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A/CN.4/SR.1356

Summary record of the 1356th meeting

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Extract from the Yearbook of the International Law Commission:-
1975, vol. I

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*Paragraphs (9)-(14)**Paragraphs (9)-(14) were approved.**Paragraph (15)*

71. Sir Francis VALLAT suggested that, in the second sentence, the words "stated flatly" in the English version should be replaced by the words "stated clearly".

*Paragraph (15) was approved with that amendment.**Paragraphs (16)-(20)**Paragraphs (16)-(20) were approved.**Paragraph (21)*

72. Mr. AGO (Special Rapporteur), referring to Mr. Kearney's comments on paragraph (7), suggested that the concluding part of the last sentence of paragraph (21) beginning with the words "in which the success of a revolutionary movement might involve a change . . ." be deleted.

*Paragraph (21) was approved with that amendment.**Paragraph (22)**Paragraph (22) was approved.*

The commentary to article 13 [15], as amended, was approved.

The meeting rose at 1.10 p.m.

1356th MEETING

Wednesday, 23 July 1975, at 4.45 p.m.

Chairman: Mr. Abdul Hakim TABIBI

Members present: Mr. Ago, Mr. Bedjaoui, Mr. Castañeda, Mr. Hambro, Mr. Kearney, Mr. Pinto, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat.

Draft report of the Commission on the work of its twenty-seventh session

(A/CN.4/L.235 and Corr.1 and Add.1, and Add.3-6)

(continued)

Chapter IV

THE MOST-FAVOURLED-NATION-CLAUSE

(resumed from the 1354th meeting)

1. The CHAIRMAN invited the Commission to resume consideration of chapter IV of the draft report.

A. INTRODUCTION (A/CN.4/L.235/Corr.1) (continued)

*Paragraphs (40)-(42)**Paragraphs (40)-(42) were approved.*

The introduction to chapter IV of the draft report, as amended, was approved.

B. DRAFT ARTICLES ON THE MOST-FAVOURLED-NATION CLAUSE (A/CN.4/L.235/Add.1) (continued)

2. The CHAIRMAN said that section B of chapter IV included the text of the draft articles on the most-favoured-nation clause already adopted by the Commission at the 1352nd and 1353rd meetings and the commentaries to those articles.¹

Commentary to article 6 ter/bis [13]²

(Irrelevance of the fact that treatment is extended gratuitously or against compensation) (A/CN.4/L.235/Add.3)

3. The CHAIRMAN invited the Commission to resume its consideration, paragraph by paragraph, of the commentaries to the draft articles on the most-favoured-nation clause, starting with the commentary to article 6 *ter/bis* [13].

Paragraph (1)

4. Mr. KEARNEY suggested that, in the concluding phrase of the last sentence of paragraph (1), the words "do the rights of the beneficiary State depend on whether the promises of the granting State were made . . .?" should be reworded to read: "are rights of the beneficiary State affected by whether the promises of the granting State to a third State were made . . .?".

It was so agreed.

Paragraph (1), as amended, was approved.

Paragraphs (2)-(6)

Paragraphs (2)-(6) were approved.

Paragraph (7)

5. Mr. USTOR (Special Rapporteur) said that the Latin expression "*cadit quaestio*" should be replaced by the words "the question does not arise".

Paragraph (7) was approved with that amendment.

The commentary to article 6 ter/bis [13], as amended, was approved.

Commentary to article 6 quater [20]

(The exercise of rights arising under a most-favoured-nation clause and compliance with the laws of the granting State) (A/CN.4/L.235/Add.3)

6. Mr. TSURUOKA said that the commentary to article 6 *quater* dealt only with the unconditional most-favoured-nation clause. Perhaps a commentary should be added on the subject of the conditional most-favoured-nation clause.

7. Mr. USTOR (Special Rapporteur) said that paragraph (6) explained that, although the commentaries and precedents referred to cases of unconditional clauses, the rule proposed in article 6 *quater* applied also to cases where the clause was coupled with the requirement of material reciprocity.

¹ The commentary to articles 6 [8], 6 *bis* [9] and 6 *ter* [10] was approved at the 1354th meeting.

² The figures in square brackets represent the numbers of the articles as they appear in the report.

8. Mr. TSURUOKA said that there might be some advantage in making that point in paragraph (1).

9. Mr. USTOR (Special Rapporteur) said that he preferred to keep the explanation in paragraph (6).

Paragraph (1) was approved.

Paragraph (2)

Paragraph (2) was approved.

Paragraph (3)

10. Mr. KEARNEY said that the sixth sentence, which read: "The petitioner was the consul-general of the Kingdom of Italy", and the sentence which followed it, should be amended to read: "The consul-general of the Kingdom of Italy filed a petition to administer the estate. The public administrator, though duly served, did not appear". In the sentence which followed, the words "the facts as to" should be dropped as redundant.

It was so agreed.

Paragraph (3), as amended, was approved.

Paragraph (4)

Paragraph (4) was approved.

Paragraph (5)

11. Mr. USTOR (Special Rapporteur) said that footnote 9 would be expanded to include a reference to the Swiss Cow case, which was mentioned in paragraphs (20) and (21) of the commentary to articles 7 and 7 bis.

Paragraph (5) was approved with that amendment.

Paragraph (6)

Paragraph (6) was approved.

Paragraphs (7) and (8)

Paragraphs (7) and (8) were approved.

The commentary to article 6 quater [20], as amended, was approved.

Commentary to articles 7 [11]

*(Scope of rights under a most-favoured-nation clause
and 7 bis [12])*

*(Entitlement to rights under a
most-favoured-nation clause)*

(A/CN.4/L.235/Add.4 and Corr.1)

Paragraphs (1) and (2)

Paragraphs (1) and (2) were approved.

Paragraph (3)

12. Mr. KEARNEY said it was desirable to follow a uniform practice with regard to the use of quotation marks. They should be avoided wherever, as was the case in paragraph (3), the text of the passage quoted was indented.

13. Mr. HAMBRO suggested that, in the quotation from the award of the Commission of Arbitration in the *Ambatielos case*, wherever the expression "the Commission" appeared, it should be expanded to read: "the Commission [of Arbitration]" so as to avoid any possible confusion with the International Law Commission.

14. The CHAIRMAN said that the Secretariat had taken note of those useful suggestions and would apply them throughout the text of the commentaries.

Paragraph (3) was approved.

Paragraphs (6)-(8)

Paragraphs (6)-(8) were approved.

Paragraph 9

15. Mr. USTOR (Special Rapporteur) suggested that paragraph (9) be deleted.

It was so agreed.

Paragraphs (10) and (11)

Paragraphs (10) and (11) were approved.

Paragraph (12)

16. Mr. KEARNEY suggested that, in the penultimate sentence, the words "from the principle of sovereignty and independence of States" be replaced by the wording: "from the general principles of treaty interpretation".

It was so agreed.

Paragraph (12), as amended, was approved.

Paragraph (13)

17. Mr. USTOR (Special Rapporteur) said that the passage in brackets at the end of the third sentence should be deleted, since it referred to the case mentioned in paragraph (9), which had now been deleted.

Paragraph (13) was approved with that amendment.

Paragraph (14)

Paragraph (14) was approved.

Paragraph (15)

18. Mr. KEARNEY suggested that, in the second sentence, the words "may indicate the scope of those persons, ships, products, etc." be replaced by the words: "may indicate those persons, ships, products, etc., to which it applies".

It was so agreed.

Paragraph (15), as amended, was approved.

Paragraph (16)

19. Mr. KEARNEY suggested that the opening words "The beneficiary State cannot claim most-favoured-nation treatment but for that category . . ." should be reworded to read: "The beneficiary State may claim most-favoured-nation treatment only for that category . . ."

It was so agreed.

Paragraph (16), as amended, was approved.

Paragraph (17)

Paragraph (17) was approved subject to the correction of two clerical errors.

Paragraph (18)

Paragraph (18) was approved.

Paragraph (19)

20. Mr. KEARNEY suggested that, in the last sentence, the words ". . . may not claim most-favoured-nation treatment, but for the goods . . ." should be reworded to

read: "... may claim most-favoured-nation treatment only for the goods ...".

Paragraph (19) was approved with that amendment.

Paragraph (20)

21. Mr. KEARNEY suggested that the semicolon in the middle of the first sentence be replaced by a full stop followed by a new sentence beginning with the words "The following paragraphs". In that new sentence, the words "serve to give a brief information only" would be replaced by the words "supply a brief explanation".

It was so agreed.

Paragraph (20), as amended, was approved.

Paragraphs (21)-(25)

Paragraphs (21)-(25) were approved.

Paragraphs (26) and (27) (A/CN.4/L.235/Add.4/Corr.1)

Paragraphs (26) and (27) were approved with minor drafting changes.

The commentary to articles 7 [11] and 7 bis [12], as amended, was approved.

Commentary to article 8 [14]

(Irrelevance of restrictions agreed between the granting and third States) (A/CN.4/L.235/Add.5)

Paragraph (1)

22. Mr. USTOR (Special Rapporteur) suggested that paragraph (1) be deleted.

It was so agreed.

Paragraph (2)

Paragraph (2) was approved subject to a drafting change in the last sentence.

Paragraph (3)

Paragraph (3) was approved.

Paragraph (4)

23. Mr. USTOR (Special Rapporteur) proposed that the title placed before paragraph (4), "The "clause réservée", be deleted.

It was so agreed.

Paragraph (4) was approved.

Paragraph (5)

Paragraph (5) was approved subject to a minor drafting change in the first sentence.

Paragraph (6)

Paragraph (6) was approved.

Paragraph (7)

24. Mr. SETTE CÂMARA suggested that, in the opening sentence, the words "which was signed", which qualified the reference to the Havana Charter, be amended to read "which was prepared".

It was so agreed.

Paragraph (7), as amended, was approved.

Paragraphs (8)-(12)

Paragraphs (8)-(12) were approved.

The commentary to article 8 [14], as amended, was approved.

Commentary to article 8 bis [15]

(Irrelevance of the fact that treatment is extended under a bilateral or a multilateral agreement) (A/CN.4/L.235/Add.6)

Paragraphs (1)-(12)

Paragraphs (1)-(12) were approved.

Paragraph (13)

65. Mr. KEARNEY said he noted that paragraph (13) contained a reference to a judgement by the District Court for the Southern District of New York. He would urge that care be taken, when citing United States court decisions, not to suggest that a ruling had been given on some point merely because some inference could be drawn from the decision.

26. Mr. USTOR (Special Rapporteur) suggested that paragraph (13) be deleted.

It was so agreed.

Paragraphs (14)-(18)

Paragraphs (14)-(18) were approved.

Paragraph (19)

27. Mr. USTOR (Special Rapporteur) proposed that the second paragraph, containing a long extract from a decision of the Greek Council of State, be deleted. Foot-note 37 would be retained, however, and the reference to it would be moved to the end of the first paragraph, the opening phrase of which would be reworded to read: "In a third case, it has been expressly recognized that ...".

Paragraph (19) was approved with those changes.

Paragraphs (20)-(22)

Paragraphs (20)-(22) were approved.

Paragraph (23)

28. Mr. USTOR (Special Rapporteur) proposed that, at the end of paragraph (23), the phrase "(paragraphs (24) to (78) below)" be added in parentheses. It would then be clear that all those paragraphs reflected the views of the Special Rapporteur himself and not those of the Commission.

It was so agreed.

Paragraph (23), as amended, was approved.

Paragraphs (24)-(78)

29. Mr. USTOR (Special Rapporteur) said that the quotation in paragraph (27) from the 1965 Trade Agreement between the USSR and Australia should be shortened so as to give only the text of article 5 of that Agreement.

30. There were a number of clerical errors in paragraphs (43), (56), (57), (58), (59), (60), (61), (68) and (70) which needed to be corrected.

Paragraphs (24)-(78) were approved subject to those corrections.

*Paragraphs (79)-(82)**Paragraphs (79)-(82) were approved.**Paragraph (85)*

31. Mr. KEARNEY suggested that, in accordance with the Commission's usual practice, the name of the member who had proposed the text quoted in paragraph (83) be replaced by the words "one member".

*Paragraph (83) was approved with that amendment.**Paragraph (84)**Paragraph (84) was approved.*

The commentary to article 8 bis [15], as amended, was approved.

The meeting rose at 6.10 p.m.

1357th MEETING

Thursday, 24 July 1975, at 10.10 a.m.

Chairman: Mr. Abdul Hakim TABIBI

Members present: Mr. Ago, Mr. Castañeda, Mr. Hambro, Mr. Kearney, Mr. Pinto, Mr. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Tsu-ruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat.

Draft report of the Commission on the work of its twenty-seventh session

(A/CN.4/L.235/Add.7 and 8; A/CN.4/236 and Add.1 and Add.1/Corr.1 and 2, and Add.2)

(continued)

Chapter V

QUESTION OF TREATIES CONCLUDED BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS OR BETWEEN TWO OR MORE INTERNATIONAL ORGANIZATIONS

1. The CHAIRMAN invited the Commission to consider chapter V of the draft report, paragraph by paragraph, starting with the introduction (A/CN.4/L.236).

A. INTRODUCTION

Paragraph 1

Paragraph 1 was approved.

Paragraph 2

2. Mr. REUTER (Special Rapporteur) said that there were two corrections to be made to paragraph 2. In the penultimate sentence, the words "and *Reservations*" should be deleted, since the Commission had not yet adopted any articles on the subject of reservations. In the last sentence, the phrase "at the next session" should read: "at its next session".

Paragraph 2 was approved with those changes.

Paragraph 3

3. Sir Francis VALLAT suggested that the adjective "nice" which qualified the word "balance" in the single sentence of paragraph 3 be deleted.

4. Mr. REUTER (Special Rapporteur) said he could accept that amendment.

Paragraph 3, as amended, was approved.

Paragraph 4

Paragraph 4 was approved.

Paragraph 5

5. Mr. KEARNEY said he was not clear about the meaning of the first part of the second sentence, which read: "For while all States are the expression of a natural society which everywhere presents qualitatively the same essential characteristics". That phrase seemed to express a belief in a tenet of natural law. He would welcome a clarification from the Special Rapporteur.

6. Mr. REUTER (Special Rapporteur) suggested that the passage in question be replaced by the words "While all States are equal before international law".

Paragraph 5 was approved with that amendment.

Paragraphs 6 and 7

Paragraphs 6 and 7 were approved.

Paragraph 8

7. In response to an observation by Mr. KEARNEY, Mr. REUTER (Special Rapporteur) proposed that the French version of the end of the paragraph be amended to read: "*munis de pouvoirs, tout en apportant à cette règle tous les tempéraments requis par la pratique*". The English version could be adjusted later.

Paragraph 8 was approved with that amendment.

Paragraph 9

Paragraph 9 was approved with a minor drafting change in the French version.

Paragraph 10

8. Mr. REUTER (Special Rapporteur) proposed that the concluding phrase of the paragraph, "customs unions could be invited because their competence would extend to questions of nomenclature", be replaced by the phrase "customs unions, whose competence would extend to questions of nomenclature, could be invited in order that they might participate in the drafting of the text of a treaty and in its adoption, and become parties to a treaty relating to the object of the conference". As certain members of the Commission had observed, it was not just a question of inviting international organizations to participate in a conference; they must be able to participate in the drafting and adoption of the text of the treaty and to become parties to the treaty.

It was so agreed.

Paragraph 10, as amended, was approved.

Paragraphs 11 and 12

Paragraphs 11 and 12 were approved.

Paragraphs 13

9. Mr. KEARNEY suggested that the second part of the last sentence, beginning with the words "it is for the Governments of the States participating in a conference . . ." be reworded so as not to exclude the possibility