Mr. Chairman,

I am taking the floor in this Committee for the first time. Therefore, let me first congratulate you and the members of the bureau on their election. I am sure the Committee will make good progress under your able guidance.

I also wish to thank Mr. Earnest Petric, Chairman of the International Law Commission, for his comprehensive introduction of the Report of the ILC on its 61st Session.

The Commission, at its last session, has had a very productive session, and has made considerable progress in its consideration of the various matters on its agenda, including the identification of possible new topics. We welcome the new members who have joined the Commission this year, Mr. Michael Wood of the United Kingdom and Professor Shinya Murase of Japan.
Mr. Chairman,

On the topic of “Responsibility of International Organizations”, we commend the Special Rapporteur, Professor Giorgio Gaja, on the presentation of his Seventh Report which addresses certain outstanding issues such as the general provisions of the draft articles and the placement of the chapter concerning the responsibility of a State in connection with the act of an international organization. The Report also proposes certain amendments based on a review of comments made by States and international organizations on the draft articles provisionally adopted earlier as well as the recent decisions rendered by national and regional courts, especially on the issue of attribution.

Mr. Chairman,

We also commend Professor Gaja on the completion of the first reading of the set of draft articles on this topic, along with commentaries. The Draft Articles follow general pattern of the articles on Responsibility of States for International Wrongful Acts with necessary adjustments taking into account the different nature, structure and functions of international organisations.

The Commission has sought the comments and observations of States on these draft articles. While we would be separately submitting our comments, we have a few preliminary observations on some of the provisions. On the question of countermeasures, we reiterate our position that the disputes between an international organisation and its members should, as far as possible, be settled in accordance with the rules and through the internal procedures of the organisations. Further, the rules of the organisation should be decisive in determining whether an organisation can take countermeasures against its members or be the target of countermeasures by its members. Only where the relevant rules of the organization expressly provide, should the taking of counter measures by an organization be considered. Accordingly, considering the availability of limited practice, the uncertainty of the legal regime and the risk of abuse inherent in the concept, it is necessary to adopt a cautious approach.

Mr. Chairman,

Draft article 39 deals with the requirement of members of an international organisation to take measures with a view to provide it the means necessary for effectively fulfilling its obligations, and thus is intended to provide for a situation where an organization which has responsibility lacks the means or resources to carry out its obligations.

Article 39, as drafted, addresses the issue of responsibility of member States towards an organization of which they are members, whereas the topic deals with the responsibility of international organizations and not that of States. In any case, the obligations of member States towards the organization would be dealt with under the constituent instrument under which it is established. Accordingly, this article should be redrafted as an obligation of the organization to make necessary efforts to approach its members for providing it with the means for effectively fulfilling its obligations.

Article 60 provides for the responsibility of a member State seeking to avoid compliance with one of its own obligations by taking advantage of the fact that an
international organisation of which it is a member has competence in relation to the subject matter of that obligation to commit an act, which, if committed by the State, would have constituted a breach of an obligation.

Mr. Chairman,

On the topic of “The Most-favoured-nation clause”, we welcome the work of the Study Group, co-chaired by Mr. Donald M. McRae and Dr. Rohan Perera. The Study Group has considered and agreed on a framework that would serve as a road map for the future work. In particular, the Study Group has made important preliminary assessment of the 1978 draft articles and decided on eight papers to be dealt with under different topics.

We also welcome the establishment of a Study Group chaired by Professor Nolte on the topic “Treaties over Time”, which considered the question of the scope of the work of the Study Group and agreed on a course of action to begin the consideration of the topic.

We welcome the appointment of Mr. Lucius Caflisch as Special Rapporteur for the topic “Effects of armed conflicts on treaties”.

We appreciate the decision to make the edited summary records of the Commission’s proceedings up to 2004, available on a pilot basis, on the Commission’s website. Considering the delay in the publication of the Summary Records, this will be of great assistance to member States and others in following the Commission’s work. Further, priority should be accorded to expedite preparation of the summary records of the Commission.

Mr. Chairman,

We also support the Commission’s views concerning the question of honoraria, resulting from the adoption by the General Assembly of its resolution 56/272 of 27 March 2002. The decision to discontinue the honoraria especially affects Special Rapporteurs from developing countries, as it compromises support for their research work. The Special Rapporteurs should also be afforded the opportunity to participate in the Meetings of the Sixth Committee and interact with delegations during the consideration of their topics.

Thank you, Mr. Chairman.

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