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Summary record of the 1341st meeting

Topic:
Most-favoured-nation clause

Extract from the Yearbook of the International Law Commission:-
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not always the case. For example, two States might conclude an agreement concerning favoured treatment of each other's consuls before the granting State had established consular relations with any third State.

56. Mr. Sette Câmara's objection that article 16 did not at present allow for termination of a most-favoured-nation clause by negotiation would be covered by the redrafting of articles 15 and 16 on the lines suggested by Sir Francis Vallat.

57. The CHAIRMAN suggested that articles 15 and 16 be referred to the Drafting Committee.

*It was so agreed.*⁷

The meeting rose at 6 p.m.

⁷ For resumption of the discussion see 1352nd meeting, para. 89.

1341st MEETING

Tuesday, 1 July 1975, at 10.15 a.m.

Chairman: Mr. Abdul Hakim TABIBI

Members present: Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. Elias, Mr. Hambro, Mr. Kearney, Mr. Pinto, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Šahović, Mr. Sette Câmara, Mr. Tammes, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat.

Most-favoured-nation clause

(A/CN.4/266;¹ A/CN.4/280;² A/CN.4/286; A/CN.4/L.228)

[Item 3 of the agenda]

(continued)

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

ARTICLE O

1. The CHAIRMAN invited the Special Rapporteur to introduce article 0 (A/CN.4/L.228), which read:

Article 0

Treatment consisting of trade advantages accorded to developing States on a non-reciprocal basis by a developed State within a generalized system of preferences established by the latter cannot be claimed by another developed State as beneficiary of a most-favoured-nation clause.

2. Mr. USTOR (Special Rapporteur) said that the apparent contradiction between the two earlier decisions of the Commission, to the effect that in studying the most-favoured-nation clause it would confine itself to matters within its own sphere of competence, and that it would devote special attention to the manner in which the need of developing countries for preferences in the form of exceptions to the clause in international trade could be given expression in legal rules,³ could be resolved if it were borne in mind that the most important task now

facing the international community was to change the present situation by helping the developing countries to reach the standard of living of the developed countries. While rapid progress towards that goal could be achieved only through direct measures such as disarmament, which would have world-wide economic effects and allow attention to be focussed on the central task, much could be done in the field of international trade. As a result of developments relating to that field in various United Nations bodies, including UNCTAD and the General Assembly, he believed that certain rules of international law were already discernible.

3. In its work on the most-favoured-nation clause, the Commission had so far been concerned with codifying, for the guidance of States, rules which had developed by custom over a long period of time. In discussing preferential treatment for developing countries, it was dealing with a kind of international law which had developed over a relatively short period in specialized United Nations organs. The Commission was not equipped to continue the discussions which had taken place in those organs, but it should take cognizance of the rules they had developed and incorporate them in the draft articles as a progressive element of international law. The direction in which the Commission should seek to move was, he thought, clearly defined by the quotation from General Principle Eight of annex A.I.I. of the recommendations adopted by UNCTAD at its first session, given in the Commission's report on the work of its twenty-fifth session.⁴

4. He was aware that he had perhaps not proceeded in a very orderly fashion in taking up the question of exceptions for developing countries in his sixth report (A/CN.4/286, chapter IV) before the Commission had completed its study of the general articles, but he had considered that it would be helpful to make a beginning in the vast field of international trade.

5. Article 0 was a modest beginning; it put forward a rule which had been accepted by practically all the members of UNCTAD, and thus by the great majority of States Members of the United Nations. The background to the emergence of that rule was traced in paragraphs 65 to 75 of his sixth report. The most important factor had been the agreement reached by the UNCTAD Special Committee on Preferences on a generalized system of preferences, to which he referred in paragraph 66 of the report. Under that system, States had the right, and perhaps the duty, to establish régimes under which they would grant the greatest possible preferences to the greatest possible number of developing countries. Preferences granted under the system were non-reciprocal, but the preference-giving countries were able to invoke certain safeguard mechanisms and to apply the principle of self-election in the choice of beneficiaries, due attention being given to the special situation of the least developed among the developing countries. The system, scheduled to apply for an initial period of ten years, also contained provisions relating to rules of origin and institutional arrangements.

¹ *Yearbook* ... 1973, vol. II, pp. 97-116.

² *Yearbook* ... 1974, vol. II, Part One, pp. 117-134.

³ *Yearbook* ... 1973, vol. II, p. 211, para. 114.

⁴ *Ibid.*, p. 212, para. 121.

6. Last, but for the purposes of the Commission not least, the Special Committee on Preferences had given the system legal status, recognizing that “no country intends 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).” The granting of legal status to the generalized system of preferences represented an important innovation, since it introduced into the law of treaties an exception to certain commitments under the most-favoured-nation clause. The importance of the objective behind that exception had been recognized by the contracting parties to the GATT, which had agreed to waive the provisions of article I of the General Agreement for the duration of the generalized system of preferences.

7. It could thus be seen that, while the generalized system of preferences might not fully meet the wishes of the developing countries, it was widely accepted. It seemed reasonable, therefore, to say that it was generally recognized that States applying that system would be exempted from their obligations under the most-favoured-nation clause. Such a rule fell within the scope of the draft articles being prepared by the Commission, and that was why he had drafted article 0.

8. The article concerned only “Treatment consisting of trade advantages”, because of the close link between it and the generalized system of preferences, which related only to trade. It would, of course, be possible to delete the words “consisting of trade advantages”, since the article included the phrase “within the generalized system of preference”.

9. The idea behind the article was that the purpose of granting preferences to developing countries was to help them to compete in international markets, to promote their own nascent industries and to overcome their dependence on agricultural products; if the preference-granting State was not freed from its commitments under most-favoured-nation clauses, the beneficiaries of those clauses would be able to claim the privileges accorded to developing countries and the whole purpose of the preferences would be nullified. The article differed from the generalized system of preferences in one respect, by providing that an exception to the most-favoured-nation clause would apply if most-favoured-nation treatment were claimed by another developed State. Under the generalized system of preferences, such an exception would apply whatever the nature of the State claiming the treatment. It would be for the Commission to decide whether it wished to restrict its own rule in that way.

10. The CHAIRMAN thanked the Special Rapporteur for his lucid explanation of a subject which was of great importance and interest not only to members of the United Nations, but also to the international community as a whole.

11. Mr. HAMBRO said it seemed to him that the Commission was now entering into the very heart of the matter. Quite a number of the articles considered so far had been of a technical nature and, while it was good to clarify them as guide to States, it was obvious that the questions

discussed in the last two chapters of the Special Rapporteur’s sixth report were the most important with which the Commission had to deal. Unless they were tackled, the Commission’s work would be nothing more than a historical foot-note to technical rules which avoided the essential issue.

12. The Special Rapporteur had shown how customary international law was being formed in the very important field of preferences for developing countries, and it was correct to say that new rules in that field were on the point of crystallization. He differed from the Special Rapporteur, however, in believing that the question could not be considered separately from that of exceptions to most-favoured-nation clauses for associations of States such as customs unions and free trade areas. Some of the reasons advanced by the Special Rapporteur for granting special preferences to developing countries were, from the strictly legal point of view, not very different from those adduced in the international community for granting exceptions to most-favoured-nation clauses to associations of States; much of the material the Special Rapporteur had used had been taken from discussions of the latter question in GATT and other bodies. International law was on the point of crystallizing in regard to customs unions and free trade areas, just as it was in regard to developing countries.

13. If the Commission included in its draft a rule relating solely to developing countries, readers might deduce *a contrario* that it had accepted as international law the right to grant special preferences to developing countries, but not the right to grant them to customs unions and free trade areas. It would not be sufficient to refer to associations of States in the commentary, as some might propose, since, as he could not repeat too often, it was the text of the article alone which would stand. Again, some might propose that, since the articles would not be retroactive, the Commission should include in the draft an article concerning new rules of international law, similar to article 4 of the Vienna Convention on the Law of Treaties.⁵ But while it was quite right to say that States could include in future treaties a clause pertaining to associations, it should not be forgotten that they could take the same action in regard to the special needs of developing countries.

14. He could accept an article providing for preferences for developing countries as something which, for political and ideological reasons, was advisable and even necessary. All members of the Commission would agree that the struggle to close the gap between developed and developing countries was so important for the United Nations that it would be wrong to ignore it in rules such as those the Commission was drafting. With regard to the text before the Commission, however, much work remained to be done and he was grateful to the Special Rapporteur for having, with typical modesty, expressed his willingness to accept changes.

15. The resolution adopted by the Institute of International Law at its 1969 session at Edinburgh, quoted

⁵ See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 290.

in the annex to the Special Rapporteur's fourth report,⁶ showed that the Institute had considered the question of the most-favoured-nation clause in international trade to be a complex and unresolved matter on which it had preferred to take no final decision. It also showed that the Institute had considered that there was a link between the two aspects of the problem he had been discussing, as could be seen from sub-paragraphs 2 (a) and 2 (b) of the operative part of the resolution.

16. The Commission should not commit the error of thinking that customs unions and free trade areas should be seen in a different political light from preferences for developing countries, on the grounds that they involved only the richer States; such associations of States existed in the third world also and they too required protection.

17. Mr. SETTE CÂMARA said that privileged treatment for developing countries, intended to ensure that the operation of the most-favoured-nation clause would not result in unequal and unfair competition, was now a general feature of relations between States. The contemporary situation was eloquently described in the quotation from Flory in paragraph 64 of the Special Rapporteur's sixth report (A/CN.4/286).

18. The Special Rapporteur had examined in detail the efforts of UNCTAD to establish a system of generalized, non-reciprocal and non-discriminatory preferences with, as stated in UNCTAD resolution 21 (II), the objectives of increasing the export earnings of developing countries, promoting their industrialization and accelerating their rates of economic growth. The system applied at present was far from achieving those objectives: it did not cover agricultural products, which constituted the main exports of the developing countries, but it did contain safeguard mechanisms and temporal restrictions which limited its value. Although discussion of such defects was outside its province, the Commission must ensure that its draft articles preserved the limited progress so far achieved; it must not impair the effectiveness of the steps already taken to ensure that developing countries received just treatment in their struggle for economic development.

19. For that reason, he found article 0 satisfactory. While it was cast in general terms and did not purport to treat the question of preferences for developing countries in detail, through its prohibition of the invocation of most-favoured-nation clauses by developed beneficiary States to claim benefits granted to developing countries, it fully preserved the principle of a privileged exception to the rule of equality.

20. He wished, to propose some amendments to the article, which were consistent with the trends already mentioned by the Special Rapporteur. The text, as amended, would read:

"Preferences and advantages accorded to developing States on a non-reciprocal basis by a developed State within a generalized system established by the latter or within multilateral arrangements cannot be claimed by another developed State as beneficiary of a most-favoured-nation clause."

21. The article should not be confined to trade alone, since even the problem of tariffs did not fall within the domain of trade *stricto sensu*, and there were other advantages relating, for example, to shipping and port facilities and the subject-matter of establishment treaties, which might be extended to developing countries at some later stage. The Commission should not bar the way to progress in the treatment of developing nations and the development of international law in that area.

22. He welcomed Mr. Hambro's expression of support for an article on the lines proposed by the Special Rapporteur. With regard to customs unions, free trade areas and similar associations, however, when the problem had been discussed earlier, the Commission had seemed to agree with the Special Rapporteur's conclusion that exceptions to the most-favoured-nation rule in favour of such groups could only be achieved by negotiation of a system of waivers, as was the case under the GATT, even as it applied to developing countries. The Special Rapporteur had further concluded that such associations of States could not claim an automatic exception to the rule unless they had become unions of States.⁷

23. The problem raised by Mr. Hambro did not concern the rich countries only; in Latin America, for example, there was a free trade association which its members valued highly. His difficulty was that he found it hard to envisage an exception for customs unions and the like at the same level as an exception for developing countries.

24. Mr. CALLE Y CALLE said that the delicate subject now under consideration had been thoroughly studied by the Special Rapporteur in his early reports. Questionnaires had been sent to international organizations concerned with the operation of the most-favoured-nation clause and with the problems of developing countries, and the replies received have been carefully examined. Those studies had clearly shown the existence of a duality of rules, applicable to industrialized States and to developing States.

25. The Special Rapporteur had noted that rules of international law on the preferential treatment of the weaker countries were in process of crystallization. His conviction on that point had now been confirmed and his proposed article 0 set out the appropriate new rule of international law. Up to the present, the Commission had been engaged in considering the traditional rules governing the most-favoured-nation clause, some of which derived from treaties signed as far back as the sixteenth century. The new proposal brought the Commission closer to the reality of the contemporary world, in which treaty provisions were being adopted to remedy existing inequalities, not merely to facilitate competition.

26. A new concept of the third States was emerging: it was connected with the customs unions and free trade areas being formed by the weaker States, which had found new strength in united action. Though it was a difficult point, he did not think that a uniform rule should be drafted to cover all such groups. One aspect of the matter

⁶ Yearbook . . . 1973, vol. II, p. 116.

⁷ See 1335th meeting, para. 56.

was the efforts being made in UNCTAD and other bodies to prevent discrimination against developing countries resulting from the operation of economic groups.

27. He agreed with Mr. Sette Câmara that the Commission should not enter into the question how the system of preferences operated. The language of article 0 should be broadened to cover more than the generalized system of preferences, which had its own institutional machinery. The article should state that all types of preferential treatment extended to developing States should be non-discriminatory and non-reciprocal. It should aim at eliminating the vertical preferences permitted under the GATT and granted by the European Economic Community; those advantages should be replaced, with appropriate compensation to their beneficiaries, by a generalized system of preferences.

28. The subject of customs unions and other groups had already been discussed in connexion with articles 8 and 8 *bis* and he believed that there was no State practice on which any exception could be based.

29. He supported article 0, subject to the changes of language proposed by Mr. Sette Câmara.

30. Mr. TSURUOKA said that article 0 remained within the framework of a draft on the most-favoured-nation clause, since it dealt not so much with generalized systems of preferences as such, as with the legal relationship between the clause and the treatment which a developed State might accord to developing countries under a generalized system of preferences.

31. For the article to be applicable, its scope must be clearly defined: it applied to trade advantages granted by a developed country to a developing country on a non-reciprocal basis.

32. The idea expressed in the article seemed faithfully to reflect State practice, in particular that of Japan. The matter was of great importance for present and future international relations, because of the role of the generalized system of preferences in promoting the economies of the developing countries and its consequences for the world. It was important to embody it in a provision permitting of lasting and universal application. In that connexion, it should be remembered that the generalized system of preferences adopted by GATT in 1971 had been considered at the time as a non-binding and temporary arrangement. Moreover, the category of countries not entitled to invoke the most-favoured-nation clause had not been specified—at least not formally. He therefore considered that the rule stated in article 0 would have more chance of universal acceptance if it were in harmony with the practice of GATT.

33. The better to take account of that practice, and for drafting reasons, he suggested that the article be amended to read:

“Without prejudice to international arrangements of a universal character, the most-favoured-nation clause may not be invoked to claim the right to treatment accorded by a developed State within a generalized system of preferences established by that State and which consists in trade advantages granted to developing countries on a non-reciprocal basis.”

He reserved the right to amend the opening phrase

“Without prejudice to international arrangements of universal character,”.

34. As GATT had not specified that it was the developed countries which must not invoke the most-favoured-nation clause, it might perhaps be better not to mention them separately as a category of countries which must not do so. Moreover, it was clear that developing countries were the natural beneficiaries of generalized systems of preferences and had no need to invoke a most-favoured-nation clause in order to benefit from such a system.

35. He would also suggest to the Drafting Committee that article 0 should, if possible, begin with the words “The most-favoured-nation clause”, since that clause was its subject.

36. With regard to the definition of the terms “developed State” and “developing country”, it should be noted that States granting tariff preferences usually designated the developing countries to which they were granted. Consequently, for the purposes of the application of article 0, States would naturally respect the designation by the granting State.

37. Mr. PINTO said he welcomed the Special Rapporteur’s draft article 0 because it met certain clearly discerned political needs. It was the first of a series of articles that should go some way towards safeguarding the interests of the developing countries, with which the Special Rapporteur was very much in sympathy.

38. The burning need to raise the level of development of the developing countries was not purely a matter of trade, but the problems of international trade themselves covered a wide field. They embraced not only tariff barriers, but also non-tariff barriers and legal barriers, with which UNCITRAL was dealing. Above all, the developing countries needed more favourable terms of trade.

39. The topic of the most-favoured-nation clause was mainly of interest to developed countries and to countries which were approaching a certain stage of development and wished to participate in existing markets. The Commission should be attentive to the needs and interests of all countries and should recognize that the present topic had a greater impact on some countries than on others. Some provisions were obviously needed in the draft articles to safeguard the position of the developing countries; the problem of framing such provisions was a difficult one, but was not beyond the capacity of the Commission. There was no need to deal with the general problem of development; it was simply a question of protecting the developing countries from the harsher effects of the general application of the rather rigid rules the Commission had so far adopted on the most-favoured-nation clause. Every effort should be made to ensure that the application of those rules did not hinder efforts to promote development.

40. He drew attention to the Declaration of Ministers approved at the GATT Ministerial Meeting on trade negotiations held at Tokyo on 14 September 1973.⁸

⁸ GATT document MIN (73) 1.

Paragraph 5 of that Declaration stated that the comprehensive multilateral trade negotiations which it had been agreed to hold in the framework of GATT "shall be conducted on the basis of the principles of mutual advantage, mutual commitment and overall reciprocity, while observing the most-favoured-nation clause, and consistently with the provisions of the General Agreement relating to such negotiations". It added, however, that "The developed countries do not expect reciprocity for commitments made by them in the negotiations to reduce or remove tariff and other barriers to the trade of developing countries", and recognized "the need for special measures to be taken in the negotiations to assist the developing countries in their efforts to increase their export earnings and promote their economic development".

41. That paragraph of the Declaration concluded with the recognition by the Ministers of "the importance of the application of differential measures to developing countries in ways which will provide special and more favourable treatment for them in areas of the negotiation where this is feasible and appropriate". It was no exaggeration to say that the concluding phrase "where this is feasible and appropriate" virtually destroyed all the concessions promised in the whole of the well-intentioned paragraph which preceded it. It was easy to imagine the impatience of the developing countries when faced with such a situation.

42. The Special Rapporteur's article 0 and the articles to follow it would be a response to the legitimate concern of the developing countries. Article 0 as it stood was perfectly acceptable, but would not suffice by itself to attenuate the consequences for the developing countries of the strict application of the precise rules embodied in the articles so far adopted by the Commission.

43. With regard to the text of the article, he thought some definition of the terms "developing State" and "developed State" should be given, at least in the commentary. The term "developing State", in particular, was rather misleading. He himself preferred the term "underdeveloped State", which had been abandoned because of its alleged pejorative connotation. Unless some definition of those terms was provided, there was a danger that a country in need of assistance might be told that it must be a developed country because it had a big gross national product.

44. The growing impatience of the developing countries had become apparent at recent United Nations meetings on economic projects. It was clear that those countries would not be attracted by any future conference on the lines of the Tokyo meeting to which he had referred. The Commission should make every effort to prepare a draft for general application, which could attract the support of all countries and not merely of a few important trading nations.

45. Mr. ELIAS said that article 0 was one of the most crucial provisions in the whole draft. He believed that it would be generally welcomed not only by developing countries, but also by developed countries. It achieved the necessary balance between those two groups of States in the international community.

46. The subject under discussion was not just a matter of sentiment; it related to the principle of the duality of the rules applicable to the industrialized countries and to the developing countries, which was a new principle of international economic and trade law. He had been particularly impressed by the Special Rapporteur's statement that the most urgent task on hand was to come to the aid of the developing countries and that in the final analysis that was "a question of human rights, of the right to life, and often of the right to life alone, of several hundreds of millions of people" (A/CN.4/286, para. 64).

47. Some five articles would, he thought, be needed to deal effectively with the problems of the developing countries and of economic unions. Those articles should be framed in a spirit of universality, as urged by the Special Rapporteur in paragraph 65 of his sixth report.

48. States did not undertake commitments from purely altruistic motives. Both the developed and the developing countries had to come to some kind of terms in order to face contemporary developments in international trade relations. It was interesting that a new spirit of accommodation had been shown by the USSR in 1965, when it had introduced a unilateral system of duty-free imports from developing countries. Its example had been followed by Australia in 1966, and Hungary in 1968. The system of preferences for developing countries had been greatly extended since then, although the benefits granted varied from one developed country to another.

49. When discussing customs unions and similar associations of States, the Special Rapporteur had rightly referred to article XXIV of the GATT, which more or less settled the matter in the relations between the contracting parties to that Agreement. He had decided not to propose the creation of exceptions to the general rule for customs and other unions, but he had promised that the matter would be reviewed in the course of the further study of the functioning of the clause in relation to the developing countries (A/CN.4/286, para. 63). The point was worth stressing because it was becoming increasingly common for developing countries to organize groups of their own. The recent Lomé Convention, whereby 42 developing countries had entered into a special relationship with the European Economic Community, indicated the need for further thought on the matter. He considered that, out of a maximum of five articles to be included in the section that would begin with article 0, one or two should deal with the question of customs and other economic unions; the matter should not be left simply to the operation of article XXIV of the GATT.

50. With regard to the text of article 0, the Special Rapporteur himself had suggested certain changes which were obviously needed in order to make it acceptable. He himself would suggest a rewording of the article on the following lines:

"A developed State which is the beneficiary of a most-favoured-nation clause cannot claim any treatment accorded to a developing State within a generalized system of preferences established by another developed State."

He believed that wording of that kind would serve to lay down the essential principle.

51. It would also be necessary to introduce a provision to prevent a developed country from benefiting from a system of preferences indirectly, by invoking its most-favoured-nation clause with a developing country which had itself secured the benefit of the system of preferences by invoking a most-favoured-nation clause.

52. With regard to the suggestion that the term "developed State" should be defined, he did not think it was at all desirable to introduce a formal definition of either a "developed State" or a "developing State" into the draft articles themselves. Those terms were in common use in GATT, in UNCTAD and throughout the United Nations family and were well understood by all who participated in the work of international organizations. Some explanation in the commentary was necessary, however, because a State which was a developing State at the present time might well become a developed State by the time the draft became a convention.

53. Article 0 was a necessary provision, which reflected a realistic and sympathetic approach to the promotion of equality and justice in international trade relations, and it had his support.

54. Mr. THIAM said that article 0 was in conformity with the Commission's mandate, which was not only to codify international law, but also to develop it progressively. The substance of the article was acceptable, for it confirmed the now widely accepted need to promote the economic development of developing countries. As to the desirability of defining the expression "developing State", he agreed with Mr. Elias that it would be enough to include an explanation in the commentary without going into too much detail. In itself, the expression "developing State" was not very satisfactory, since all States were developing in so far as they made development plans every year. It would not be advisable to refer to the Group of 77, because the level of development of the States members of that Group varied widely.

55. The expression "generalized system of preferences" was in use in GATT, but it had been criticized by some members of the Group of 77. The developing countries which were associate members of the Common Market, and which considered that the former colonial Powers should grant them certain advantages, were afraid of losing those advantages if they became parties to a generalized system of preferences. Consequently, it would be better to use the expression "any system of preferences", which would apply both to the GATT system and to other systems.

56. The expression "trade advantages" seemed too restrictive. The development of the developing countries should not be considered only from the point of view of trade. Besides, an agreement such as the GATT applied not only to trade, but also to customs tariffs.

57. Unlike Mr. Hambro, who thought the question of customs unions should be dealt with in article 0, he himself considered that it was only after it had studied the substance of that article that the Commission should examine the possible effects of the most-favoured-nation clause on customs unions and free-trade areas.

58. Other articles relating to developing countries were needed to supplement article 0. In particular, there

should be a provision stating the rule that a developed State could not claim the treatment accorded by a developing State to another developing State.

The meeting rose at 1.5 p.m.

1342nd MEETING

Wednesday, 2 July 1975, at 10.10 a.m.

Chairman: Mr. Abdul Hakim TABIBI

Members present: Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. Elias, Mr. Hambro, Mr. Pinto, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Tammes, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat.

Most-favoured-nation clause

(A/CN.4/266;¹ A/CN.4/280;² A/CN.4/286;
A/CN.4/L.228/Rev.1)

[Item 3 of the agenda]

(continued)

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR ARTICLE 0 (continued)

1. The CHAIRMAN invited the Commission to continue consideration of article 0 and drew attention to the revised text submitted by the Special Rapporteur (A/CN.4/L.228/Rev.1), which read:

"A developed beneficiary State is not entitled under a most-favoured-nation clause to the right to trade advantages accorded on a non-reciprocal basis by a developed granting State within its generalized system of preferences to a developing third State."

2. Mr. TAMMES said that the principle underlying article 0 had been known to the Commission from the beginning of its work on the most-favoured-nation cause in 1968. The Special Rapporteur's initial working paper on the topic had mentioned the interests of developing countries as an exception to the operation of the most-favoured-nation clause, and quoted a very significant passage from the proceedings of the Second Session of UNCTAD, which read: "The traditional most-favoured-nation principle is designed to establish equality of treatment . . . but it does not take account of the fact that there are in the world inequalities in economic structure and levels of development; to treat equally countries that are economically unequal, constitutes equality of treatment only from a formal point of view but amounts actually to inequality of treatment".³

3. The need for exceptions and preferences which followed from that recognition of the existing situation had been frequently restated since then, most recently in

¹ Yearbook . . . 1973, vol. II, pp. 97-116.

² Yearbook . . . 1974, vol. II, Part One, pp. 117-134.

³ Yearbook . . . 1968, vol. II, p. 169, para. 28 and foot-note 35.