latter document, particularly the topical summary of the debate in the Sixth Committee at the thirty-fifth session. The problem was how to help Governments to make the best use of the information currently available. There were three possibilities: a further analysis could be made with a view to arriving at conclusions or recommendations; the material as it stood could be made available to Governments, and attention drawn to its importance; or the question could be left open until the next session so that those Governments that wished to do so could make further comments, to complete the compilation of views.

19. He doubted that any further analysis was likely to be helpful. Further theoretical analysis would be done by scholars outside the United Nations. The only work the United Nations could do would be to make a practical analysis aiming at specific recommendations. However, those recommendations would be made by Governments to Governments, and consequently progress could be made only in those areas where there was a consensus. There was already agreement that no single régime could apply to all multilateral treaty-making, since the results would be either too vague or too restrictive.

20. He agreed with the Secretary-General that the publication of the valuable material currently available would be fully justified, particularly since the financial implications were not extensive. The existing material, made available to Governments in an accessible form, would undoubtedly help them to make better use of the treaty-making procedure. Accordingly, his delegation had serious

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(Mr. Calero Rodrigues, Brazil)

doubts about the wisdom of establishing a working group to deal with the question at the next session. It was doubtful that such a group could do anything useful, and in any case, from the practical standpoint the Sixth Committee had seen at the current session how difficult it was to have two working groups operating at the same time. At the next session those two working groups would still exist, and there was even talk of the Third Committee wishing to refer items to the Sixth Committee to be dealt with in yet another working group. His delegation therefore opposed the setting up of a working group to deal with the question of multilateral treaty-making.

21. The best course would be to publish the material currently available, which he believed to be sufficient. However, if some Governments felt that they still wished to have the opportunity of making comments, the Sixth Committee could decide to defer the question for one more year. That seemed the best way of concluding the item.

22. Mr. KEMISHANGA (Zaire) said that the question of the multilateral treaty-making process was of particular importance in view of the steady development of international relations. That in turn led to increased codification, which might entail considerable burdens, particularly for economically weak States. His delegation considered that further studies were necessary, particularly with respect to data relating to the need for rationalizing the multilateral treaty-making process, and to the subjects that could appropriately be covered by such instruments and the resources available for that purpose.

23. With regard to the list of questions to be considered, reproduced in annex I to document A/36/553, he supported the idea that the Secretary-General should publish a manual on multilateral treaty-making techniques (section A, question (3)), and update the Handbook of Final Clauses and extend it to additional categories of formal clauses (section A, question (4)) including clauses on peaceful settlement of disputes.

24. With respect to the over-all burden of the multilateral treaty-making process (section B), his delegation considered that in order to lighten the load an order of priority of topics should be established, so that a balance could be maintained in the participation of States, particularly newly-independent States, which seemed to play little part in the process. In so far as the international community considered that the codification and progressive development of international law were important, particularly in relation to international peace and security, it should recognize the need to extend the sphere of action of the international community through the type of treaties concluded.

25. Concerning the over-all co-ordination of multilateral treaty-making (section C), his delegation agreed with those that considered that because of the universal nature of the United Nations the General Assembly was the most appropriate organ to supervise the conclusion of multilateral treaties, including those concluded at the regional level. That meant, however, that the General Assembly must be given the means to do so, so that it could make recommendations on the subjects to be codified while, of course, respecting the autonomy of other

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(Mr. Kemishanga, Zaire)

international organizations. The Sixth Committee would be the body best suited to perform that function.

26. As to improvements of the treaty-making process in the United Nations (section D), they would depend essentially on the relevant legal and other facts concerned. That information would make it possible to assess the chances of success of a treaty and what its effect would be on other treaties. Zaire considered that draft treaties, in so far as they dealt with subjects that had been selected by those that would be affected by the rules concerned, namely States, should logically be initiated by States. However, the nature of the subject and the particular circumstances might determine the choice of the body that should be responsible for the first drafting stage. Such a body should consist either of Government representatives, when the subject would have an impact in the political or economic sphere, or a group of experts or the Secretariat, when technical or legal questions were concerned.

27. His delegation would be opposed to the adoption of a more structured and less flexible system for the elaboration of treaties within the framework of the United Nations. The universality and effectiveness of treaties depended largely on the flexibility of the treaty-making process. The existing procedures and methods should therefore be maintained.

28. Concerning the work of the International Law Commission (section E), the Commission, as a body of experts, had a very important role to play in the progressive development and codification of new norms of international law, but that role should be limited to such technical topics as State responsibility, to the exclusion of political topics. The Commission should therefore have a lighter agenda and precise programmes of work relating exclusively to the progressive development and codification of international law.

29. With regard to the final negotiation and adoption of multilateral treaties (section F), his delegation believed that negotiations on such political questions as disarmament or economic development could be initiated by the General Assembly, whereas technical negotiations could be entrusted to conferences of plenipotentiaries, which, as a rule, were attended by high-level delegations. Although the Sixth Committee would be unable to examine all the multilateral treaties elaborated within the United Nations, it should nevertheless reserve the right to make final adjustments before they were opened for signature. In that connexion, the recommendations concerning the methods and procedures of the General Assembly for dealing with legal and drafting questions, contained in annex II to the rules of procedure of the General Assembly (A/520/Rev.13), were very useful. The recommendation that, when a Committee considered the legal aspects of a question important, the Committee should refer it for legal advice to the Sixth Committee reflected the Assembly's recognition of the residual competence of the Sixth Committee.

30. His delegation believed that negotiations at conferences of plenipotentiaries should take place in two separate phases of the same session, when there was good reason for such an interruption. The Secretariat should prepare, on the

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basis of the observations submitted by Governments and international organizations, a document recapitulating the methods and procedures used at conferences. Such a document should contain commentaries on each of the methods, so that their chances of success could be evaluated. His delegation would be opposed to any attempt to make consensus the sole basis for decision-making, lest that should lead to the exercise of the veto.

31. With regard to questions relating to drafting and language (section G), the enlarged role of the Sixth Committee in the drafting of treaties was not inconsistent with the establishment of drafting committees. The current practice relating to the languages in which the authentic texts of treaties were formulated should be maintained.

32. As far as records, reports and commentaries (section H) were concerned, his delegation endorsed the proposal that article 32 of the Vienna Convention on the Law of Treaties should apply to the work of official organs within which negotiations were taking place, with the exception of informal negotiating bodies, which should simply have reports. The commentaries of the International Law Commission were extremely useful for a better understanding of the principles and norms being elaborated.

33. The question of post-adoption procedures (section I) related to the national sovereignty of States. Nevertheless, the General Assembly should encourage States which had not already done so to ratify or become parties to treaties, except in the case of treaties establishing intergovernmental organizations or treaties containing self-executing provisions. In such cases, ratification was not essential to the application of the provisions by States.

34. For the most part, his delegation supported the existing treaty-amending procedures.

35. Mr. ROSENNE (Israel) said that his delegation had already given its general views concerning the initiative that had led to the inclusion of item 120 in the agenda. Those views had been confirmed by the Secretary-General's report submitted at the thirty-fifth session (A/35/312 and Add.1) and by the observations submitted by the International Law Commission (A/35/312/Add.2). More recently, those views had been confirmed by the UNITAR publication concerning the Commission, a publication whose authors might, in some respects, have misinterpreted Article 13 of the United Nations Charter and the function of the Commission. His delegation believed that the Commission should re-examine its own observations in the light of the criticisms voiced in the Sixth Committee.

36. Some of the questions in the Secretary-General's questionnaire (A/36/553, annex I) related to the proceedings of the Third United Nations Conference on the Law of the Sea. His delegation still believed that until the outcome of that Conference was known, it would be premature to subject its proceedings to any careful and objective analysis that would take all factors into account. It also believed that, in some important respects, developments with regard to the

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(Mr. Rosenne, Israel)

Conference might not have been adequately reflected in document A/35/312. That view had been confirmed by developments in 1981, when the Drafting Committee of the Conference had met almost continuously and had produced some 1,500 amendments to the draft convention in one or more languages. The Drafting Committee had had the exceptionally difficult task of ensuring full harmonization and concordance in six languages of a series of mini-packages negotiated by different persons, at different times and in different political contexts.

37. The few replies submitted by Governments (A/36/553 and Add.1 and 2) hardly permitted any generalized conclusions, except perhaps with regard to the need for caution against misguided attempts by the General Assembly to insist on some sort of rationalization and uniformization of the international treaty-making process.

38. The representative of Australia had suggested that a working group of the Sixth Committee should be established at the thirty-seventh session to deal with the question of the multilateral treaty-making process. That idea deserved serious consideration. However, the terms of reference of the working group should not be too broad, and purely theoretical considerations should be avoided. Even before the beginning of the thirty-seventh session, a basic working paper, perhaps an informal one, should be prepared for the group by Governments and/or the Secretariat. If that was done, the working group should be established as early as possible during the thirty-seventh session, perhaps after a brief exchange of views in the Sixth Committee. One topic which the group could examine was the methods of work of the Sixth Committee.

39. A number of Governments had expressed opposition to the idea of excessive unification and standardization of rules of procedure, at least for the preparation of multilateral treaties. His delegation had already drawn attention to the draft standard rules of procedure for United Nations conferences prepared by the Secretary-General (A/36/199). Before final decisions were taken by the General Assembly, the views of the Sixth Committee should be ascertained. In that connexion, it seemed to his delegation that the proposed working group would be the proper forum for the necessary analysis of any such standard rules of procedure, if indeed they were really necessary. That would legitimately be the concern of the Sixth Committee.

40. There might be room for a more detailed study of the technical problems connected with multilingual drafting, especially the current United Nations practice of drafting conventions in six authentic texts. More information was required about the various techniques employed in the Secretariat itself. The study should be informative and should avoid the delicate problems which might underlie such expressions as "cultural hegemonies". At the same time, it should be borne in mind that major multilateral treaties might well have to be translated officially, by the United Nations, individual Governments or groups of Governments. The language groups of the Third United Nations Conference on the Law of the Sea, or at least some of them, had been alert to that aspect and to the special problems posed, for instance, by the capitalization of

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(Mr. Rosenne, Israel)

words and the changes in the meanings of some words depending on whether they were capitalized or not. In 1966, the Secretariat had prepared a paper for the International Law Commission on some aspects of the multilingual drafting problem. That paper had been helpful in the drafting of what had become article 33 of the Vienna Convention on the Law of Treaties and should be updated.

41. The comments of international organizations reproduced in document A/36/553 suggested that it was not necessary to go beyond the practices of the United Nations; the specialized agencies and the non-United Nations international organizations had quite different problems to face with regard to the multilateral treaty-making process.

42. His delegation warmly supported the suggestion that new editions of the Handbook of Final Clauses and the Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements should be published promptly. While his delegation understood the difficulties facing the Office of Legal Affairs, it had noted with dismay the content of annex III to document A/36/553. The Handbook and the Summary were necessary to Ministries of Foreign Affairs, delegations attending multilateral conferences and the members of their secretariats. His delegation was therefore ready to support any concrete steps that might be envisaged to accelerate publication. If any question of priority should arise, his delegation would be inclined to give preference to the Handbook, in respect of which there had been many innovations since it had first been issued. His delegation believed that new classified bibliographies on the law of treaties would also probably be helpful.

43. Mr. KURUKULASURIYA (Sri Lanka) said that the purpose of the review of the multilateral treaty-making process was to enable the Sixth Committee to give its careful consideration to that process, with a view to improving the existing procedures, wherever necessary, making the process itself more effective and promoting the most efficient use of the resources available. Since 1976, considerable progress had been made towards the achievement of those objectives. The discussions in the Sixth Committee at the thirty-fifth session had reflected clearly the need for a thorough examination of the international treaty-making process in order to enhance the effectiveness of that area of international co-operation. Such an examination might also result in the formulation of certain guidelines relating to the preparation of documents for international treaty-making conferences, the most efficient use of time and personnel during such conferences, conference procedures and post-conference activities for maintaining proper records of the negotiations leading to the formulation of the treaty or convention.

44. Sri Lanka attached considerable importance to item 120, not only because of its deep commitment to the rule of law, but also because it was currently turning every available resource to the rapid and effective implementation of economic development programmes aimed at alleviating poverty and giving the people a measure of prosperity. The commitment to national development

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(Mr. Kurukulasuriya, Sri Lanka)

necessarily placed certain restraints on Sri Lanka's participation in the many international conferences which had become a part of international life. There was a very real need for a thorough examination of the processes by which international conventions were drawn up and for some generally accepted guidelines relating to the convening of international conferences. Such guidelines should depend on the importance of those conferences, not so much for the development and codification of abstract principles, but for the development of principles and norms which had an actual bearing on the lives of people, especially in the developing countries. The current discussion in the Sixth Committee was all the more timely as the developing countries, having consolidated their political independence, were turning to the development, management and use of their own natural resources for the well-being and prosperity of their own people. The most economical use of time, money and expertise was, in the view of his delegation, the objective of the initiative currently before the Committee.

45. The Committee had reached a point in the consideration of the item at which it would be justified in examining closely and thoroughly the material already collected and other material which would certainly become available in the form of responses by Governments to the questionnaire. Such a study could be undertaken by a working group established at the thirty-seventh session. The mandate of the working group might be to consider the questions raised in annex I to document A/36/553 and any other relevant material submitted by Governments and intergovernmental organizations; to identify those aspects of the multilateral treaty-making process of the United Nations that could be rendered more efficient and economical in order to meet the needs of all Members of the United Nations; and to make recommendations on how those goals could best be achieved. Practical usefulness should be the main objective of the deliberations of the working group. His delegation hoped that it would be possible for the Sixth Committee to recommend by consensus to the General Assembly the establishment of such a working group.

46. Mr. MAHMUD (Bangladesh) said that his delegation considered item 120 to be of great interest to the international community as a whole; it believed that the very useful report submitted in response to General Assembly resolution 35/162 (A/36/553) should be studied in greater depth in view of the complexity of the subject.

47. The United Nations had been responsible for the conclusion of almost 100 major multilateral treaties. His delegation agreed that the increasing rate of treaty-making and the tendency to decentralize the treaty-making process within the United Nations were closely related. There was a growing risk of serious delay in the preparation of major treaties and a danger of overlapping with regard to topics being considered in two or more bodies at the same time or at different times. In order to avoid complications, the international community needed sources of comprehensive and easily accessible information, which would help countries to identify areas of mutual interest without conflicting treaty obligations.

(Mr. Mahmud, Bangladesh)

48. There was also the problem of communication. Representatives of the developing countries, which suffered from financial, technical or personnel constraints, could not effectively participate in treaty-making. Solutions must be found to that problem, or it would be further aggravated. In that regard, his delegation believed that there should be additional studies of the over-all burden of the multilateral treaty-making process. Measures should be devised with a view to co-ordination and general improvement of that process.

49. The Sixth Committee should establish a working group at the thirty-seventh session. The group, which could be open-ended or of limited composition, might be assigned the task of considering the questions raised in the reports submitted by the Secretary-General at the thirty-fifth and thirty-sixth sessions. In addition, the working group should recommend which topics should be further investigated in the light of the material and the responses received from various Governments and organizations. His Government should be in a position to submit its views in writing to the Secretary-General within the foreseeable future.

AGENDA ITEM 119: CONSIDERATION OF THE DRAFT ARTICLES ON MOST-FAVOURED-NATION CLAUSES: REPORT OF THE SECRETARY-GENERAL (continued) (A/36/145, 146)

50. Mr. BENA (Romania) said that for his country, which was steadily expanding its trade relations with other countries, international trade was essential to the participation by every State in the international division of labour and in the establishment of a new international economic order. More than ever, there was a need for legal mechanisms to facilitate international trade and develop mutually advantageous economic co-operation on the basis of equal rights and non-discrimination.

51. The liberalization of international trade and the adoption of measures to give the exports of the developing countries access to the markets of the developed countries were of crucial importance. Most-favoured-nation clauses were aimed at combating protectionism, promoting the foreign trade of the developing countries and increasing their participation in international trade in the interest of the economies of all countries. The draft articles adopted by the International Law Commission represented a major contribution to the progressive development and codification of international law. As stated in his Government's reply to the Secretary-General, any effort to regulate the legal mechanism of most-favoured-nation clauses should reflect the existing situation with respect to relations between States and promote the development and reshaping of those relations so that they might gradually meet the requirements of a new international economic order. The future legal instrument should help to remove the obstacles and lift the restrictions which still hampered international trade, and to narrow the gap between the developing countries and the developed countries (A/36/145, p. 8, para. 5).

52. The competent Romanian organs were in favour of a number of the draft articles, including those defining the most-favoured-nation clause and most-favoured-nation treatment (arts. 4 and 5), the article regulating questions

(Mr. Bena, Romania)

concerning the source and scope of most-favoured-nation treatment (art. 8), the one providing for compliance with the laws and regulations of the granting State (art. 22), and those establishing the most-favoured-nation clause in relation to arrangements between developing States (arts. 23 and 24).

53. With respect to article 1, Romania suggested that the question of applicability of the rules to be codified should be reconsidered in respect of clauses contained in treaties concluded between States and international organizations. Article 7 used the term "international obligation undertaken" to indicate the legal basis of most-favoured-nation treatment, whereas article 4 used the term "treaty provision". There did not seem to be any concordance between the terminology used in those two articles.

54. With respect to articles 12 and 13, his delegation did not see the need to include in the future codifying instrument clauses made subject to conditions of compensation or reciprocal treatment. In State practice, such clauses were in the nature of exceptions.

55. With regard to article 21, paragraph 1, it would be useful to examine more closely the consequences of applying that provision. State practice in that area should also be examined in order to ensure that the rule did not introduce an element of uncertainty in relations between States according each other most-favoured-nation treatment.

56. His delegation commended the International Law Commission on its attention to the implications of most-favoured-nation clauses for the developing countries. In drafting the articles, the Commission had taken into consideration the changes that had occurred in international relations in recent years in the light of the imperatives of the new international economic order. The new order should base economic relations among all States on the principles of equality and equity, give the developing countries access to modern technology and support them in their efforts to develop their economies. It was logical that such factors should be taken into account in the progressive development and codification of the norms governing the operation of most-favoured-nation clauses. It was in that spirit that his delegation viewed articles 23 and 24, which allowed exceptions to the general rule for the benefit of the developing countries. The Commission had also been right to provide for the possible establishment of new norms of international law to benefit those countries.

57. As to the form which the new rules should take, Romania believed that, to the extent that the draft articles in their final stage offered generally acceptable solutions, they might serve as the negotiating text for the elaboration and adoption of an international convention (A/36/145, p. 10, para. 11). Romania would spare no effort to give fresh impetus to the finalization of the draft articles and the elaboration of the future codifying instrument.

58. Mr. V. KOSTOV (Bulgaria) said that his delegation attached great importance to the development of the most-favoured-nation clause as a factor encouraging international trade relations on the basis of the principles of the sovereign equality of States, co-operation and non-discrimination.

59. The draft articles prepared by the International Law Commission provided a satisfactory basis for the drafting and adoption of an appropriate international convention which would essentially serve as a code of conduct, establishing general rules which would be binding under international law. The norms established in the convention would be applicable in the political, economic, trade, diplomatic and consular relations between States.

60. His delegation took a favourable view of draft article 5, on most-favoured-nation treatment, and article 9 on the scope of rights under a most-favoured-nation clause. The draft articles had taken sufficient account of the differences in economic development between States and the specific features of individual States. His delegation therefore welcomed the exceptions set forth in articles 24, 25 and 26. On the other hand, some articles of the draft departed from the underlying principle that most-favoured-nation treatment should be unconditional. It considered that the provisions in articles 12 and 13 should be reviewed in that they might tend to widen the existing gaps between the levels of economic development of States and to encourage discrimination in the application of most-favoured-nation treatment.

61. His delegation believed that further work on the codification of the principle should be conducted in the framework of a specially convened international conference. However, it could understand the misgivings voiced by a number of delegations, and took into account the changes that had occurred in the international situation since 1978, when the draft articles had been drawn up by the Commission. Although the work carried out by the Commission had been of high quality, his delegation felt that, since the most-favoured-nation clause principally affected international economic relations and trade, the best approach would be to submit the draft articles to UNICTRAL for its consideration.

62. Mr. GÖRNER (German Democratic Republic) said that many years' experience had shown convincingly that the most-favoured-nation clause was an important means of implementing equal rights among all States and overcoming discrimination and trade barriers. It also helped to reduce existing gaps in the levels of economic development achieved by States. That was the intention behind the provisions in draft articles 23, 24 and 30 in favour of developing countries.

63. The proposed agreement on the most-favoured-nation clauses was, therefore, an important part of the legal foundations for a new international economic order. A legal instrument for the settlement of questions related to the most-favoured-nation clause would effectively contribute to the democratic restructuring of international economic relations.

64. His delegation wished to emphasize its conviction that the draft articles constituted a good basis for further work on the topic. That was evident from the

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(Mr. Görner, German Democratic Republic)

balanced approach to the question of proposed exceptions from most-favoured-nation treatment, which covered all essential aspects. Incorporation of any further exceptions was likely to have an adverse effect on that balance. His delegation could not, for example, support the demand for an exception in favour of mutually accorded privileges within an economic community, since such an exception did not constitute a generally recognized norm of international law, and would be prejudicial to the interests of developing countries.

65. His delegation felt that the correct procedure for settling questions which might arise in connexion with the application of the most-favoured-nation clause in relation to intergovernmental economic organizations was through direct negotiations between the States concerned.

66. Although the draft articles were generally satisfactory, they could undoubtedly be improved in some respects. His delegation would, in particular, welcome a further strengthening of the unconditional form of most-favoured-nation treatment. His delegation hoped that in further work on the draft articles, all proposals submitted in written form and in verbal statements would be carefully examined with a view to achieving a generally acceptable text.

67. In taking a decision on the further consideration of the draft articles, the Committee should bear in mind General Assembly resolution 34/142, which emphasized the necessity of co-ordinating all activities in the field of international trade law, and which entrusted UNCITRAL with that task in order to ensure that legal texts prepared by various international organizations in that field contributed to a coherent and generally acceptable system of international law. His delegation accordingly endorsed the proposal that the draft articles should be submitted for consideration by UNCITRAL as a matter of priority with a view to improving the text so that an appropriate convention, binding in international law, could be adopted as soon as possible.

68. Mr. KAREV (Union of Soviet Socialist Republics) said that his country had always favoured universal recognition and application of the principle of most-favoured-nation treatment in international trade and economic relations. The codification of the norms of international law in that respect was particularly important in the endeavour to establish equitable and mutually advantageous economic relations and to eliminate economic discrimination. His delegation therefore supported all measures undertaken in the United Nations and other international orgnaizations which were aimed at bringing about practical implementation of the principle of most-favoured-nation treatment.

69. The draft articles prepared by the International Law Commission constituted a satisfactory basis for the elaboration of an appropriate international legal instrument in the form of a convention. His delegation could not agree with the view that the draft articles should take the form of a General Assembly resolution or declaration, since such a procedure would not adequately reflect the importance of the principle in international commercial and economic relations.

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(Mr. Karev, USSR)

70. Draft article 5 was particularly valuable in that it provided a definition of the generally accepted concept of most-favoured-nation treatment in international law, together with the rights associated with that treatment. However, the clause itself could only be of benefit to the development of international trade and commercial relations if it was not restricted by an excessive number of exceptions. His delegation considered that the exceptions to the application of the most-favoured-nation clause contained in draft articles 23 to 26 were fully justified, and that the Commission's decision not to include an article 23 *bis* in the draft had been correct.

71. The provisions in the draft dealing with the "conditions of compensation" and the "condition of reciprocity" in connexion with the most-favoured-nation clause were not conducive to the favourable development of international trade relations and might indeed constitute a serious obstacle to implementation of the principle of most-favoured-nation treatment.

72. His delegation had given careful consideration to the Secretary-General's reports on the topic submitted in 1980 and 1981, and the comments made by delegations in the Sixth Committee during the thirty-fifth session of the General Assembly. It was evident that the vast majority of States were in favour of continuation of the International Law Commission's important work on the most-favoured-nation clause with the aim of concluding, on the basis of the draft articles, an appropriate international convention. Such concern was a natural reflection of the importance States attached to the furtherance of international economic relations.

73. With the foregoing considerations in mind, his delegation supported the suggestion made by the delegation of Hungary that the draft articles should be submitted to UNCITRAL with a request that they should be examined from the point of view of their effect on the progressive development of international trade, on the understanding that the General Assembly should, as a matter of priority, review the topic at its thirty-eighth session.

AGENDA ITEM 122: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (*continued*) (A/36/33; A/C.6/36/L.10)

74. The CHAIRMAN announced that El Salvador and Suriname had become sponsors of draft resolution A/C.6/36/L.10.

The meeting rose at 1 p.m.