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Summary record of the 1343rd meeting

Topic:
Most-favoured-nation clause

Extract from the Yearbook of the International Law Commission:-
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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. 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, L.229 and Corr.1)

[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

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

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

[3] For text see 1341st meeting, para. 1 and 1342nd meeting, para. 1.

[4] For text see previous meeting, para. 49.

questions. It must be borne in mind that in the current practice of the United Nations, treaties signed by developing countries were not, for those countries, subject to the same strict rules of performance as they were for developed countries. Hence he was convinced that some day it would be necessary to consider development in a broader setting than that of economic questions.

8. The text he had submitted was accordingly very broad, and dealt both with relations between developing countries and with relations between developing and developed countries. In that respect, it reflected the two main relationships defined in UNCTAD, where it had been considered desirable that developing countries should carry on preferential trade among themselves, so that a first treaty, subsequently enlarged, had been concluded between Yugoslavia, Egypt, India and some other countries.

9. The Special Rapporteur had adopted a very wise approach. The reason why he himself was proposing a much more general formula than that proposed by the Special Rapporteur was that he hoped the Commission would go beyond the question of generalized preferences, which were of very limited application and which had so far benefited only the nine most developed of the developing countries. In his opinion, the Commission should show the General Assembly that it had no wish whatever to obstruct, either in the matter of preferences or in any other way, any measures which could improve the lot of developing countries.

10. He agreed with Mr. Ushakov that, even if the Commission devoted the remaining three weeks of the session to those questions, it would not be able to find acceptable definitions which, despite the existence of the most-favoured-nation clause, would reserve for certain States constituting an embryo of regional life, the faculty of progressing towards unification. The unification of States could take place in two ways; either in a single operation in which case a new State was formed and the problem of succession of States arose; or gradually, in which case there were a number of intermediate solutions that could not be clearly defined at present.

11. He further agreed with Mr. Ushakov that a regional union could be most damaging to the most-favoured-nation clause or to a régime of non-discrimination. For example, when the six European founder members of the European Communities had attempted to set up the European Coal and Steel Community, they had come up against the GATT commitments, but since the law of GATT was fairly elastic, they had been able to gain acceptance for their economic agreements. On the other hand, when the Treaty of Rome had been concluded, the view had prevailed in GATT that that customs union so greatly changed the general conditions of operation of the General Agreement that it was unacceptable; and the United Kingdom and the Commonwealth countries had formulated objections which had never been formally withdrawn. The situation had been even more dramatic in the case of OEEC; when the United Kingdom had asked for a waiver of the quantitative restrictions which the "Six" had agreed upon among themselves, they had refused, and the tension in OEEC had become so acute that that organization had not survived.

12. It was a very difficult problem, but States could not be refused the right to develop a centre of intensive regional life. The Commission should not adopt too rigid a position on such a political question. From a strictly legal viewpoint, it was a matter of the interpretation of treaties and of the relations between treaties; but treaties could be interpreted in ways that were valid in some cases and not in others. It was a question which could not be settled in the abstract, in advance, by an absolute rule; he hoped, therefore, that it would remain open. In his opinion, it was a matter which was crucial for the Commission's future; consequently, the Commission could not deal with it in the abstract, by appearing to ignore what was the fundamental concern of the majority of the States Members of the United Nations. Nor did he think that, technically or even legally, the Commission was in a position to substitute itself for organs established by GATT, which was in disagreement with UNCTAD, which in turn was not always in agreement with the General Assembly.

13. With reference to the Charter of Economic Rights and Duties of States, quoted by Mr. Tammes, [5] he pointed out that according to the *Official Journal of the European Communities*, the States members of those Communities considered that that Charter had no legal consequences so far as they were concerned. In his opinion, the Commission was not called upon to settle questions of that kind.

14. Mr. USHAKOV said that, before considering whether it could provide for restrictions or exceptions in the case of economic unions, the Commission should define the meaning of an "economic union" on the basis of concrete examples, such as the Common Market or CMEA, and then work out general rules. The text proposed by Mr. Reuter was very vague and did not, in his opinion, contain either a specific proposal or a general rule. What was meant by such expressions as "special régimes" and "relations"? Was the reference to economic or social or cultural relations? By whom was the "construction" to be placed on the most-favoured-nation clause? What was meant by "regional régimes" and "particular economic or political unions"? Could political unions like NATO or the Warsaw Pact have any effect on the interpretation of the most-favoured-nation clause?

15. Mr. KEARNEY said that article 0 stood out strongly from the preceding draft articles. The Commission, which had been considering general articles on the most-favoured-nation clause, now had before it an article dealing specifically with trade advantages and couched in the specialized language of commercial treaties; it seemed as if the Commission had moved into the domain of GATT or even UNCITRAL. It could, of course, do so if it wished, and he had no basic objection to the proposal.

16. The problems of definition raised by the article were, however, considerable. For example, if trade

[5] See previous meeting, para. 8.

advantages were granted to developing countries on the basis of some countervailing favours, as commonly happened, it was hard to tell whether the most-favoured-nation clause would not apply. It certainly seemed that the clause would not apply if treatment was accorded under a "specialized" system of preferences, and it might be asked why that should be so. Lastly, there was the very basic problem of determining what was a "developing" or a "developed" country.

17. There could be no doubt that the article sought to establish an exception to the *pacta sunt servanda* rule. That was, of course, permissible, but he was concerned that the commentary in chapter IV of the Special Rapporteur's sixth report (A/CN.4/286) tended to imply that the exception for developing countries was an accepted international principle, even though the historical evidence adduced in support of that view was scanty. The situation could be contrasted with that in regard to economic unions, considered later in the same chapter, where the Special Rapporteur had taken the view that there was no basis in law for an exception. There could be no objection to the Commission's engaging in the progressive development of international law provided that it furnished sound and basic reasons for its proposals. It should, therefore, be made clear that the Commission was proposing an exception in respect of developing countries for reasons which, though valid, were not necessarily legal.

18. In that context, he had a great deal of sympathy for the new article submitted at the previous meeting by Mr. Reuter, which had the advantages of not saying that one form of economic development should be saved and another damned, and of constituting a holding proposal designed to allow more time for identification and consideration of the underlying issues. If the proposal was seen in that light, the objections to it raised by Mr. Ushakov became less important.

19. For his part, he did not feel competent to judge the precise consequences of the inclusion in an article of a phrase such as "generalized system of preferences" and he would appreciate time to seek an expert opinion on such matters. He had assumed from what the Special Rapporteur himself had said in paragraph 75 of his sixth report, that article 0 and the related articles would not be discussed until the next session. But if the Commission wished to produce an article such as article 0 at the present session—perhaps in a somewhat clearer form—he would be prepared to accept it on a provisional basis, subject to review and reconsideration at the 1976 session.

20. The CHAIRMAN, speaking as a member of the Commission, commended the Special Rapporteur for his excellent commentary and for his formulation, in article 0, of a very important and timely rule. The Special Rapporteur had given expression to the common will of the international community, which had developed since the foundation of the United Nations. The founders of the Organization, in discussing how to save the world from another holocaust, had recognized that that could not be done without considering economic and political questions; thus the decisions taken at Dumbarton Oaks had been reflected in the Charter of the United Nations, and had been followed by the Havana Conference and the formation of GATT and UNCTAD.

21. At the first session of UNCTAD, the most important meeting of the present era, rules had been laid down which specifically provided for exceptions to the most-favoured-nation clause for land-locked countries. Those who believed that trade questions did not come within the purview of the International Law Commission should reflect on the fact that, as long ago as the time of Vitoria, trade had been described as a natural part of relations between States. To suggest that the Commission should not take up the matter dealt with in article 0 because the UNCTAD generalized system of preferences was to be reviewed in five years' time was no argument; nearly 30 years' discussion of economic questions in the United Nations had brought little change in the basic pattern of the world economy, so it was unlikely that there would be any radical change in the near future. Indeed, the gap between developed and developing countries might grow still wider. The Commission's concern should be for the half of the world's population which was faced with starvation. Even if generalized systems of preferences as envisaged in article 0 were put into effect, the problem of the developing countries would not be entirely solved. Developed countries would still be protected by safeguard mechanisms and the developing countries could not hope to make much progress so long as they had no manufactures to export.

22. The problems of developing countries would be discussed during the current year in numerous international forums, including the seventh special session and the thirtieth regular session of the General Assembly. He felt it his duty as Chairman to point out that the Commission would lay itself open to criticism from the Sixth Committee of the General Assembly, which had always considered it to be Western-oriented, if, after three days of discussion, it produced nothing and merely said that it required more time to seek expert advice. If the Commission adopted article 0, however, its work would win both the close attention and the appreciation of the Sixth Committee.

23. Mr. PINTO said that Mr. Reuter's admirable statement was of significance not only in regard to his proposal and the question of the most-favoured-nation clause, but also in regard to the work, and perhaps the very life of the Commission. It had been like a flash of light in the darkness, throwing into sharp relief problems which had remained hidden too long, and revealing conflicting and unspoken hesitations and desires which had underlain the Commission's discussions in recent weeks.

24. Mr. Reuter seemed to wish his new article to be seen as a holding operation rather than a concrete proposal. Personally, he fully appreciated that wish in the spirit in which it had been meant, for if the proposal were indeed concrete, it could so restrict the operation of the remaining draft articles as virtually to destroy their significance.

25. Where he did not agree with Mr. Reuter was in his suggestion that it would be unwise for the Commission to deal at the present stage with matters affecting the

developing countries, because they were of a political nature. The Commission differed from its predecessors in the field of codification in that it had been instructed to take account of the views of governments. [6] It dealt not with the abstract science of international law, but with the life of States; the law it created had no coercive force, but must be acceptable to States. For the sake of its own survival the Commission should admit that it was politicized and not balk at discussing problems, such as those relating to developing countries, which were of political import, particularly since, in view of its small size and the vocation of its members, it could do so in a disciplined and objective manner. The validity of that thesis was proved by the very fact that Mr. Reuter, who came from a developed State, had felt able to speak as he had.

26. Mr. THIAM said that the problem under consideration was essentially political, but the Commission could not disregard it. And it could not escape from its predicament by purely legal speculations, for law was only a tool; law must serve reality, not vice versa.

27. All the members of the Commission seemed to be in favour of providing for an exception to the application of the most-favoured-nation clause for the benefit of developing countries, but the questions raised during the discussion might impair the value of that exception.

28. The draft article proposed by Mr. Reuter had the advantage of covering two situations that were not dealt with in draft article 0. As it stood, article 0 was insufficient; it ought to be supplemented by articles which, first, would deal with customs and economic unions and, secondly, would lay down the principle that a developed State could not, as the beneficiary of a most-favoured-nation clause, claim the treatment accorded by one developing State to another developing State. Both those questions were covered by Mr. Reuter's draft article.

29. So far as customs or economic unions were concerned, he considered that the formation of such unions was essential to the development of any country. Because the colonized territories had been split up arbitrarily by the colonizers, most of the developing countries did not enjoy sufficient economic living room. Consequently, the formation of customs or economic unions was a necessity, and it was important to relax the conditions of application of the most-favoured-nation clause for the benefit of developing countries.

30. If it approved Mr. Reuter's draft article, the Commission would not need to draft articles supplementing article 0; the wording could no doubt be improved, though the expressions "special régimes" and "regional régimes limited to certain countries forming part of a particular economic or political union" were quite satisfactory.

31. The distinction between developed and developing countries was in current use; but what was important in the fight against under-development was not to spend time on terminological questions, but to establish institutions and machinery which would bring justice and equity into international economic relations. The fact that the situation of the developing countries would necessarily change during the next few years and that articles drafted in 1975 might no longer correspond to reality in the year 2000, could not be invoked by the Commission as a reason for not taking the special situation of those countries into consideration.

32. He suggested that the draft article proposed by Mr. Reuter should be adopted provisionally or, if that could not be agreed on, that article 0 should be supplemented by other provisions.

33. Mr. TSURUOKA said that he was still in favour of referring article 0 to the Drafting Committee.

34. The principal purpose of Mr. Reuter's draft article seemed to be to inform the General Assembly that a number of special situations were being considered by the Commission. Personally, he thought it would suffice to mention in the commentary to article 0 that the Commission had studied those situations, but that such delicate problems had come up that a more thorough inquiry had proved necessary, and that in the short time available article 0 was the only article concerning developing countries that the Commission had been able to consider. In any case it should be indicated in the commentary that any exception in favour of developing countries should be soundly based in law and should not be contrary to fundamental rules of international law, such as the principles of *pacta sunt servanda* and *res inter alios acta*, or the principle of the sovereign equality of States.

35. Some members seemed to have exaggerated the importance of the problem. It should not be forgotten that the draft would be applicable only to treaties concluded after its entry into force, and would in no way debar developed and developing countries from agreeing on exceptions to the application of the most-favoured-nation clause in the case of economic unions or where advantages were to be granted subject to any special conditions. Besides, countries would still be free not to accept a most-favoured-nation clause. Hence, the draft would in no way hinder the formation of customs, political or economic unions at the regional level. The commentary to article 0 should therefore indicate that in including that article in the draft the Commission's only concern had been to allow for exceptions to the system of the most-favoured-nation clause in favour of developing countries.

36. Mr. CALLE Y CALLE said that sub-paragraph (1) of the text proposed by Mr. Reuter, which related to the developing countries, was consistent with the Commission's views on the subject, but he would prefer the Special Rapporteur's text of article 0, provided it was not confined to trade advantages, but broadened in the manner suggested by Mr. Sette Câmara. [7]

37. Mr. Reuter's proposal covered by the special situation of the developing countries by means of an exception stated in very brief and general terms. The form in which it was drafted was intended to show that the Commission was not unaware of those areas in which the most-favoured-nation clause did not operate, because

[6] See article 16 of the Statute of the International Law Commission (A/CN.4/4/Rev.1).

[7] See 1341st meeting, paras. 20 and 21.

certain realities stood in its way. In addition to the case of the developing countries, the text dealt, in sub-paragraph (2), with economic and political unions. Under that sub-paragraph the regional régimes established by such unions would constitute another exception to the operation of the most-favoured-nation clause.

38. It had been claimed that it would be premature for the Commission to draft a rule of international law to the effect that the most-favoured-nation clause must not hinder the granting of benefits by developed countries to developing countries. He thought the time had come to recognize the existence of such a rule, as suggested by the Special Rapporteur in his remarkable statement in 1969 to the Institute of International Law, quoted in his sixth report (A/CN.4/286, para. 64).

39. It had been rightly pointed out that the generalized system of preferences was not a panacea, that it was limited in scope and that it had yielded only modest results. The fact remained, however, that its adoption constituted a very important international precedent, in that it represented the recognition by the appropriate international bodies of the principle that, where the generalized system of preferences was concerned, the most-favoured-nation clause did not operate automatically.

40. The same applied to any other advantages that might be extended to developing countries by developed countries. The reference to "the importance of the application of differential measures to developing countries", in paragraph 5 of the Declaration of Ministers approved at the GATT Ministerial Meeting at Tokyo on 14 September 1973, had already been mentioned by Mr. Pinto. [8]

41. He was in favour of separate formulation of the various exceptions to the operation of the most-favoured-nation clause. The first would be that relating to the generalized system of preferences; the second that relating to regional systems.

42. Mr. ELIAS said that Mr. Reuter's proposal brought together two very disparate ideas. Its author himself recognized that it would be better to deal separately with the two issues involved.

43. As far as developing countries were concerned, when submitting his own proposed redraft of article 0, he had mentioned the desirability of including 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 that system by invoking a most-favoured-nation clause. [9] In order to cover that point, he wished to revise the concluding words of his redraft so that it would now read:

> "A developed State which is a 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 State, whether developed or developing."

44. The whole purpose of the Commission's work on article 0 was to bring developed States to make some concessions to developing States in the interests of fair play and justice. He need only remind members once again of the impressive statement made by the Special Rapporteur to the Institute of International Law in 1969, in which he had stressed that what was at stake was, in the final analysis, a question of human rights and of the right to life of several hundred million people.

45. Clearly, the rule the Commission was framing was not so much a matter of codification as of progressive development. In the process of progressive development, the representation on the Commission of the "main forms of civilization and of the principal legal systems of the world", under article 8 of its Statute, acquired a very special significance. It was only by considering the different ways in which human beings reacted in different parts of the world that the Commission could recognize the facts of contemporary international life and help to remove some of the injustices of the past. The adoption of such a responsible attitude by the Commission would enhance its standing with the General Assembly and increase the confidence of States in its work.

46. He was in favour of adopting article 0 on the lines proposed by the Special Rapporteur, subject to the reservation that it did not represent the Commission's final position; that would show the Commission's willingness to deal with the problem. It had admittedly received the revised text of the article only a very short time ago, [10] but the exception relating to the developing countries had been mentioned by the Special Rapporteur in his earliest reports; and in any case, he had submitted his draft article only as a tentative proposal.

47. The Commission should take note of the fact that additional articles would be included in the draft to cover other exceptions, and invite the Special Rapporteur to revise his position in regard to economic and other unions. The situation had altered, in that unions of that kind were being formed by developing States, both in Africa and elsewhere. The Commission should make it clear that it intended to study the question of such unions.

48. He hoped that a reference to the very useful elements in sub-paragraph (1) of Mr. Reuter's proposal would be included in the commentary.

49. Mr. USHAKOV said he was curious to know what rule of international law members had in mind when they supported exceptions in favour of developing countries. Were they thinking of an exception in favour of all the developing countries or of only some of them? Was there a rule under which a developing country, when granting advantages to another developing country, could withhold the benefit of the most-favoured-nation clause not only from developed, but also from developing countries? And in the case of an economic or political union of developing countries, could a State member of such a union deny the advantages granted within the union both to developed and to developing countries which were not members of the union?

50. Mr. SETTE CÂMARA said he was a little surprised at the degree of concern shown by some speakers

[8] *Ibid.*, para. 41.

[9] *Ibid.*, paras. 50 and 51.

[10] See previous meeting, para. 1.

during the discussion. As he saw it, the Commission was not invading the realm of GATT or UNCTAD. It was not writing rules on the subject of trade and developing countries. It was simply framing rules on the most-favoured-nation clause, and in doing so it could not ignore realities.

51. It had been pointed out by some members that the generalized system of preferences could be short-lived. In fact that system fell far short of what the developing countries had been striving for and they had accepted the nominal ten-year period for the system as part of the price to be paid for obtaining some concessions from the developed countries. He was sure that all the many people engaged in UNCTAD work would be most surprised at any suggestion that their efforts to improve the trade position of the developing countries were a purely temporary venture.

52. The proposal put forward by Mr. Reuter had the merit of not being confined to trade concessions. It used the much more general formula "special régimes", which, unfortunately, was far too vague, and detracted from the force of the rule proposed by the Special Rapporteur. Moreover, Mr. Reuter's text did not avoid the problem of definitions, since it used the terms "developing countries" and "developed countries". Consequently, although he would not oppose sub-paragraph (1) of that proposal, he preferred the Special Rapporteur's text with the amendment he had suggested at a previous meeting. [11]

53. With regard to sub-paragraph (2) of Mr. Reuter's text, the very thorough study which the Special Rapporteur had made of customs unions in chapter III of his sixth report (A/CN.4/286) had led him to a different conclusion from that which he had reached in regard to the developing countries. State practice did not yet indicate that it was possible for the Commission to adopt a rule providing for exceptions in the case of economic and other unions. Further studies were called for and more backing by State practice would be necessary before any such rule could be adopted. Nevertheless, if the majority of the Commission favoured the adoption of a provision on the lines of sub-paragraph (2) of Mr. Reuter's text, he would not oppose it; but he would urge that it be kept quite separate from the exception for developing countries, for that had substantial material behind it.

54. Mr. USTOR (Special Rapporteur) drew attention to the statement in the Commission's 1973 report that "while it is not the Commission's intention to deal with matters not included in its functions, it wishes to take into consideration all modern developments which may have a bearing upon the codification or progressive development of rules pertaining to the operation of the clause". The Commission had gone on to say that it wished "to devote special attention to the question of the manner in which the need of developing countries for preferences in the form of exceptions to the most-favoured-nation clause in the field of international trade, can be given expression in legal rules". [12]

55. The problem now facing the Commission was that of drafting, as a matter of progressive development, an exception to the most-favoured-nation clause for developing countries. He had tried to draft a text that would be generally acceptable, and the criticisms put forward by Sir Francis Vallat [13] applied not so much to that text as to the general system of preferences as such. It was true that that system was rather limited and that it did not fully meet the expectations of the developing countries; but it did represent a compromise reached within the framework of UNCTAD. He believed it was valuable to translate the results of that compromise into a legal rule which could gain the approval of all the countries of the world.

56. He fully realized that the generalized system of preferences had been created for an initial period of ten years, but the very fact that that period had been described as "initial" showed the intention to continue the system. With all its limitations, moreover, the generalized system of preferences was an achievement for the benefit of the developing countries, and it was highly desirable to raise the principle embodied in it to the level of a rule of international law.

57. He was not in favour of framing a wider rule that would state the exception as applying to all benefits granted by developed countries to developing countries. The Commission should stay on the firm ground of the generalized system of preferences, on which wide agreement had been reached and which provided valuable safeguards for the developed countries.

58. With regard to the text of article 0, he suggested that the opening words "A developed beneficiary State" be replaced by the words "A beneficiary State" and that the expression "trade advantages" be replaced by "advantages". Those changes would bring the text into line with UNCTAD practice. Moreover, the generalized system of preferences was limited to customs.

59. He did not share the concern expressed by certain members because article 0 dealt with a somewhat technical subject: it was the common fate of lawyers to have to deal with specialized subjects. Those engaged in fashioning the rules on the law of the sea, for example, were facing a great variety of technical problems, but that did not deter them from continuing their work on the formulation of appropriate rules of international law.

60. The Commission's present task should be to examine carefully the work being done in such bodies as UNCTAD and to try to discern any rules which it could raise to the status of norms of international law. The problems of the developing countries were at the forefront of the General Assembly's attention and the Commission could not avoid dealing with them.

61. The question of economic or political unions, dealt with in sub-paragraph (2) of Mr. Reuter's proposal, was not comparable with that of developing countries. In formulating the rule in article 0, he had relied on the substantial background material in chapter IV of his sixth report, which showed that there was agreement on that rule between developed and developing States.

[11] See 1341st meeting, para. 20.

[12] *Yearbook ... 1973*, vol. II, p. 211, para. 114.

[13] See previous meeting, paras. 39-45.

There was no such agreement between States in regard to economic or other unions.

62. The problem of the impact of economic unions on most-favoured-nation clauses was not one of framing any special rule on the subject; it was simply a problem of conflicting treaty obligations. A conflict of that kind had to be settled in accordance with the appropriate rules of the general law of treaties. The interesting idea had been put forward by Mr. Tsuruoka that the draft would probably contain a non-retroactivity provision and would apply only to future economic unions, not to existing ones, so that States would have time to provide for the necessary exceptions in their treaties. For the present, he did not see how it was possible to claim that the mutual obligations of members of such economic groups should have absolute priority over the ordinary rules of the law of treaties, and that the members of those groups were relieved from their most-favoured-nation commitments.

63. The CHAIRMAN declared the discussion on article 0 closed. He suggested that the article be referred to the Drafting Committee for consideration in the light of the discussion.

It was so agreed. [14]

The meeting rose at 1.10 p.m.

[14] For resumption of the discussion see 1352nd meeting, para. 126.

1344th MEETING

Friday, 4 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. Kearney, Mr. Pinto, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Thiam, Mr. Tsuruoka, 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 (*continued*)

1. Sir Francis VALLAT said he wished to place on record that the discussion on article 0 had not been completed. He and other members who still had some comments to make on that article had only agreed to its being referred to the Drafting Committee at that stage in order not to delay the work of the Commission, which was now due to take up the next item on its agenda.

2. The CHAIRMAN said that members who wished to comment on draft article 0 would be able to do so when it came back from the Drafting Committee.

Question of treaties concluded between States and international organizations or between two or more international organizations

(A/CN.4/281; A/CN.4/285)

[Item 4 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

ARTICLE 7 AND

ARTICLE 2, PARAGRAPH 1 (*c*)

3. The CHAIRMAN reminded the Commission that at its previous session it had begun the first reading of the draft articles on treaties concluded between States and international organizations or between international organizations, and had provisionally adopted article 1, most of article 2, and articles 3, 4 and 6, together with the commentaries thereto. [1] He invited the Special Rapporteur to report on the progress of his work and to introduce his fourth report (A/CN.4/285), with particular reference to article 7 and paragraph 1 (*c*) of article 2, which read:

Article 7

Full powers

1. A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if:

(*a*) he produces appropriate full powers; or

(*b*) it appears from the practice of the States and international organizations concerned or from other circumstances that their intention was to consider that person as representing the State for such purposes and to dispense with full powers.

2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:

(*a*) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty;

(*b*) representatives accredited by States to an international conference or to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that conference, organization or organ or of a treaty with that organization.

3. A person is considered as representing an international organization for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the organization to be bound by a treaty if:

(*a*) he produces appropriate full powers; or

(*b*) it appears from the practice of the States and international organizations concerned or from other circumstances that their intention was to consider that person as representing the organization for such purposes and to dispense with full powers.

Article 2

Use of terms

1.

...

(*c*) "full powers" means a document emanating from the competent authority of a State or international organization and designating a person or persons to represent the State or organization for negotiating, adopting or authenticating the text of a

[1] *Yearbook ... 1974*, vol. II, Part One, document A/9610/Rev.1, chapter IV, section B.