Summary record of the 1342nd meeting

Topic:
Most-favoured-nation clause

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(http://www.un.org/law/ilc/index.htm)
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/L.228/Rev.1)

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

(continued)

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

the Charter of Economic Rights and Duties of States adopted by the General Assembly in 1974. It was therefore only natural that the Commission should now be considering an exception which appeared to have entered the general legal conviction of peoples—a conviction that was the only basis on which the Commission could present a rule of progressive development of international law.

4. At that point, two worlds met: the familiar world of the law of treaties, from which the present draft articles were derived, and the more dynamic world of international economic law, which had a different language and philosophy. That encounter had produced a proposal which gave grounds for some concern as to how such an expression as “generalized system of preferences” would be interpreted by national courts unfamiliar with the concept. He had been reassured on that point, however, when he had noted that that expression had found its way into the internal law of his own country through the incorporation of certain EEC regulations.

5. A serious difficulty was that article 0 dealt with a class of subjects of international law which was by definition ephemeral, since the very purpose of the article was to help eradicate under-development so that the category of developing States would disappear.

6. A more serious difficulty was that individual developing States might leave that category within a relatively short time, as a consequence of some unexpected change such as the discovery of new resources. Awkward problems of interpretation relating to time and substance would then arise. Should the interpreter go to the United Nations to ascertain whether, in a particular case, a claim based on the most-favoured-nation clause could still be sustained? Development was a gradual process which did not lend itself readily to the application of an objective criterion, such as per capita income, which could be applied by a court of law.

7. The Special Rapporteur had drawn attention to a comparable exception for the benefit of developing countries to be found in article 2, paragraph 3 of the International Covenant on Economic, Social and Cultural Rights, adopted by the General Assembly in 1966. That provision permitted developing countries to determine to what extent they would guarantee to non-nationals the economic rights recognized in the Covenant. The Covenant, however, was not yet in force, so that there was no experience showing how national courts had handled that exception, which was comparable to the one provided for in article 0.

8. He shared Mr. Sette Câmara’s concern over the question whether the effect of article 0 should be limited entirely to trade. As he saw it, the draft articles as a whole were intended to have general application to all sorts of benefits. Moreover, the idea behind article 0 was general: it was designed to remove or eradicate intolerable inequalities, and should apply to other things than trade—for instance, scientific and technical information. Article 13, paragraph 1, of the Charter of Economic Rights and Duties of States provided that “Every State has the right to benefit from the advances and developments in science and technology for the acceleration of its economic and social development”. In the light of that provision, access to information on science and technology appeared to be another matter that should be protected from the automatic operation of the most-favoured-nation clause.

9. He agreed with those members who thought that article 0 should be only the first of a series of special articles which he hoped would be submitted to the Commission at its next session.

10. Mr. RAMANGASOAVINA observed that for some time, and particularly since articles 8 and 13 had been considered, several members of the Commission had been urging the need to provide for greater flexibility in, or exceptions to, certain rules which they considered to be correct, but too strict for developing countries. The problems of those countries had caused concern to international bodies such as GATT and UNCTAD, and they had not been evaded by the Special Rapporteur, who had dealt with them in his sixth report (A/CN.4/286). Draft article 0, which would be followed by other articles relating to developing countries, seemed to meet that concern. Several members of the Commission had already stressed the merits of the article and observed that the international community had become aware of the need for solidarity between developed and developing countries, as a means of speeding up the development of the latter.

11. Article 0 should have a special place in the draft because it was a transitional provision. Studies by GATT and UNCTAD showed that the generalized system of preferences would be limited in duration, so that even if under-development continued for a long time yet, the only purpose of article 0 would be to deal with a temporary situation.

12. As he understood it, the expression “generalized system of preferences” meant all the trade arrangements—including arrangements relating to customs tariffs—designed to facilitate marketing of the products of the developing countries. The purpose of article 0 was to provide some protection for the developing countries on the world market. It was obvious that the prohibition contained in the provision applied only to developed countries; it could not prevent a developing country linked to a developed country by a most-favoured-nation clause from invoking that clause, merely because the developed country had special ties with other developed countries, within the Common Market, for example.

13. Article 0 was the outcome of the Special Rapporteur’s study of the work of international bodies. In paragraph 74 of his sixth report, he had referred to the Charter of Economic Rights and Duties of States, article 18 of which provided that “Developed countries should extend, improve and enlarge the system of generalized non-reciprocal and non-discriminatory tariff preferences to the developing countries consistent with the relevant agreed conclusions and relevant decisions as adopted on
the existence of customs unions or free-trade areas should
varieties it would be extremely difficult to do so.

capitalist economy. Of course, that did not mean that
use of the most-favoured-nation clause, claim the treatment
establishment of regional organizations, which were a form of
countries, should be covered by another rule, whereby a developed State could not, as the beneficiary
of a regional organization or a customs union. The estab-
lishment of regional organizations, which were a form of
co-operation supported by GATT and UNCTAD, should
be encouraged.

Mr. USHAKOV said that article 0 was acceptable,
but it seemed strange to consider an exception to the
general rules before they had been definitely

The term "developing countries" was difficult to
define, either in the present context or in the context of
international relations in general.

With regard to the exceptions which some members
of the Commission would like to make in favour of
customs unions and free-trade areas, he did not think
they followed from any rule of international law. If the
existence of such exceptions could be proved, the Com-
mission should try to clarify the concepts of a customs
union and a free-trade area, though in view of their
great variety it would be extremely difficult to do so.
He would therefore prefer that any questions raised by
the existence of customs unions or free-trade areas should
continue to be governed by practice.

Mr. ŠAHOVIČ said that article 0 gave the Com-
mision an opportunity to take up a basic question on
which the success of its work on the most-favoured-nation
clause depended. That question had some non-legal
aspects and made it necessary to consider the historical
role of the most-favoured-nation clause in the develop-
ment of international economic and political relations.
Since the discussions on the most-favoured-nation clause
had begun, some members of the Commission had urged
that the modalities of its application should be adapted
to economic and political realities, particularly in regard
to developing countries. The clause was one of the
principal instruments of international trade, but it was
characteristic of an international market based on a
capitalist economy. Of course, that did not mean that
it was going to disappear in the relatively near future, but
it was undeniable that, in the interests of most of the
members of the international community, the conditions
for application of the clause should be changed in order
to improve the situation of the developing countries.
And to ensure the success of the Commission's work on
the subject, the largest possible number of States should
be able to support it.

Mr. BILGE said that all the members of the Com-
mision seemed to agree that article 0 met a need—the
need to correct the inequality between developed and
developing countries; their differences of opinion related
only to the scope of the exception provided for in the
article. In the commentary, the inequality between de-
veloped and developing countries was presented as a tem-
porary phenomenon, but in fact it was impossible to say
how long it would last. Moreover, if the measures taken
to cure under-development proved ineffective, they would
probably become permanent. For about 20 years, the
international community had been trying to discover the
causes of under-development, but its efforts had not yet
been successful. The diversity of the measures success-
ively recommended seemed to suggest that the pheno-
menon would continue for a long time to come. After
confining itself to financial assistance, the international
community had decided to provide the developing coun-
tries with technical assistance, then to improve their
economic infrastructure and, finally, to improve their
social infrastructure.

The rule stated in article 0 would have the effect of
transforming into a legal obligation an intention of the
developed States, namely, the intention not to claim the
benefit of a most-favoured-nation clause in a specific case.
The purpose of the provision was thus to establish con-
fidence between developed and developing countries.
That exception in favour of developing countries was
clearly only one measure, among others, calculated to remedy under-development.

23. With regard to the definition of developing countries, which were to be the beneficiaries of article 0, the Commission should content itself with the terminology employed in the United Nations and the specialized agencies. For about ten years groups of experts had been trying to draw up a functional definition of the concept, but that was not a task for the Commission.

24. The main difficulty with article 0 lay in its very limited field of application, which did not match the objectives listed by the Special Rapporteur in his sixth report, namely, to increase the export earnings of the developing countries, to promote their industrialization and to accelerate their rates of economic growth (A/CN.4/286, para. 66, I, 2). The exception in article 0 was limited strictly to trade. Moreover, it should be noted that reduction of customs tariffs was becoming less important, since the international community was moving towards the elimination of customs duties. It was therefore to be feared that a provision of such limited scope as article 0 would disappoint the developing countries. Without going to the other extreme, the Commission should perhaps consider making the provision rather broader. Like the other articles relating to the most-favoured-nation clause, article 0 might apply to matters other than trade. It would, however, be necessary to ensure that such an enlargement of its scope did not discourage developed States from granting benefits to developing countries within a generalized system of preferences.

25. Mr. USTOR (Special Rapporteur) said that after the discussion which had taken place, he thought it desirable to clarify the nature of the provision under study.

26. It was not the Commission's task to deal with the whole question of developing countries. All it could do was to discern the kind of rules that were being evolved in regard to those countries in United Nations bodies and elsewhere. It should examine the special benefits which were being granted to developing countries and determine on what types of benefit there was general agreement among States. If the Commission found that there was general agreement to grant certain special rights to developing countries, it should formulate a legal rule establishing the entitlement to those rights.

27. He believed there was general agreement among States that every developed State should accord the benefits of a generalized system of preferences to the developing countries. As he saw it, that right existed only in trade and customs matters; there was no basis in State practice for admitting any other exception to the operation of the most-favoured-nation clause. Though personally in full sympathy with the cause of the developing countries, he could not propose rules which went beyond what had been accepted by the appropriate economic bodies.

28. Mr. QUENTIN-BAXTER said he admired the careful preparatory work done by the Special Rapporteur in his sixth report on the questions both of developing countries and of economic unions, and his presentation of an article which, whatever its ultimate destiny, was the perfect vehicle for an essential discussion on those subjects. He was particularly grateful to the Special Rapporteur for having emphasized the modesty of the role the Commission could play in relation to the needs of poor countries. Any suggestion that the Commission's drafts could redress the balance, or change the character of the old rules relating to the most-favoured-nation clause, was bound to lead to regrettable false expectations and misunderstandings.

29. Since other speakers had drawn attention to the limited character of the article, he would only point out that the system it proposed was in the hands of the developed States. Being familiar with the economic problems of small Pacific islands, which needed special rules to ensure that their limited output found a market, he had the objectives of the article very much at heart; it was clear, however, that the discretion left to the developed countries might lead them to apply the proposed system principally for their own benefit. Thus the article was merely an instrument which could be of use.

30. Again as other speakers had said, the concept of what was a developing country and what was a developed country changed as rapidly as the world situation. Consequently, the forward-looking part of the draft articles might soon seem out of date than those rules relating to the clause which had been derived from centuries of practice.

31. He also wondered about the place of the proposed rule in the draft. It had been said that the rule did not come within the sphere of jus cogens, that the Commission was not seeking to override the right of States to contract with others as they wished or challenging the pacta sunt servanda rule, but it would be unacceptable for the final version of the article to begin "Unless otherwise agreed...". The value of the article was, he supposed, that it would be accepted as a rule from which States would not wish to derogate. If the Commission saw the article merely as another aid to interpretation, its inclusion might contribute to the promotion of a benevolent principle, or merely draw attention to the weakness of the Commission's position. He was reminded of the example mentioned by Mr. Pinto of provisions which were ultimately governed by words such as "appropriate" and necessary. 7

32. He was sure of one thing, namely, that if the Commission's draft was to become part of codified law, it must have integrity. That was to say, it must be honestly founded on State practice and on the Commission's perceptions of organized world opinion, and it must be of one piece, rather than a set of rules and a set of exceptions. He was very chary of making sharp distinctions between the codification and development aspects of the draft—between the elements which had their origins in treaty law and development law respectively. The Commission should submit to the General Assembly a set of articles with a single, consistent, well-founded theme, not a set of tight rules counterbalanced by broad exceptions. He would be very nervous about the ultimate success of the Commission's efforts if consideration of the problems of developing countries led to the conclusion of special

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7 See previous meeting, para. 41.
exceptions for economic unions. In his view, the splendid
work done by the Special Rapporteur provided a basis
broad enough for the Commission to suggest to the Gen-
eral Assembly, and particularly to the representatives of
developing States, basic propositions which should com-
mand their attention and perhaps their approval.

33. The Commission's findings on the most-favoured-
nation clause were consistent with the conclusions it had
reached on the relationship between the sovereignty and
the international obligations of States when discussing
other subjects. Time and time again, and most recently
in connexion with State succession in respect of matters
other than treaties, the Commission had had to ensure
that obligations were placed in their proper context and
did not constitute infringements of State sovereignty.
In
the case of a most-favoured-nation clause, the agreement
was always drafted in a certain climate of expectation and
within definite limits, so that when a change occurred so
profound that it went beyond the scope of the matters
agreed upon, it was generally understood that most-
favoured-nation treatment agreements would not consti-
tute a restraint on the ordinary freedom of States to
develop in various ways. That being so, it seemed to
him that both practice and sense of what was reasonable
suggested that, when a State entered an economic union,
obligations more limited than those it incurred thereby
must yield to negotiation and amendment. It also seem-
ed that understandings between parties to arrangements
such as the GATT would normally be incorporated in
any arrangements made by those States under the kind
of generalized system of preferences referred to in draft
article 0.

34. Consequently, the first step to be taken in submit-
ting the venerable institution of the most-favoured-nation
clause to the General Assembly was to say that the ideas
on which it was based and which it contained were fully
in harmony with modern thinking on the relative posi-
tions of State sovereignty and the obligations States
assumed towards each other in everyday life.

35. The second step was to point out that, whatever
its limitations and whatever the extent to which it had
been overtaken by other economic rules and formalized
multilateral negotiations, there were still fields in which
the most-favoured-nation clause offered the less developed
nations a chance to achieve a certain status. While that
often implied no more than the right to participate in
negotiations, the fact that under the clause developing
countries always had a certain claim to have their views
taken into account was extremely important. If it was
clear that commitments under a most-favoured-nation
clause must be amended if an economic union was
formed—a fact which should be stated as a consequence
of, not as an exception to, the Commission's rules—it
was also beyond doubt that the beneficiary States had a
right to be heard on such an occasion and to seek to pre-
save their own interests as far as possible.

36. If, as a third step, the Commission could point out
the main difficulties and choices to which the extensive
ramifications of the most-favoured-nation clause gave
rise, the draft articles would be useful to small States
which lacked the resources to engage in elaborate research
and which might need a reminder that the clause faced
them with primary choices likely to have important con-
sequences.

37. By following such a course, the Commission would
place the most-favoured-nation clause, which by and
large had served the world well, in a modern context. He
was particularly wary of attempts to gain favour for the
draft articles by stating principles which in themselves
must be popular. While the principle stated in article 0
was in itself harmless, danger could arise if States were
allowed to believe that it, or anything else the Commis-
sion adopted by way of exceptions, could radically alter
the balance of the whole draft. Members of the Com-
mision should bear in mind the difficulty of attracting
parties to multilateral conventions. There were situa-
tions in which there would be overwhelming approval of
the inclusion of a certain principle in a treaty, simply
because it was of the kind which commanded general
international support, but in which, when it came to
ratification of the instrument, States would seriously re-
consider their positions, finding a provision which had
been of value as a demonstration of international solidar-
ity to be empty as an international obligation.

38. For those reasons, he reserved his position on the
value of article 0 as currently proposed, and on the in-
clusion of further exceptions in the draft.

39. Sir Francis VALLAT said he wished to make it
quite clear at the outset that he was fully in favour of the
idea underlying article 0. Nonetheless, he was filled with
doubt and concern at the thought that the Commission
had left an area of work in which it had dealt with legal
principles entered a new field where it was surrounded
by economic and political problems and was on unstable
ground. He had feeling that, under the guise of working
towards the codification and progressive development of
international law, members of the Commission were
vying with each other to gain or preserve economic and
political advantages, and he very much doubted whether
that was the Commission's true function.

40. There was no general agreement, no practice or
opinio juris on the basis of which the principle in article 0
could be seen as a general rule. What the Commission
was proposing pertained to the progressive development
of international law, but he had grave doubts as to
whether the bases for the proposal were solid enough for
the purposes of codification. The document on which
the Special Rapporteur had relied most heavily, the
Agreed Conclusions of the UNCTAD Special Committee
on preferences (A/CN.4/286, para. 66), referred to a sys-
tem that was to be reviewed after ten years. Since that
system had been instituted in 1970, the review would take
place at the very moment when the Commission could
first hope that its draft articles would enter into force.
Moreover, in section IX, paragraph 2, of the agreed
conclusions, UNCTAD itself had emphasized the mobile,
threatening character of the very concept on which the
Commission had based its draft article. If the Commission
did wish to make a rule based on something the economic
and political world was likely to replace in five years' 
time, in order to avoid confusion it might be wise to use
the language employed by UNCTAD.
41. There could be no absolute answer to the question of whether a particular country was a developing country or not; everything depended on the relations between States, since a country might be considered developed by comparison with one country and still developing by comparison with another. That view was confirmed by the reference in paragraph 70 of the Special Rapporteur’s fourth report to a preferential tariff scheme operated by Hungary, under which the test applied for the granting of preferences not only discriminated on a geographical basis, but relied on the relationship between the per capita national income of a developing country and that of Hungary itself. While he was delighted that Hungary should feel able to consider itself a developed country, he wondered whether it would wish to do so in all circumstances. Similarly, it was possible that certain States in Africa, for example, might be happy to accord preferences to other countries, but would themselves feel entitled to claim similar treatment from, for example, States in Europe.

42. He had called attention to the difficulty of defining the concept of a “developing country” for two reasons. The first was that the Commission should be careful lest, by using the term in a loose sense, it opened the back door to another kind of discrimination, as was entirely possible. While he agreed that there was no need for a formal definition of the term, the Commission must describe what it meant. It must employ in the commentary a common standard which would be objective, not a kind of sliding scale; and if the criterion was to be the comparison of some elements of the systems of the beneficiary and granting States, that should be stated in the article.

43. The second reason concerned the scope of the article. Given its historical background, the phrase “generalized system of preferences” clearly referred to a system under which one State would be granted lower customs tariffs than another. That, however, was very different from the concept of “trade advantages”, which could take widely differing forms. It was more a matter of drafting than anything else, but as it stood, article 0 did seem to subject the broader concept of trade advantages to the limitations of the generalized system of preferences. If the Commission wished to refer to “trade advantages” as such, it would have to consider further just what the phrase meant and what standards would be applied.

44. In the light of the discussion, he feared that he would be misunderstood if he did not refer to the question of customs unions and free trade areas. He agreed with Mr. Hambro that that question was, in a sense, linked to other countries, but would themselves feel entitled to claim similar treatment from, for example, States in Europe. It fell...
preferences based on certain national interests, rather than on the general interest of the international community and its least privileged members.

49. Mr. REUTER proposed a new article which read:

“None of the provisions of these articles prejudices:

“(1) the special régimes which may prevail in the relations among developing countries and in the relations between developing and developed countries;

“(2) the construction to be placed on a most-favoured-nation clause in the case of regional régimes limited to certain countries forming part of a particular economic or political union.”

The meeting rose at 1 p.m.

1343rd MEETING
Thursday, 3 July 1975, at 10.20 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. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Tammes, Mr. Thiam, Mr. Tsruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat.

Most-favoured-nation clause

[Item 3 of the agenda] (continued)

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

ARTICLE 0 3 (continued) AND

NEW ARTICLE PROPOSED BY MR. REUTER 4

1. The CHAIRMAN invited Mr. Reuter to introduce the new article he had proposed at the previous meeting (A/CN.4/L.229/Corr.1).

2. Mr. REUTER said that the new article he had proposed was intended to deal with two different questions: that of development and that of the relationship between the most-favoured-nation clause and certain special regional agreements. There were two separate matters and they were dealt with in two independent paragraphs, so that the Commission could very well drop one and keep the other. The two questions had certain aspects in common, but the mere fact that paragraph 1 dealt with the special régimes which might prevail in relations between developing countries made paragraph 2 superfluous so far as those countries were concerned.

3. In submitting a fairly general and quite brief provision he had had two kinds of consideration in mind, the first of which seemed imperative, since a question of time was involved. For even if the Commission decided to devote the remaining three weeks of the session to questions concerning the most-favoured-nation clause and developing countries, he did not think it would be able to work out a satisfactory text. If it wished to show the General Assembly how much it had that question at heart, it should recognize the existence of certain problems, but adopt a waiting attitude and express a sort of general reservation, leaving open the possibility of reverting to the question later if the General Assembly requested it to do so.

4. That reserved attitude was also justified by considerations of a different kind. For while he appreciated that the bitterness of the developing countries was perfectly legitimate, particularly after 1974, which had been a very disappointing year for them, he hoped the Commission would not have to deal with the legal aspect of the problems of developing countries, regarding which the situation was extremely confused.

5. The law relating to development was still in its infancy, as Mr. Bilge had very rightly said. But if the Commission wished to deal with development problems from the legal point of view, it would have to take a position on the law of development and inquire into its sources. Were those sources to be found in conventions or in a nascent international authority possessed by certain international organizations? Those questions were being hotly contested at the very time when the General Assembly had decided to undertake a review of the Charter. In his opinion, it was the body responsible for studying the review of the Charter which should pronounce on certain questions concerning the sources of the law of development.

6. The definition of the term “developing countries” was also controversial. Some members of the Commission had spoken on that question in other bodies and in other contexts, and had shown that it was absurd to multiply definitions and categories of developing countries. One definition had been proposed for the generalized system of preferences, but it was not necessarily adopted in individual agreements; the agreements with Hungary had been mentioned, but it would be equally appropriate to cite the agreements of the European Communities, which had refused to apply generalized preferences to European developing countries. The United Nations had drawn up a list of the 25 poorest countries, but when it had come to establishing a relief fund for victims of the drought in the Sahel, the number had been increased to 29. Again, when deciding the apportionment of the expenses of the emergency force set up by the Security Council in 1973, the General Assembly had classified developing countries in another way. Thus the definition of the expression “developing country” was a very difficult problem which the Commission was hardly in a position to solve; and it was only one problem among many.

7. He was, of course, only expressing his personal opinion, but he was sure that the text he had submitted would at present be unacceptable to most of the developed countries, for it was based on the premise that the problem of development was not confined to specific economic

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3 For text see 1341st meeting, para. 1 and 1342nd meeting, para. 1.
4 For text see previous meeting, para. 49.