PERMANENT MISSION OF JAMAICA TO THE UNITED NATIONS

STATEMENT BY

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SIXTH COMMITTEE AGENDA ITEM 83:

REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-SEVENTH SESSION

UNITED NATIONS HEADQUARTERS
4rn NOVEMBER 2015

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STATEMENT BY JAMAICA

My delegation would like to congratulate you on your election as Chairman and your able conduct of the affairs of the Sixth Committee. We would also like to thank the International Law Commission for their Report on the Sixty-Seventh Session and the significant contribution that body continues to make to the codification and progressive development of international law.

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from changing the wording of new agreements to meet with the critical interpretation questions now manifest in this area of the law.

Chapter 4 of the Report of the International Law Commission addresses the Most-Favoured-Nation clause. My delegation wishes to thank the Chairman of the Study Group, Professor McRae and his former co-chair Mr. Perera, as well as Mr. Forteau who acted in Professor McRae's absence for the leading role they have played in the ILC's work programme on this subject. My delegation noted with interest the insights provided by the distinguished Ambassador of Sri Lanka on the hesitancy with which the ILC initiated its review of this issue. Investment is admittedly a specialized area of international law with public and private international law dimensions. However, the International Law Commission cannot shy away from treating with treaties between States which govern the commercial relations of States and transnational corporations - some of which account for a greater share of global income than many small developing countries.

Note is taken of the statement in paragraph 8 of the ILC's Study Group's report that

"The Commission does not have an authoritative role in relation to the
decisions of investment tribunals, and to conclude that one tribunal was
right and another wrong would simply insert the Commission as just
another voice in an ongoing debate."

Chairman, my delegation does not view the International Law Commission as just another voice in any debate on matters concerning international law. Nonetheless, we appreciate the reluctance of the Commission to venture into such a vexed topic and to tread cautiously

interpretation and different factors, sometimes unrelated to the words used in the treaties before them, appear to have been given weight."

The ILC Study Group observes that "[t]he particular nature of the WTO system, with its own set of agreements and a dispute settlement process to interpret and apply these agreements, means that there is limited direct relevance of the interpretation of MFN provisions under the WTO for MFN clauses in other agreements. The interpretation of MFN treatment can continue within the WTO system regardless of how MFN clauses are treated in other contexts." (paragraph 48)

My delegation concurs with the view that there is no need to examine the MFN clause in the trade context given the pivotal role played by the Appellate Body in the WTO dispute settlement system.

My delegation also supports the conclusion of the Study Group that the key question of ejusdem generis - what is the scope of the treatment that can be
claimed - has to be determined on a case-by-case basis.

The Report of the Study Group serves to highlight the growing uncertainty in this
area of the law and provides a very useful analysis of the jurisprudence directing
the attention of legal advisers to certain key decisions meriting further reflection. Nevertheless, Mr. Chairman, my delegation hopes that the ILC and the Sixth
Committee will do more to address some of the critilc3593j 0.015 Tc 9Tc 12.4 0 0 12.4 35 13