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**A/CN.4/SR.1246**

**Summary record of the 1246th meeting**

Topic:  
**Other topics**

Extract from the Yearbook of the International Law Commission:-  
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4. *The most-favoured-nation clause and the different levels of economic development*

*Paragraphs 28 and 29*

*Paragraphs 28 and 29 were approved.*

*Paragraph 30*

53. In reply to a question put by Mr. AGO, Mr. USTOR (Special Rapporteur) said that treaties sometimes contained a most-favoured-nation clause specifying certain particular advantages which could not be claimed by the beneficiary State. Those were exceptions which would have to be specified in detail. But there was also the problem of customary rules of international law which had to be taken into account when including a most-favoured-nation clause in a treaty. That applied, for example, to treaties concluded with developing countries, which might enjoy certain trade advantages that could not be claimed by a developed country.

54. Mr. TABIBI supported that view and cited as an example the 1965 Convention on Transit Trade of Land-locked States.<sup>4</sup>

55. Mr. USTOR (Special Rapporteur) said that Convention was a good example of an exceptional case in which preferential treatment could not be claimed by a beneficiary State. Most exceptions would in fact be of a conventional nature, although it was not always clear whether they were based on a convention or on some customary rule of international law.

*Paragraph 30 was approved.*

*Section A of chapter IV of the draft report, as amended, was approved.*

The meeting rose at 1 p.m.

<sup>4</sup> United Nations, *Treaty Series*, vol. 597, p. 42.

## 1246th MEETING

*Tuesday, 10 July 1973, at 3.30 p.m.*

*Chairman: Mr. Mustafa Kamil YASSEEN*

*Present: Mr. Ago, Mr. Bartoš, Mr. Martínez Moreno, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Sette Câmara, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat.*

### **Draft report of the Commission on the work of its twenty-fifth session**

(A/CN.4/L.195 and Add.1; A/CN.4/L.199/Add.1)

*(continued)*

#### *Chapter IV*

THE MOST-FAVOURED-NATION CLAUSE

*(continued)*

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

### B. DRAFT ARTICLES ON THE MOST-FAVOURED-NATION CLAUSE (A/CN.4/L.199/Add.1)

*Commentary to article 1*  
(Scope of the present articles)

*The commentary to article 1 was approved.*

*Commentary to article 2*  
(Use of terms)

*The commentary to article 2 was approved.*

*Commentary to article 3*  
(Clauses not within the scope of the present articles)

*The commentary to article 3 was approved.*

*Commentary to article 4*  
(Most-favoured-nation clause)

*Paragraphs (1) to (5)*

*Paragraphs (1) to (5) were approved.*

*Paragraph (6)*

2. Mr. USTOR (Special Rapporteur) drew the Commission's attention to the explanations given in brackets in paragraph (6).

*Paragraph (6) was approved.*

*Paragraphs (7) to (10)*

*Paragraphs (7) to (10) were approved.*

*Paragraph (11)*

3. Sir Francis VALLAT proposed that the words "attached to", in the second sentence, should be replaced by the words "in a particular relationship with".

*Paragraph (11) was approved with that amendment.*

*Paragraph 12*

4. Mr. AGO proposed that the words "is a constitutive element of", in the first sentence, should be replaced by the words "is the constitutive element of".

*Paragraph (12) was approved with that amendment.*

*Paragraphs (13) to (17)*

*Paragraphs (13) to (17) were approved.*

*The commentary to article 4, as amended, was approved.*

*Commentary to article 5*  
(Most-favoured-nation treatment)

*Paragraph (1)*

5. Mr. USHAKOV pointed out that the concept of "nation" had been reintroduced into the Russian expression equivalent to "most-favoured-nation treatment".

6. Mr. USTOR (Special Rapporteur) said that paragraph (1) would be amended accordingly.

*Paragraph (1) was approved subject to that amendment.*

*Paragraphs (2) to (8)*

*Paragraphs (2) to (8) were approved.*

*Paragraph (9)*

7. Mr. SETTE CÂMARA pointed out that the enumeration appearing between brackets in the second sentence after the words "member States of the international community" was not exhaustive. He proposed that it be deleted.

8. Mr. AGO supported that proposal. He further proposed that the words "member States of the international community" should be replaced by the words "members of various groups of States within the international community", and the words "certain States or a group of States" by the words "the treatment granted to a certain group of States".

9. Sir Francis VALLAT supported those proposals.

*The proposals submitted by Mr. Sette Câmara and Mr. Ago were adopted.*

*Paragraph (9), as amended, was approved.*

*The commentary to article 5, as amended, was approved.*

*Commentary to article 6*

(Legal basis of most-favoured-nation treatment)

*The commentary to article 6 was approved.*

*Commentary to article 7*

(The source and scope of most-favoured-nation treatment)

10. Mr. USHAKOV reiterated the reservations he had made during the discussion on article 7.<sup>1</sup> In his opinion, the text of the article did not convey the idea that the right of the beneficiary State to obtain most-favoured-nation treatment from the granting State could only arise from the most-favoured-nation clause in force between the two States. The wording proposed was not clear enough and could be taken to mean that that right could also arise from other sources.

11. Mr. AGO shared Mr. Ushakov's reservations.

12. Mr. USTOR (Special Rapporteur) pointed out that paragraph (1) of the commentary specified that the most-favoured-nation clause "is the exclusive source of the beneficiary State's rights".

*The commentary to article 7 was approved.*

*Section B of chapter IV of the draft report, as amended, was approved.*

*Chapter III*

SUCCESSION OF STATES IN RESPECT OF MATTERS  
OTHER THAN TREATIES

## A. INTRODUCTION

13. The CHAIRMAN invited the Commission to examine section A of chapter III of its draft report (A/CN.4/L.195 and Add.1).

*Paragraphs 1 to 6*

*Paragraphs 1 to 6 were approved.*

*Paragraph 7*

14. Mr. AGO proposed that, in order to avoid any possible confusion, the quotation marks in the second sentence should be deleted, and that the sentence should be amended to read: "It decided, in accordance with the Special Rapporteur's suggestion, to delete from the title of the topic all reference to sources, in order to avoid any ambiguity regarding the delimitation of the topic entrusted to the Special Rapporteur".

15. Sir Francis VALLAT supported that proposal.

*The proposal was adopted.*

*Paragraph 7, as amended, was approved.*

*Paragraph 8*

*Paragraph 8 was approved.*

*Paragraph 9*

16. Mr. AGO questioned whether public property was really an economic aspect of State succession, as the fourth and fifth sentences of paragraph 9 seemed to suggest. He was not convinced by the explanations given in paragraph 10, and proposed that the fourth and fifth sentences of paragraph 9 should be replaced by the following sentence: "The report suggested that the problems of public property and public debts should be considered first".

17. Mr. SETTE CÂMARA said that he shared Mr. Ago's views, but wondered whether it was possible to delete from the text all reference to the economic aspects of the question without having to amend sub-heading (ii), which read "Priority given to succession of States in economic and financial matters".

18. Mr. AGO proposed that, in that heading, the words "in economic and financial matters" should be replaced by "in matters of public property and public debts".

19. The CHAIRMAN said he thought it would be difficult to leave out the economic aspects of the question and to mention only the problems of public property and public debts, because it was stated in the sixth sentence that, since that aspect of the question appeared too limited, "it was proposed that it should be combined with the question of natural resources...".

20. Sir Francis VALLAT said that, if it deleted the passage relating to the economic aspects of the question, the Commission might place the Special Rapporteur in an embarrassing position, because his second report, submitted in 1969 at the Commission's twenty-first session, was entitled "Economic and financial acquired rights and State succession".<sup>2</sup> In any case it was a fact that the question of State succession had economic and financial aspects.

<sup>1</sup> See 1218th meeting, paras. 27-29 and 1238th meeting, para. 47.

<sup>2</sup> See *Yearbook of the International Law Commission, 1969*, vol. II, p. 69, document A/CN.4/216/Rev.1.

21. Mr. THIAM said that in his view sub-heading (ii) should not be changed, for public debts constituted a financial aspect of the problem.

*Paragraph 9 was approved.*

*Paragraphs 10 to 20*

*Paragraphs 10 to 20 were approved.*

*Paragraph 21*

22. Mr. SETTE CÂMARA said he doubted whether the preliminary cautions in paragraph 21 were really necessary.

23. Mr. AGO shared that doubt. He proposed that paragraphs 21 and 34 should be combined by deleting paragraph 21 and adding to paragraph 34 a sentence to the effect that the articles reproduced in section B were only the first provisions of the draft which the Commission intended to prepare.

24. Sir Francis VALLAT said he thought paragraph 21 should be kept as it stood in order to stress the provisional nature of the work.

*Paragraph 21 was approved.*

*Paragraph 22*

25. Mr. USTOR proposed that, in the heading, the words "which are being prepared" should be deleted, since they were unnecessary.

*It was so agreed.*

26. Mr. AGO proposed that the word "articles" should also be deleted; draft articles generally resulted in a convention, but it was not yet known, in the present case, whether the work would lead to a convention or a code. He therefore proposed that the heading should be amended to read: "General questions relating to the form of the draft".

27. Mr. USTOR supported Mr. Ago's proposal.

28. Mr. RAMANGASOAVINA observed that the expression "draft articles" did not commit the Commission, since paragraph 23 specified that "the form to be given to the codification of succession of States in respect of matters other than treaties cannot be determined until consideration of this subject has been completed".

*Paragraph 22 was approved.*

*Paragraph 23*

29. Mr. USTOR proposed that, in sub-heading (a), the word "articles" should be deleted, so that the heading would read: "Form of the draft".

30. Mr. USHAKOV supported that proposal.

31. Mr. BARTOŠ said he saw no reason to depart from the expression "draft articles", which had always been used so far.

32. The CHAIRMAN said that, since only a sub-heading was involved, he thought there would be no harm in deleting the word "articles"; the expression "draft articles" remained in the main heading.

33. Mr. THIAM agreed with the Chairman.

*Mr. Ustor's proposal was adopted.*

*Paragraph 23, as amended, was approved.*

*Paragraph 24*

34. Mr. USHAKOV proposed that the sub-heading (b) should be amended to read "Meaning of the expression 'matters other than treaties'"; there was no "concept" involved.

35. Mr. BARTOŠ supported that proposal.

*The proposal was adopted.*

36. Mr. SETTE CÂMARA proposed that paragraph 24 should simply be deleted, as being unnecessary. Paragraph 25 would then begin with the words "The expression 'matters other than treaties' did not appear...".

37. Sir Francis VALLAT supported that proposal.

*The proposal to delete paragraph 24 was adopted*

*Paragraph 25*

38. Mr. AGO proposed that, in the first sentence of paragraph 25, the words "any of" should be deleted.

*It was so agreed.*

39. Mr. AGO said he found the third sentence difficult to understand. He proposed its deletion.

40. Mr. TSURUOKA and Mr. THIAM supported that proposal.

41. Mr. USTOR pointed out that that sentence was derived from the report submitted by the Special Rapporteur in 1968.<sup>3</sup>

42. Mr. BARTOŠ said he did not think the sentence should be deleted; he feared that its deletion might be interpreted by the Special Rapporteur as showing lack of confidence in him.

43. Mr. USHAKOV said he thought the Commission was free to quote whatever it wished.

44. The CHAIRMAN and Mr. RAMANGASOAVINA shared that view.

45. Mr. AGO proposed, as a compromise, that the third sentence should be amended to read: "In the first case the treaty was regarded as the subject-matter of succession, in the second as the source of succession".

*It was so agreed.*

*Paragraph 25, as amended, was approved.*

*Paragraph 26*

*Paragraph 26 was approved.*

*Paragraph 27*

46. Mr. USHAKOV observed that the Commission had never decided that the various questions enumerated at the end of paragraph 27 were matters of State succession. He himself did not believe that territorial problems, for example, came within the topic. He proposed that the second sentence of the paragraph should be deleted and only the first retained.

<sup>3</sup> See *Yearbook of the International Law Commission, 1968*, vol. II, p. 97, document A/CN.4/204, para. 19.

47. Mr. BARTOŠ said that the second sentence did not imply any decisions by the Commission, since it stated that the matters in question had simply been "referred to during the discussions". He therefore opposed its deletion.

48. Mr. USTOR supported Mr. Ushakov's proposal.  
*The proposal was adopted.*

*Paragraph 27, as amended, was approved.*

*Paragraphs 28 and 29*

*Paragraphs 28 and 29 were approved.*

*Paragraph 30*

49. Sir Francis VALLAT objected to the expression "property belonging to the territory", at the end of the third sentence; in his opinion, a territory could not own property.

50. Mr. RYBAKOV (Secretary to the Commission) said that the Special Rapporteur had wished to draw a distinction between State property situated in the territory and property belonging to a territory which had some measure of legal personality, as Algeria had had.

51. Mr. AGO agreed with Sir Francis Vallat that the expression "property belonging to the territory" was unacceptable.

52. Mr. SETTE CÂMARA endorsed that view.

53. Mr. BARTOŠ said that there were forms of property belonging to a territory, such as territorial waters, which were not property of the State, but were in the public domain in the broad sense of the term.

54. Mr. THIAM said he found it difficult to see what difference there could be between property belonging to the territory and property of territorial authorities or of the State.

55. Mr. USHAKOV proposed the deletion from the last sentence, of the words "has for the time being given up the idea of formulating rules governing all these categories of public property *en bloc* and it".

56. Sir Francis VALLAT proposed that the last sentence should be replaced by the following text: "After full discussion, and on the proposal of the Special Rapporteur, the Commission has decided to begin its study with State property, to which part I of the draft articles is devoted". He reminded the Commission that it had taken that decision after a very long discussion.<sup>4</sup>

*Sir Francis Vallat's proposal was adopted.*

*Paragraph 30, as amended, was approved.*

*Paragraph 31*

*Paragraph 31 was approved.*

*Paragraph 32*

57. Mr. AGO proposed that the last part of the first sentence, beginning with the word "namely", should be deleted.

*Paragraph 32 was approved with that amendment.*

*Paragraph 33*

*Paragraph 33 was approved.*

*Paragraph 34*

*Paragraph 34 was approved with some minor drafting amendments.*

*Section A of chapter III of the draft report, as amended, was approved.*

The meeting rose at 6.30 p.m.

## 1247th MEETING

*Wednesday, 11 July 1973, at 10.15 a.m.*

*Chairman: Mr. Mustafa Kamil YASSEEN*

*later: Mr. Jorge CASTAÑEDA*

*Present: Mr. Ago, Mr. Bartoš, Mr. Bilge, Mr. Hambro, Mr. Martínez Moreno, Mr. Pinto, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat.*

### Draft report of the Commission on the work of its twenty-fifth session

(A/CN.4/L.195/Add.2; A/CN.4/L.198 and Add.6-7; A/CN.4/L.200/Add.1; A/CN.4/L.201)

*(continued)*

#### Chapter III

#### SUCCESSION OF STATES IN RESPECT OF MATTERS OTHER THAN TREATIES

*(continued)*

#### B. DRAFT ARTICLES ON SUCCESSION OF STATES IN RESPECT OF MATTERS OTHER THAN TREATIES

1. The CHAIRMAN invited the Commission to examine the commentaries to the draft articles on succession of States in respect of matters other than treaties (A/CN.4/L.195/Add.2).

#### *Commentary to the introduction*

*The commentary to the introduction was approved without comment.*

#### *Commentary to article 1* (Scope of the present articles)

*Paragraph (1)*

*Paragraph (1) was approved.*

*Paragraph (2)*

2. The CHAIRMAN, after reminding the Commission of the changes it had made the previous day in the draft introduction to chapter III of the report (A/CN.4/

<sup>4</sup> See 1230th meeting, para. 41 *et seq.*