Document:-
A/CN.4/SR.1497

Summary record of the 1497th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1978, vol. I

(A/CN.4/L.266). The latter text, however, was not entirely satisfactory. On the one hand, it made no mention of the granting State and the beneficiary State; on the other hand, it could not be affirmed, as in the text, that developing countries "may grant trade preferences". Those countries could themselves decide whether or not they were in a position to grant such preferences, it being understood that general international law did not prevent them from doing so. Moreover, it was not appropriate to specify that such preferences were granted "in accordance with bilateral or regional arrangements", since the granting State could accord them in any way it wished, for example, by a unilateral decision or under a provision of its internal law. It would be better to draft article 21 *bis* the following lines:

A developed beneficiary State is not entitled under a most-favoured-nation clause to any preferential trade treatment extended by a developing granting State to a developing third State.

55. Thus stated, the rule should be acceptable to all States, provided, however, that it were made clear what was meant by a "developing third State" in the context of trade. Some countries could be regarded as developing from the political point of view but as developed from the point of view of trade. Unless it could be specified which countries were developing countries in the context of trade, the proposed article might raise a number of difficulties.

56. Mr. ROMANOV (Secretary to the Commission) said that, in accordance with the request made by the Commission at its 1494th meeting, Mr. H. Stordel, Deputy Director of the Manufactures Division of UNCTAD, had agreed to address the Commission the following morning, 9 June 1978, on issues of direct relevance to the Commission's work on the most-favoured-nation clause.

The meeting rose at 1.05 p.m.

1497th MEETING

Friday, 9 June 1978, at 10.05 a.m.

Chairman: Mr. José SETTE CÂMARA

Members present: Mr. Ago, Mr. Calle y Calle, Mr. Castañeda, Mr. Dadzie, Mr. Díaz González, Mr. El-Erian, Mr. Francis, Mr. Jagota, Mr. Njenga, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat.

The most-favoured-nation clause (*continued*) (A/CN.4/308 and Add.1 and Add.1/Corr.1, A/CN.4/309 and Add.1 and 2, A/CN.4/L.264-266)

[Item 1 of the agenda]

DRAFT ARTICLES ADOPTED BY THE COMMISSION: SECOND READING (*continued*)

ARTICLE 21 (The most-favoured-nation clause in relation to treatment under a generalized system of preferences)[1] (*concluded*)

1. The CHAIRMAN invited Mr. Stordel, Deputy Director of the Manufactures Division of UNCTAD, to address the Commission.

2. Mr. STORDEL (UNCTAD secretariat) said that the question of most-favoured-nation treatment, and its relationship to the preferential treatment of developing countries, had been of major concern to UNCTAD since its inception. General Principle Eight of recommendation A.I.1, adopted at the first session of the Conference, provided *inter alia* that international trade should be conducted to mutual advantage on the basis of most-favoured-nation treatment. It also provided that developed countries should grant concessions to all developing countries, and should extend to the latter all the concessions they granted to one another; in so doing, they should not require any concessions from developing countries in return. New preferential concessions, both tariff and non-tariff, should be extended to developing countries as a whole and should not be extended to developed countries. Developing countries should not be required to extend to developed countries preferential treatment in operation among themselves.[2]

3. Although most-favoured-nation treatment aimed at equality of treatment, it was, paradoxically, preferences that provided a means of enabling developing countries to come closer to real equality of treatment. The most-favoured-nation principle did not in fact take account of inequalities in economic structure and levels of development in the world; equal treatment of countries that were economically unequal was equality only in the formal sense, and actually amounted to inequality. Thus preferential reductions on imports from developing countries brought those countries closer to achieving equality of treatment with producers in the national or multinational markets by taking account of their lower level of development and correcting a situation in which their exports were placed at a disadvantage compared with those of developed countries.

4. The breakthrough in the introduction of generalized preferences for products originating in developing countries had been achieved with resolution 21 (II), adopted at the second session of UNCTAD. That resolution provided that the objectives of the generalized non-reciprocal, non-discriminatory system of preferences in favour of developing countries should be: (*a*) to increase their export earnings;

[1] For text, see 1494th meeting, para. 1.

[2] *Proceedings of the United Nations Conference on Trade and Development*, vol. I, *Final Act and Report* (United Nations publication, Sales No. 64.II.B.11), p. 20.

(*b*) to promote their industrialization; (*c*) to accelerate their rates of economic growth.[3]

5. Decision 75 (S-IV), adopted by the Trade and Development Board at its fourth special session, defined the legal status of the GSP; it recognized that no country intended to invoke its rights to most-favoured-nation treatment with a view to obtaining, in whole or in part, the preferential treatment granted to developing countries in accordance with Conference resolution 21 (II), and that the Contracting Parties to the General Agreement on Tariffs and Trade[4] intended to seek the required waiver or waivers as soon as possible. The decision also took note of the statement made by the preference-giving countries that the legal status of the tariff preferences to be accorded to the beneficiary countries by each preference-giving country individually would be governed by the following considerations: first, that the tariff preferences were temporary in nature; secondly, that their grant did not constitute a binding commitment and, in particular, did not in any way prevent their subsequent withdrawal in whole or in part or the subsequent reduction of tariffs on a most-favoured-nation basis, whether unilaterally or following international tariff accommodations; thirdly, that their grant was conditional upon the necessary waiver or waivers in respect of existing international obligations, in particular in the General Agreement on Tariffs and Trade. The decision also provided that developing countries that were to share their existing tariff advantages in some developed countries as the result of the introduction of the GSP would expect the new access in other developed countries to provide export opportunities at least to compensate them.[5]

6. Mainly on the basis of Conference resolution 21 (II) and decision 75 (S-IV) of the Trade and Development Board, a large number of developed countries had introduced schemes of generalized preferences. Such schemes were currently applied by the following developed market economy countries: Australia, Austria, Canada, the EEC countries (Belgium, Denmark, France, Federal Republic of Germany, Ireland, Italy, Luxembourg, Netherlands, United Kingdom), Finland, Japan, New Zealand, Norway, Sweden, Switzerland and the United States. The following socialist countries of Eastern Europe also granted preferential treatment to developing countries: Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, Poland and USSR.

7. A number of the schemes had undergone important changes since their entry into force, and UNCTAD had made continuing efforts to improve them. In that connexion, special mention should be made of resolution 96 (IV), adopted at the fourth session of UNCTAD, which provided *inter alia* that the generalized system of non-reciprocal, non-discriminatory preferences should be improved in favour of developing countries, taking into account the relevant interests of developing countries that enjoyed special advantages, as well as the need to find ways and means of protecting their interests. With regard to the duration of the GSP, the resolution provided that it should continue beyond the initial period of 10 years originally envisaged, bearing in mind, in particular, the need for long-term export planning in developing countries.[6]

8. Developing countries were interested in strengthening the legal status of the GSP. Accordingly, the Manila Declaration and Programme of Action, adopted by the developing countries in February 1976,[7] proposed that the system should be given a firm statutory basis and made a permanent feature of the trade policies of the developed market economy countries and of the socialist countries of Eastern Europe.

9. An important step towards the improved legal status of the system had been the adoption of the Charter of Economic Rights and Duties of States,[8] article 18 of which called for preferential treatment for developing countries, not only in the area of tariffs, but also, where feasible, in other areas.

10. Such areas were indicated in UNCTAD resolution 96 (IV), which dealt with a set of interrelated and mutually supporting measures for expansion and diversification of exports of manufactures and semi-manufactures of developing countries, and in UNCTAD resolution 91 (IV), on multilateral trade negotiations.[9] Resolution 96 (IV) requested developed countries to give consideration to the view of developing countries that developed countries should apply the principle of differential and more favourable treatment in favour of developing countries to non-tariff barriers also. Resolution 91 (IV) urged the practical and expeditious application, in the multilateral trade negotiations, of differential measures that would provide special and more favourable treatment for developing countries in accordance with the provisions of the Tokyo Declaration;[10] it emphasized further that there was widespread recognition that subsidies and countervailing duties were areas in which special and differentiated treatment for developing countries was both feasible and appropriate. It also stressed the need to ensure that the least developed countries received special treatment in the context of any general or specific measures taken in favour of developing countries during the negotiations.

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[3] *Ibid.*, *Second Session, vol. I* (and Corr.1 and 3 and Add.1 and 2), *Report and Annexes* (United Nations publication, Sales No. E.68.II.D.14), p. 38.

[4] See 1492nd meeting, foot-note 10.

[5] See *Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 15* (A/8015/Rev.1), pp. 261 *et seq.*, Part Three, annex I.

[6] *Proceedings of the United Nations Conference on Trade and Development, Fourth Session*, vol. I (and Corr.1), *Report and Annexes* (United Nations publication, Sales No. E.76.II.D.10), p. 10.

[7] *Ibid.*, p. 109.

[8] General Assembly resolution 3281 (XXIX).

[9] *Proceedings of the United Nations Conference on Trade and Development, Fourth Session*, vol. I (and Corr.1) (*op. cit.*), p. 14.

[10] See 1496th meeting, foot-note 7.

11. Stressing the importance of the preferential treatment that developing countries accorded or intended to accord to each other, he affirmed that, in establishing a new international economic order, collective self-reliance and increasing co-operation among developing countries were of capital importance. Preferential trade arrangements among developing countries, including those of limited scope, could play a key role, to an ever-increasing extent, in measures of economic co-operation among developing countries. Accordingly, resolution 1 (I) of the UNCTAD Committee on Economic Co-operation among Developing Countries called upon the Secretary-General of UNCTAD, in establishing the work programme on economic co-operation among developing countries, to give special priority to the initiation of studies on a global scheme of trade preferences among developing countries, and to the intensification of ongoing work and activities relating to the strengthening of subregional, regional and interregional economic co-operation and integration among developing countries.[11]

12. Such were the objectives and forms of preferential treatment for developing countries as they had developed in the recent past, and particularly in the Second United Nations Development Decade. The issue of preferential treatment was still under consideration in UNCTAD, as well as in the context of the multilateral trade negotiations being held within the framework of GATT. It raised a number of complex questions, the resolution of which was not foreseeable at that stage. He would point out, however, that article 21 was confined to tariff preferences under the GSP, whereas developing countries were seeking preferential treatment or special differentiated treatment in all areas of trade relations with developed countries. Moreover, they considered that preferential treatment granted in trade among themselves should not be extended to developed countries. In that connexion, he wished to stress the importance of article 27[12] which, he understood, was intended to leave the way open for the elaboration of new rules to the benefit of developing countries in regard to their preferential treatment.

13. There was no doubt that the Commission's work could contribute substantively to the maintenance and further development of such preferential treatment in the Third Development Decade and thereafter. It would be necessary, however, for the preferential treatment described to be adequately covered by the draft articles. In that spirit, he wished the Commission all success in its further work.

14. Sir Francis VALLAT said that the information provided by the UNCTAD representative was most valuable and trusted that Mr. Stordel's statement would be circulated as a document of the Commission.

15. It would be helpful if the Commission could have a list of the countries that were beneficiaries under the schemes of generalized preferences applied by developed countries and by EEC. That would assist the Commission in distinguishing between developed and developig States for the purposes of the draft.

16. Mr. STORDEL (UNCTAD secretariat) said the UNCTAD secretariat would be pleased to provide the Commission with such a list.

17. The CHAIRMAN thanked Mr. Stordel for his contribution to the Commission's work and said that his statement would be reproduced in full.[13]

18. He invited the Commission to continue its consideration of article 21.

19. Mr. JAGOTA said that he could accept the text proposed by the Special Rapporteur at the previous meeting,[14] which he understood was a rewording of the text proposed by Mr. Njenga (A/CN.4/L.255).[15]

20. The CHAIRMAN, noting that there were no further comments, suggested that article 21 be referred to the Drafting Committee, together with the proposals and comments relating to it.

It was so agreed.[16]

ARTICLE 22 (The most-favoured-nation clause in relation to treatment extended to facilitate frontier traffic)

21. The CHAIRMAN invited the Special Rapporteur to introduce article 22, which read:

Article 22. The most-favoured-nation clause in relation to treatment extended to facilitate frontier traffic

1. A beneficiary State other than a contiguous State is not entitled under the most-favoured-nation clause to the treatment extended by the granting State to a contiguous third State in order to facilitate frontier traffic.

2. A contiguous beneficiary State is entitled under the most-favoured-nation clause to the treatment extended by the granting State to a contiguous third State and relating to frontier traffic only if the most-favoured-nation clause relates especially to the field of frontier traffic.

22. Mr. USHAKOV (Special Rapporteur) pointed out that article 22, like articles 21 and 21 *bis* and article 23, applied to both conditional and unconditonal clauses. All those articles related to the right of the beneficiary State to certain treatment, irrespective of the nature of the most-favoured-nation clause.

23. Paragraph 1 of article 22 provided that a beneficiary State other than a continuous State was not entitled under the most-favoured-nation clause to the treatment extended by the granting State to a contiguous third State in order to facilitate frontier traffic. That exception to the operation of the clause was

[11] *Official Records of the Trade and Development Board, Seventeenth Session, Supplement No. 2* (TD/B/652), annex I, p. 15.

[12] See 1483rd meeting, foot-note 1.

[13] Subsequently issued as document A/CN.4/L.268.

[14] 1496th meeting, para. 54.

[15] 1494th meeting, para. 25.

[16] For consideration of the text proposed by the Drafting Committee, see 1521st meeting, paras. 66-75.

therefore an exception *ratione personae*; it applied only to beneficiary States that were not contiguous third State and relating to frontier traffic only if the clause related especially to frontier traffic.

24. In its commentary to article 22, the Commission had explained the basis of the article. It seemed to be quite general practice for commercial treaties concluded between States with no common frontier to except from the operation of the most-favoured-nation clause advantages granted to contiguous countries in order to facilitate fronteir traffic. Commercial treaties concluded between contiguous countries constituted a different category inasmuch as the countries might or might not have a uniform regulation of the frontier traffic with their neighbours. However, it was not because stipulations on the frontier traffic exception were so frequently to be found in treaties that the Commission had judget that it should be codified. It had seemed to the Commission that the rule was in conformity with the constant practice of States and in harmony with the *ejusdem generis* rule reflected in articles 11 and 12. The Commission had also noted that the expression "frontier traffic" was not unequivocal since it might mean the movement of goods or persons, or of both. The expression usually related to persons residing in a certain frontier zone and to their movements to, and labour relations in, the opposite frontier zone, and also to the movement of goods between the two contiguous zones, which was sometimes restricted to goods produced in those zones. National regulations on frontier traffic varied considerably, not only as to the width of the zone in question but also as to the conditions of the traffic between the two zones lying on either side of the common frontier. To determine the meaning of "frontier traffic" it was therefore necessary to refer, in each case, to the most-favoured-nation clause concluded between the granting State and the beneficiary State.

25. With respect to the comments made on article 22, many representatives in the Sixth Committee had declared themselves in favour of that provision (A/CN.4/309 and Add.1 and 2, para. 300). In their written comments, most governments had also approved of article 22; an exception was Czechoslovakia, which agreed with the substance but doubted the advisability of retaining paragraph 2 (A/CN.4/308 and Add.1 and Add.1/Corr.1, sect. A). In his opinion, it was essential to retain that paragraph, since it specified that a contiguous beneficiary State was entitled to the treatment extended by the granting State to a contiguous third State and relating to frontier traffic only if the most-favoured-nation clause related specifically to frontier traffic.

26. Mr. CALLE Y CALLE said that article 22 was at first sight clear enough and corresponded to established State practice. Paragraph 2, however, gave rise to some difficulties, since it extended the concept beyond frontier traffic for trade in a given area to the movement of goods and persons generally. An example was provided by Peru, which had five frontiers, with differing geographical, social and economic conditions prevailing in each frontier zone. In such a case, it would be illogical to extend the facilities granted to, say, a highly populated zone, to another zone that was virtually uninhabited. Furthermore, facilities were accorded under regional integration schemes with a view to promoting integration through the movement of goods and persons; thus Chile, a State contiguous to Peru, having withdrawn from the Cartagena Agreement,[17] could not claim the facilities extended to the parties to that agreement. That, at least, was his understanding of the position. In addition, facilities extended under such schemes eventually became part of the law of each State party to them, which was a further reason why a contiguous State that was not a party to an integration scheme could not automatically claim those facilities. He thought some reference should be made to that point in the commentary. Nor did the *ejusdem generis* rule entitle a contiguous State to claim the facilities extended to another country whose situation was very different, both in fact and in law.

27. Mr. TABIBI, endorsing the comments made by the Special Rapporteur and Mr. Calle y Calle, said that article 22 reflected State practice and embodied a principle that had been recognized in article XXIV of the General Agreement on Tariffs and Trade as well as in a number of commercial treaties. The article was particularly important for the countries of Asia and Africa owing to their historical, ethnic, linguistic and cultural ties and the consequent need to liberalize trade and contacts in order to resolve their many problems and improve their relations. The point could, of course, have been covered in article 11 (Scope of rights under a most-favoured-nation clause) and article 12 (Entitlement to rights under a most-favoured-nation clause), but it was preferable to deal with it expressly in a separate article. He therefore considered that article 22 should be retained and referred to the Drafting Committee.

28. Mr. AGO was in favour of retaining article 22 as adopted by the Commission on first reading. He stressed the fact that situations always varied from frontier to frontier. For instance, the agreements concluded between Italy and Yugoslavia regarding their common frontier had no equivalent for the frontiers separating Italy from other countries. Hence it was essential to specify that the most-favoured-nation clause could apply to treatment extended to facilitate frontier traffic only if express provision were made for such application. The Special Rapporteur was therefore right to recommend the retention of paragraph 2 of article 22.

29. Mr. USHAKOV (Special Rapporteur), referring to the comments made by Mr. Calle y Calle, said that paragraph 2 of article 22 seemed to have given rise to a misunderstanding. According to that provision, two conditions must be met for the most-favoured-nation clause to apply: the beneficiary State must be a contiguous State, and the granting State must have concluded with the beneficiary State a

[17] See 1491st meeting, foot-note 3.

most-favoured-nation clause relating especially to frontier traffic. Consequently, if Peru granted a contiguous State certain treatment in order to facilitate frontier traffic and was not bound to other contiguous States by a most-favoured-nation clause relating expressly to frontier traffic, the latter States could not claim the treatment in question. If such a clause existed, it must have been concluded at the wish of the granting State itself. It was obvious, therefore, that no State was automatically obliged to extend to all contiguous States the treatment it had accorded to one of them.

30. He also wished to point out that the expression "contiguous beneficiary State" should not be understood to mean only a State having a common land frontier with the granting State; it could also mean a State separated from the granting State by a stretch of water. For instance, although Japan and the Soviet Union had no land frontier, they had concluded an agreement on frontier traffic.

31. Mr. AGO thought that that last point should be mentioned in the commentary to article 22. That article should not be interpreted as applying only to traffic across a land frontier. It was obvious, for example, that there was frontier traffic between Italy and Tunisia across the Sicilian channel and between Italy and Switzerland across Lake Lugano.

32. The CHAIRMAN said that if there were no objections he would take it that the Commission decided to refer article 22 to the Drafting Committee for examination in the light of the comments and suggestions made during the debate.

It was so agreed.[18]

ARTICLE 23 (The most-favoured-nation clause in relation to rights and facilities extended to a land-locked State)

33. The CHAIRMAN invited the Special Rapporteur to introduce article 23, which read:

Article 23. The most-favoured-nation clause in relation to rights and facilities extended to a land-locked State

1. A beneficiary State other than a land-locked State is not entitled under the most-favoured-nation clause to rights and facilities extended by the granting State to a land-locked third State to facilitate its access to and from the sea.

2. A land-locked beneficiary State is entitled under the most-favoured-nation clause to the rights and facilities extended by the granting State to a land-locked third State and relating to its access to and from the sea only if the most-favoured-nation clause relates especially to the field of access to and from the sea.

34. Mr. USHAKOV (Special Rapporteur) said that article 23 was based on State practice and on international instruments of a more or less universal character. The prescribed exception to application of the most-favoured-nation clause related to rights and facilities extended to a land-locked State to facilitate its access to and from the sea.

34. Paragraph 1 of article 23, which corresponded to paragraph 1 of article 22, provided that a beneficiary State other than a land-locked State was not entitled under the most-favoured-nation clause to rights and facilities extended by the granting State to a land-locked third State to facilitate its access to and from the sea. Under paragraph 2, two conditions must be met for a beneficiary State to be able to acquire such rights and facilities: the State must be a land-locked State and the most-favoured-nation clause it had concluded with the granting State must relate especially to access to and from the sea. It was therefore by its own wish that the granting State agreed to extend to other land-locked States the rights and facilities it had accorded to a State in that category.

36. In its commentary to article 23, the Commission had explained that the exception provided for in article 23 had been proposed by Czechoslovakia, in 1958, at the Preliminary Conference of Land-locked States. In 1964, UNCTAD had adopted a principle according to which

> The facilities and special rights accorded to land-locked countries in view of their special geographical position are excluded from the operation of the most-favoured-nation clause.[19]

The Third United Nations Conference on the Law of the Sea, which had not yet completed its work, was moving towards the adoption of a similar principle.

37. In drafting article 23, the Commission had not intended to take up the study of the rights and facilities that were needed by land-locked States or were due to them under general international law. It had wished to take account of the fact that 29 sovereign States, constituting one-fifth of the members of the international community, were land-locked, and that 20 of them were developing States, some of them among the least developed countries. It had considered that the principle set out in the article was now generally recognized.

38. One member of the Commission had pointed out that the Third United Naions Conference on the Law of the Sea might adopt other rules in favour of land-locked States. He had proposed that article 23 should not be limited to the right of access to and from the sea, but should extend to any treatment accorded to a third State by virtue of the fact that it was land-locked or otherwise geographically disadvantaged, unless the beneficiary State was itself so land-locked or otherwise geographically disadvantaged. The Commission had believed, however, that it would not be appropriate to pursue that question until the results of the Conference were known.

39. In the Sixth Committee, many representatives had approved article 23, sometimes mentioning international legal instruments or texts on which the article was based (A/CN.4/309 and Add.1 and 2, paras. 305 and 306). In their written comments, governments had approved the article, although Czechoslovakia had

[18] For consideration of the text proposed by the Drafting Committee, see 1521st meeting, paras. 76-79.

[19] *Yearbook... 1976*, vol. II (Part Two), p. 65, doc. A/31/10, chap. II, sect. C, art. 23, para. 2 of the commentary.

expressed doubts about the advisability of retaining paragraph 2 (A/CN.4/308 and Add.1 and Add.1/Corr.1, sect. A). For reasons similar to those he had given in connexion with paragraph 2 of article 22, he considered that the paragraph should be retained.

40. Mr. TABIBI was strongly in favour of article 23, which should be referred to the Drafting Committee as it stood.

41. The matter dealt with in the article had been discussed in 1958 by the Preliminary Conference of Land-locked States, which he had attended. Subsequently, at its first session, UNCTAD had adopted eight principles relating to the transit trade of land-locked countries, the seventh of which had been reaffirmed in the preambie and in article 10 of the 1965 Convention on Transit Trade of Land-locked States. The matter had also been dealt with in the "revised single negotiating text" of the Third United Nations Conference on the Law of the Sea.[20]

42. He still wondered whether a single article was sufficient to cover the question of the share of the land-locked countries in the resources of the ocean, or whether some additional provision were not needed. He would not press that point, however, since it had been agreed that it should be left in abeyance.

43. The term "land-locked", although now in common usage, was not in fact in conformity with international law and he would have preferred the expression adopted by the First United Nations Conference on the Law of the Sea, namely, "States having no sea coast".[21] The term "land-locked" implied that some countries had no sea. That was not so; they had no sea coast, but the sea belonged to them just as much as to all other States, as was shown by the fact that their merchant ships plied the oceans of the world. To persist in using the term "land-locked" was to refuse to recognize the legal rights and the heritage of those countries. The term should therefore be changed, or at the least should be explained in the definitions.

44. Mr. AGO observed that the expression "Etat sans littoral", used in the French version of article 23, should satisfy Mr. Tabibi.

45. With regard to certain comments made by governments, he wished to dispel a misunderstanding. There was no reason to await the results of the Third United Nations Conference on the Law of the Sea. The Conference was to draw up the general rules of international law applicable to land-locked States, but those rules might not be the same tomorrow as today. The Commission, for its part, had to consider what rights and facilities particular treaties might grant to land-locked States in addition to those to which they were entitled under general international law. It was precisely those additional rights and facilities which, if they were extended by the granting State to a land-locked third State, could be claimed by a land-locked beneficiary State only if the most-favoured-nation clause expressly so provided. Article 23 had been drafted in the same spirit as article 20; the rights and facilities extended to a land-locked State, in addition to those to which it was entitled under general international law, were extended *intuitu personae*. It followed that paragraph 2 of article 23 should be retained. Otherwise, when a State having common frontiers with several land-locked States extended special rights to one of them, those rights would no longer afford any advantage since, through the operation of the most-favoured-nation clause, they would automatically have to be extended to all the other contiguous land-locked States. Although Italy, by reason of its special relations with Switzerland, granted that country certain facilities, it could not be expected to accord them to other land-locked States through the operation of a general most-favoured-nation clause. Article 23 should therefore be retained as it stood.

Co-operation with other bodies (*continued*)*

[Item 11 of the agenda]

46. The CHAIRMAN said that it was his privilege, on behalf of all the members of the Commission, to extend a very warm welcome to Mr. Sen, Secretary-General of the Asian-African Legal Consultative Committee, and to Mr. Alsayed, Secretary-General of the Arab Commission for International Law.

Statement by the Observer for the Asian-African Legal Consultative Committee

47. The CHAIRMAN invited Mr. Sen, Observer for the Asian-African Legal Consultive Committee, to address the meeting.

48. Mr. SEN (Observer for the Asian-African Legal Consultative Committee) wished first to convey the apologies of the Asian-African Legal Consultative Committee for having been unable to be represented at the twenty-eighth and twenty-ninth sessions of the Commission, especially in view of the increasing co-operation between the two bodies on their common objective of fostering the growth of an international law acceptable to both developed and developing nations. It was gratifying that so many members of the Commission had been closely associated with the work of the Committee, and in that connexion it was pertinent to mention the active contribution made over the years by Mr. Dadzie, Mr. El-Erian, Mr. Jagota, Mr. Njenga, Mr. Pinto and Mr. Tabibi. Moreover, at its nineteenth session, held in Doha (Qatar), the Committee had been privileged to welcome Mr. Francis, who had attended the session on behalf of the Commission.

[20] *Ibid.*, paras. (1) to (4) of the commentary.

[21] See *Official Records of the United Nations Conference on the Law of the Sea*, vol. II, *Plenary Meetings* (United Nations publication, Sales No. 58.V.4, vol. II), p. 88, Annexes, doc. A/Conf. 13/L.11, para. 26.

* Resumed from the 1475th meeting.

49. The Committee's membership programme of activities had expanded year by year and its work had been gradually oriented towards providing assistance to the governments of the region in carrying out their growing role in the development of international law and international relations. During the first 10 years of its existence, the Committee had proved its value to the governments of member countries, most of them newly independent, by making recommendations on major topics requiring attention at the time, such as diplomatic relations, immunity of States in respect of commercial transactions, extradition of fugitive offenders, status and treatment of aliens, dual or multiple nationality, legality of nuclear tests and rights of refugees. In the following 10 years, the scope of the Committee's functions had come to include the rendering of assistance to member countries and to other Asian and African governments in their preparations for various diplomatic conferences convened by the United Nations and its agencies. Relations had also been established on a regular basis with UNCITRAL and UNCTAD and a standing subcommittee had been set up to examine all trade law questions of interest to the region. For the previous three years, the secretariat had also been performing certain advisory functions relating to the problems of member governments.

50. The Committee's session at Kuala Lumpur, in 1976, had been attended by observer delegations from 22 non-member governments as well as by observers from the United Nations and other international organizations. The number of observer delegations from non-member governments had increased to 33 at the session held at Baghdad and to 35 at the session at Doha. At each of those three sessions, the United Nations had been represented by Mr. Zuleta, special representative of the Secretary-General at the Third Conference on the Law of the Sea, and, in accordance with the usual practice, observer delegations had participated in the deliberations of the Committee and in informal meetings.

51. The priority topic at those sessions had been the law of the sea, on which the Committee had begun work in 1971, with a view to assisting both member and non-member governments in their preparations for the Third United Nations Conference on the Law of the Sea. The Committee had prepared extensive documentation and background material and several proposals for the Conference, such as those relating to the exclusive economic zone; moreover, the concept of archipelagos had originated in the Committee's deliberations. At the Kuala Lumpur session, the discussion had centred on the provisions of the revised single negotiating text and more especially on the exploration and exploitation of the resources of the sea-bed area outside national jurisdiction. At the Baghdad session, an attempt had been made to reconcile the differences in approach between the Group of 77 and developed countries. One important trend noted at that session had been the willingness of a large number of delegations to consider ways and means of reaching a compromise solution, provided the basic principle that the sea bed was the common heritage of mankind were not placed in jeopardy. At the Doha session, discussions had continued on the system of exploitation of the sea-bed area, the financing of the Enterprise and financial arrangements with contractors, and questions concerning the rights and interests of land-locked and geographically disadvantaged States.

52. In accordance with the provisions of its statutes, which required it to examine all questions under consideration by the Commission, the Committee had prepared for its Baghdad session a study on succession of States in respect of treaties. It had noted that the draft articles prepared by the Commission[22] were largely acceptable, but had drawn the attention of member governments of the Committee to certain aspects of article 2, paragraph 1 (*f*), and of articles 6, 7, 11, 12, 15, 16, 18, 29, 30 and 33, to Mr. Ushakov's proposal on multilateral treaties of a universal character,[23] and to a proposal on the settlement of disputes[24] that had been placed before the Commission at its twenty-sixth session. The topic had been further discussed at the Doha session in the light of the views expressed at the first session of the United Nations Conference on Succession of States in respect of Treaties, held at Vienna in 1977.

53. Territorial asylum, another topic of considerable importance, had been discussed at the Kuala Lumpur session in preparation for the conference held at Geneva in 1977. The Committee had considered two draft conventions in some detail, and comments on the drafts had been prepared and submitted to member governments.

54. In regard to trade law, great progress had been made at the Kuala Lumpur session on international commercial arbitration, the international sale of goods and the carriage of goods by sea, and major recommendations on those subjects had been adopted at the Baghdad and Doha sessions.

55. In regard to commercial arbitration, the Committee had recommended the use of the UNCITRAL Arbitration Rules[25] in *ad hoc* arbitrations; it had also recommended that UNCITRAL should consider preparing a protocol to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards[26] with a view to clarifying certain matters that had raised difficulties. Following a decision to promote the establishment of arbitration centres as part of an integrated system for the settlement of commercial disputes, a regional centre had been set up at Kuala Lumpur in April 1978, negotiations were taking place to establish another centre at Cairo and consideration was being given to setting up a third centre, in an African country. The purposes of the

[22] *Yearbook... 1974*, vol. II (Part One), pp. 174 *et seq.*, doc. 9610/Rev.1, chap. II, sect. D.

[23] *Ibid.*, pp. 172 and 173, doc. A/9610/Rev.1, foot-note 57.

[24] *Ibid.*, pp. 173 and 174, foot-note 58.

[25] *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17* (A/31/17), chap. V, sect. C.

[26] United Nations, *Treaty Series*, vol. 330, p. 3.

centres were, *inter alia,* to promote international commercial arbitration in the region, to co-ordinate the activities of existing arbitral bodies and to assist in the conduct of *ad hoc* arbitrations and the enforcement of arbitral awards. Two model contracts had been prepared for use in the international sale of certain commodities, and steps were being taken to circulate them as widely as possible to the appropriate organizations. Considerable assistance had been received from ECE in preparing the forms. In addition, the Committee had prepared comments on the draft of the United Nations Convention on the Carriage of Goods by Sea.

56. Other matters under consideration included certain aspects of the law on the environment and reciprocal assistance in the prosecution and prevention of economic offences; and the Committee would, of course, prepare notes and comments on the topics now being examined by the Commission. Arrangements had also been made for a special meeting of legal advisers of member governments, under the chairmanship of Mr. Jagota, to permit an exchange of views on the organization of legal advisory services and on methods and techniques for dealing with problems of international law. It was the Committee's intention that consultations of that nature, which had proved extremely fruitful, should be continued.

57. In the past year, official relations had been established between the Asian-African Committee and the European Committee on Legal Co-operation, and ties with the Inter-American Juridical Committee had been further strengthened. It was gratifying that closer links had been achieved among the regional organizations enjoying observer status with the Commission. He had attended a session of the European Committee on Legal Co-operation, and it had been interesting to note the similarity in the approach adopted by the two bodies, even though the work of the European Committee served a group of highly developed countries, whereas the work of the Asian-African Legal Consultative Committee related primarily to developing countries. He had been able to discuss various matters of mutual interest with the President of the Inter-American Juridical Committee during a visit to Brazil, and discussions had also been held on future co-operation between the Asian-African Committee and OAS.

58. He wished to conclude by expressing the Committee's gratitude to the Commission for its continued co-operation and support, which had made it possible for the Committee to play an effective part in furthering the common objective of establishing the international legal order envisaged in the Charter of the United Nations.

59. The CHAIRMAN said that it was gratifying to note the continuing progress in co-operation between the Commission and the Committee and the stronger ties between the Committee and other regional organizations concerned with international law. Particularly striking was the Committee's practical approach to its work and the way in which it sought to help Asian and African governments in their preparations for diplomatic conferences such as the Conference on the Law of the Sea, the Conference on Territorial Asylum and the Conference on Succession of States in respect of Treaties. It had also been very interesting to hear of the Committee's close contacts with UNCITRAL and the establishment of international arbitration centres, which would certainly be of very great assistance to the member countries. It only remained for him to thank Mr. Sen for his statement and to express the hope that co-operation between the Commission and the Asian-African Committee would prove even more fruitful in the future.

Statement by the Observer for the Arab Commission for International Law

60. The CHAIRMAN invited Mr. Alsayed, Observer for the Arab Commission for International Law, to address the meeting.

61. Mr. ALSAYED (Observer for the Arab Commission for International Law) conveyed the greetings of the Secretary-General of the League of Arab States and his sincere wishes for the continued success of the Commission's work. The codification and progressive development of international law was a task of the utmost importance and it was the firm conviction of all those who believed in and worked for a sound international order that the Commission would contribute to the strengthening of the rule of law among nations, as an instrument for the maintenance of peace and security and the promotion of justice and progress.

62. The Commission's decision to respond favourably to the request of the Secretary-General of the League of Arab States had been greatly appreciated by the League and by its legal bodies. The Council of the League had adopted a resolution on 8 September 1977 to establish a "commission for international law on the Arab level" and had decided to seek representation of the newly established body at the meetings of the International Law Commission under arrangements similar to those made for other organizations engaged in the codification and progressive development of international law at the regional level.

63. Long before the establishment of the Arab Commission for International Law, other organs of the League of Arab States had undertaken intensive work in the legal sphere. The Charter of the League, drawn up in 1945, had specified that the Council of the League should establish a permanent committee responsible for legal matters. In the sphere of international law and international organizations, the legal committee had prepared a number of drafts of conventions concluded under the auspices of the League, such as the Headquarters Agreement, the General Convention on Privileges and Immunities, the Convention on Extradition and the Convention for Judicial Assistance and Execution of Judgements. It had also initiated the preparation of a number of legal studies and publications such as a treaty series and a legislative series.

64. The legal bodies of the Arab League had followed the International Law Commission's work with great interest. The conventions concluded on the basis of drafts prepared by the Commission were landmarks in the codification and progressive development of international law. Naturally, the Arab Commission was paying close attention to the current consideration of such important topics as State responsibility, succession of States in respect of matters other than treaties, the most-favoured-nation clause, treaties between States and international organizations or between two or more international organizations, and the law of the non-navigational uses of international watercourses. He also felt bound to express his appreciation of the valuable work of the Codification Division.

65. Co-operation between the International Law Commission and the Arab Commission would undoubtedly assist the latter in the fulfilment of its objectives and he had the honour to extend to the Chairman an invitation to attend the next session of the Arab Commission for International Law.

66. The CHAIRMAN thanked Mr. Alsayed for his very interesting statement, from which the Commission had learned much about the legal work done under the auspices of the League of Arab States. It was indeed very encouraging to hear of the close interest shown in the Commission's work. Unquestionably, co-operation between the Arab Commission and the International Law Commission would prove to be of great value and he was most grateful for the kind invitation to attend the first session of the Arab Commission for International Law.

67. Mr. FRANCIS wished to express his gratitude to Mr. Sen for the courtesy shown to him when he had attended the session of the Asian-African Legal Consultative Committee held at Doha. He had been impressed not only by the organization and conduct of the session, but also by the very high quality of the discussions. The Committee was certainly doing extremely valuable work for the Asian and African regions. The establishment of the Arab Commission for International Law also augured well for the future. Mr. Alsayed would certainly become a familiar figure to the members of the International Law Commission and, as an Arab and an African, he too could take pride in the achievements of the session of the Asian-African Legal Consultative Committee held in Qatar.

68. Mr. TABIBI, speaking on behalf of the Asian members of the Commission, congratulated Mr. Sen and Mr. Alsayed on their excellent statements. The devotion of Mr. Sen to the cause of international law had done much to increase the membership of the Asian-African Legal Consultative Committee, a body that rendered great service to Asian and African governments. The presence of Mr. Alsayed was also most welcome, for Arab jurists had made important contributions not only to the work of the Commission, but also to that of the International Court of Justice. The establishment of the Arab Commission for International Law could not fail to further the work undertaken on the codification and development of international law.

69. Sir Francis VALLAT, speaking on behalf of the Western members of the Commission, said that it was a particular pleasure to join in expressing gratitude and appreciation to Mr. Sen and Mr. Alsayed and to do so after Mr. Tabibi, for it was during Mr. Tabibi's chairmanship of the Commission that new emphasis had been laid on the Commission's relations with regional bodies. The presence of the representatives of such bodies at meetings of the Commission was of enormous assistance, because there was no real substitute for personal contact. He wished to express sincere thanks for the very valuable statements made by Mr. Sen and Mr. Alsayed and was especially pleased that it had been his privilege to be able to inform the Commission, at the beginning of the session, of the request made by the League of Arab States that special relations be established between the Arab Commission for International Law and the International Law Commission.

70. Mr. CASTAÑEDA, speaking on behalf of the Latin American members of the Commission, thanked Mr. Sen and Mr. Alsayed for their statements. The Asian-African Legal Consultative Committee had done extremely valuable work, which had obviously had a great impact on the deliberations of the United Nations Conference on the Law of the Sea. Fortunately, he had had an opportunity to appreciate its work when attending the sessions held in Tokyo and Delhi. It was particularly satisfying to note the strengthening of the ties between the Asian-African Committee and the Inter-American Juridical Committee.

The meeting rose at 1 p.m.

1498th MEETING

Monday, 12 June 1978, at 3 p.m.

Chairman: Mr. José SETTE CÂMARA

Members present: Mr. Ago, Mr. Bedjaoui, Mr. Calle y Calle, Mr. Castañeda, Mr. Dadzie, Mr. Díaz González, Mr. El-Erian, Mr. Francis, Mr. Jagota, Mr. Njenga, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sucharitkul, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta.

The most-favoured-nation clause (*continued*) (A/CN.4/308 and Add.1 and Add.1/Corr.1, A/CN.4/309 and Add.1 and 2, A/CN.4/L.264-266)

[Item 1 of the agenda]

DRAFT ARTICLES ADOPTED BY THE COMMISSION: SECOND READING (*continued*)