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Summary record of the 1381st meeting

Topic:
Most-favoured-nation clause

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virtue of the rules of customary international law, excepted certain favours from the operation of the most-favoured-nation clause without explicit stipulation. The former might be called a conventional exception and the latter an implied exception.

39. It could safely be said that no implied exception, based on customary international law, precluded all favours from all kinds of most-favoured-nation clauses, whether they applied to consular immunities, to intellectual property or to anything else. It was alleged by some that, in the field of international trade, there were certain exceptions so frequently specified in treaties that they had become part of customary international law and therefore applied without express stipulation in a treaty. The principal problem in that regard was the so-called implied exception of Customs unions and similar groups of States. It might be advisable, however, to discuss the frontier traffic exception first.

40. It had been asserted, in particular by the Institute of International Law in its 1936 resolution (*ibid.*, para. 35), that the frontier traffic exception was incorporated so often in treaties that it operated without necessity of specific stipulation. To his mind, the matter did not raise any difficulties. So far as he was aware, no contentious cases had arisen in connexion with that exception, and it was common practice to include it in international trade treaties. States appeared to be satisfied with that particular situation. Moreover, it was difficult, if not impossible, to adopt a rule which would encompass all the different conventional exceptions in such treaties. The draft already contained the basic rules relating to treaties containing most-favoured-nation clauses, and it was not necessary to formulate extremely complicated rules on the frontier traffic exception. Consequently, he was not proposing any text dealing with that exception. The Commission might perhaps take note of the position, which could be discussed in the commentary.

41. Mr. BILGE said he understood the Special Rapporteur's desire to maintain the integrity of the most-favoured-nation clause as far as possible and, hence, not to introduce exceptions for frontier traffic or Customs unions. In the case of frontier traffic, however, it might be questioned whether the fact that States were satisfied with the present situation was a sufficient reason for not dealing with it. In his view, the commentary should stress the Commission's concern to maintain the integrity of the most-favoured-nation clause.

42. Where Customs unions were concerned, it seemed that the Special Rapporteur had taken into consideration only unions formed between developed States and the diversionary effects such unions could have on trade. But the developing countries were also interested in Customs unions and might one day form such unions among themselves. Hence the Commission should not consider only the negative effects which Customs unions between developed States could have on international trade. In his report, moreover, the Special Rapporteur had mentioned not only the trade diversion which could result from such unions, but also the new trade to which they might give rise. For his part, he was concerned not only with the negative effects which Customs unions might have in the short term, but also with the positive repercussions they might have in the future. If developing countries which did not at present have a large enough market to produce a certain consumer good joined together in a Customs union, they might be able to make their production competitive. That aspect of the matter should be dealt with in the commentary.

43. Mr. AGO said that he, too, doubted whether the mere fact that States were satisfied with the present situation justified the Commission in not making any provision for the frontier traffic exception. At present, that exception raised no difficulties, probably because there were some customary principles, such as, perhaps, the principle that the facilities accorded to frontier traffic did not extend to the beneficiary State unless otherwise agreed. But at a time when the Commission was codifying the rules on the most-favoured-nation clause, silence on that point might be interpreted as meaning that the most-favoured-nation clause automatically implied that the frontier traffic facilities granted to a third State extended to the beneficiary State. Obviously, that question deserved consideration.

44. Mr. USHAKOV said that he was not sure whether it was better to consider that the exception for frontier traffic was so widely accepted that no special provision was needed, or to decide that there should be an article dealing with that exception.

The meeting rose at 6 p.m.

1381st MEETING

Tuesday, 1 June 1976, at 10.10 a.m.

Chairman: Mr. Abdullah EL-ERIAN

Members present: Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Šahović, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat, Mr. Yasseen.

Most-favoured-nation clause (*continued*) (A/CN.4/293 and Add.1)

[Item 4 of the agenda]

EXCEPTIONS TO THE OPERATION OF THE CLAUSE (*concluded*)

1. Mr. TABIBI said that the Special Rapporteur had done well to consider (A/CN.4/293 and Add.1, para. 31) the question, which had been raised in the Sixth Committee, whether the Commission's draft covered all the customary exceptions to the application of the most-favoured-nation clause. Frontier traffic was, in his opinion, an extremely important matter. Although States appeared to be satisfied with the present situation it would do no harm to state the obvious and include in the

draft an article formulated along the lines of article XXIV, paragraph 3, of the GATT or of the provision contained in paragraph 7 of the 1936 resolution of the Institute of International Law (*ibid.*, para. 35).

2. Mr. CALLE Y CALLE said that, in referring to "customary exceptions", the representative of France in the Sixth Committee might have had in mind such traditional exceptions as frontier traffic and Customs unions, and even questions of public policy.

3. The Special Rapporteur had said that it was not the task of the Commission to consider specific technical matters, such as international trade or frontier traffic. The rules now being prepared were general in scope and related to all kinds of benefits granted in various areas. The question arose as to whether, in the absence of a specific exception, it would be understood that a rule did exist that, if benefits were granted because of the special character of a frontier régime, such benefits could not be claimed by a State that was not a frontier State. Again, some States had more than one adjacent State, and not all such States could be accorded the treatment that was extended at a particular part of the frontier, perhaps by reason of geographical conditions. For example, the regulations which Peru applied on its frontiers with Bolivia, Brazil, Chile and Colombia differed in each case. The 1936 resolution of the Institute of International Law stated that the most-favoured-nation clause did not confer the right to the treatment which was or might be granted by either contracting country to an adjacent third State to facilitate frontier traffic. However, it had not gone so far as to set forth a rule on that point.

4. Like Mr. Tabibi, he thought that an appropriate provision should be incorporated in the draft. It would be worth while to explore a formula which referred not specially to frontier traffic but to benefits granted as a result of the special circumstances involved in a frontier régime.

5. Mr. YASSEEN said that the customary rules which had been referred to in the Sixth Committee could be either formal clauses, which were often found in treaties containing a most-favoured-nation clause, or customary rules of international law restricting the general application of the most-favoured-nation clause. Those formal clauses were the expression of the will of the parties, which were quite free to include them or not to include them. Since they depended on the will of the parties, they could not be generalized, on the presumption that, if nothing was said, the parties would conform to them.

6. Rules of customary international law which restricted the general application of the most-favoured-nation clause might exist, but they were not peremptory rules. They could only be residuary rules supplementing the expressed will of the parties. The question whether the parties had conformed to those rules or had departed from them raised a problem of interpretation; for treaty interpretation had to take into account all the relevant rules of international law applicable in the relations between the parties. It was perhaps useful to recall in that connexion that in general the silence of the parties to a treaty meant that they intended to conform to the rules of general international law.

7. The frontier traffic exception could be justified by common sense. It was only natural that a State should be able exempt from the application of the most-favoured-nation clause all matters relating to frontier traffic. The only question whether that faculty, which the parties undoubtedly possessed, should be mentioned explicitly in the draft. In his view, there was no necessity to draft a presumptive clause in favour of the frontier traffic exception, since a clause of that type would mean having first to settle the meaning of such terms as "frontier traffic" and "frontier zone", the scope of which depended on the will of the parties and various circumstances, particularly historical ones.

8. Mr. AGO said it was important to remember that, although the Commission's codification of the rules on the most-favoured-nation clause would be valid only for the future, certain past or present situations might one day recur. For example, Italy might become bound to Switzerland by a most-favoured-nation clause which did not provide for any exceptions favour of frontier traffic, and then conclude an agreement with Yugoslavia conceding to Yugoslav nationals resident in the area adjacent to Trieste special facilities regarding traffic with that city. The fact that the most-favoured-nation clause did not provide for an exception would certainly not be grounds for presuming that the frontier régime applying in respect of Yugoslavia was extended to Switzerland. Such cases had, however, given rise to controversy in the past. He therefore felt that it was not enough just to leave the task of settling those questions to the parties themselves. In order to avoid practical difficulties, it was desirable that the Special Rapporteur should submit a draft provision.

9. Mr. USHAKOV said that the frontier traffic exception fell within the category of exceptions *ratione personae*. Although he was opposed to a general exclusion *ratione personae*, he could accept the frontier traffic exception because it derived from a special situation and could be considered as following from natural law. For a non-adjacent State naturally could not expect to enjoy the special régime which the granting State accorded to an adjacent State for frontier traffic. Say, for example, that the Soviet Union established a special frontier régime with Afghanistan, New Zealand, as a non-adjacent country, would not be justified in requesting the same special treatment through the application of the most-favoured-nation clause. That was so obvious that there was no need to state it in the draft.

10. As Mr. Ago had pointed out, the situation became more complicated when several adjacent States were involved. If the Soviet Union established a frontier traffic régime with Afghanistan, it was not obliged by the operation of the most-favoured-nation clause to do the same with Poland. A frontier régime of that kind was not part of international trade, which was what the draft applied to: States established frontier régimes for the benefit of the population of a particular zone. It was obvious that the Soviet Union's position with regard to the frontier population of Afghanistan and Poland might be quite different, but that had nothing to do with natural law. It should therefore be made clear that the establishment of a frontier traffic régime with an adjacent State did not

imply that that régime should be extended, by the operation of the most-favoured-nation clause, to another adjacent State.

11. Article D did not relate to a natural law situation but to an agreement between the granting State and the beneficiary State. It was quite unacceptable, because it meant, in legal terms, that the draft no longer applied when the two States agreed to restrict the number of third States. That was tantamount to rendering without effect all the articles of the draft relating to third States, including article 2 (*d*), where the expression "third State" was defined as meaning any State other than the granting State or the beneficiary State. Other articles which would lose all meaning included article 12, which clearly applied to any third State. No exception to the application of the most-favoured-nation clause should therefore be allowed, other than exceptions deriving from natural law.

12. The draft articles would nevertheless clearly be useful, not only for States wishing to conclude genuine most-favoured-nation agreements, but also for those which might wish to draw up special rules for special situations. Of course, the draft would not be applicable in such cases, but States would at least know exactly what a most-favoured-nation clause was and to what extent special rules would have to be drawn up *mutatis mutandis*.

13. He could not agree with the view expressed at the previous meeting by Sir Francis Vallat that the difficulties which the Commission was now facing resulted from the fact that some concepts had already been defined in the draft articles. In reality, the difficulty was not definitions but the delimitation of the scope of application of the draft and the determination of the subject-matter it was to deal with.

14. Mr. TSURUOKA said that his country, Japan, was an island country which, by definition, had no land frontier and no maritime frontiers, since it was separated from all its neighbours by the high seas. It might therefore be thought that a State like Japan should not be concerned with the question of frontier traffic. However, it was interested in the question because Japanese citizens were interested in joint enterprises which might be affected. It was, moreover, worth noting that Japan had established a special régime with the Soviet Union on coastal trade which had not given rise to any difficulties with regard to the application of the most-favoured-nation clause. If the Commission decided to insert a presumptive rule in the draft, it should take situations of that kind into consideration.

15. Mr. USTOR (Special Rapporteur) said that a non-adjacent country could not claim the privileges enjoyed by an adjacent country in connexion with frontier traffic. Such a claim could not be made because of the natural rule concerning the most-favoured-nation clause, namely the *ejusdem generis* rule embodied in article 11 of the draft. In the case of a special situation, for example the existence of a large city on the frontier, the *ejusdem generis* rule would again apply. On the other hand, if the situation was not special but similar, the most-favoured-nation clause stipulated in favour of one adjacent country would apply in respect of another adjacent country, but in State practice care was taken to ensure that exceptions were established in such circumstances. Consequently, he saw no need for a rule similar to that contained in article XXIV of the GATT, particularly since it was of such a sweeping character.

16. The Commission could of course establish a general exception in the field of frontier traffic vis-à-vis non-adjacent countries, but such a course was not necessary because the *ejusdem generis* rule obviously applied. The problem was whether the Commission should insert a general customary exception for frontier traffic in respect of another adjacent country. He failed to see the need for such an exception, which would mean that, unless a special situation did exist, a most-favoured-nation clause in favour of one adjacent country would operate in respect of advantages accorded to another adjacent country. Perhaps it would be best to explain the matter in the commentary, stating that it had been considered on a preliminary basis. In the light of comments from Governments, the Commission could then, if necessary, deal with the problem in the course of the second reading of the articles.

17. Mr. ŠAHOVIĆ said that his conclusions concerning the advisability of drafting a provision on the frontier traffic exception were the opposite of those of the Special Rapporteur. The arguments in favour of such a provision were practical rather than theoretical.

18. Mr. AGO said that he had the same impression. The Special Rapporteur was doubtless correct in considering that there was a general *ejusdem generis* rule, but that approach could lead to disputes and it was dangerous to make no express provision to settle such matters. Just to dispose of some old quarrel, two adjacent States might decide to agree on some special rules between themselves. For instance, in order to bring their peoples closer together, they might agree to allow complete freedom of movement in a given area without either passport control or Customs inspection. If one of those States was linked to all its other neighbours by a most-favoured-nation clause, it would obviously hesitate to accept such an arrangement. For that reason, he was apprehensive about the automatic extension of such régimes through the operation of the most-favoured-nation clause.

19. Mr. REUTER said that he had reached roughly the same conclusions as Mr. Šahović and Mr. Ago. He wondered if a general frontier régime was conceivable. If there were only special frontier régimes, the clause would not apply. If, on the other hand, a completely general régime were established in favour of frontier populations, the clause should apply. In theory it was possible to imagine a general régime based on, say, the idea that frontier regions were regions of closer international collaboration, as was argued by the writers who defended the "frontier zones" theory according to which frontiers had a certain breadth. Nevertheless, the idea of a general frontier régime could only be accepted if the rules applicable in the frontier zone were reciprocal, and all the advantages granted by State A to nationals of State B were granted by State B to national of State A. But it would be impossible to generalise such a régime by way of the most-favoured-nation clause; the benefi-

ciary State would not be entitled to invoke the benefit of that treatment without reciprocity. In theory, therefore, a general régime was conceivable but it would have to be reciprocal. The draft article, however, was based on the unconditionality of most-favoured-nation clauses.

20. Mr. MARTÍNEZ MORENO said that the Commission was faced with a particularly complex problem. Frontier traffic might cover such matters as freedom of movement within a particular area. For instance, Guatemala accorded special treatment to nationals of El Salvador and Honduras who wished to make a pilgrimage to a famous religious shrine: all they had to do was to produce their identity cards. That did not, however, apply to Mexican nationals. That was perhaps an example of frontier transit rather than frontier traffic. The Commission would later have to consider other possible exceptions, such as free-trade zones, common markets, Customs unions and special provisions for developing countries. It might then be more useful to leave the question in suspense for the moment and decide later, in the light of the discussion, whether other exceptions would also have to be included in the article.

21. Mr. SETTE CÂMARA said there was no doubt that States were free to agree the terms of special frontier régimes with adjacent countries; that had been done many times all over the world and always by means of treaty provisions embodying exceptions to the most-favoured-nation clause. In drafting the present articles, the Commission should take full account of State practice. The Special Rapporteur had noted in his report that no dispute had arisen over the question of whether, in the absence of a specific stipulation, the advantages granted in frontier traffic ought to be extended to a non-adjacent beneficiary State (A/CN.4/293 and Add.1, para. 39). Brazil had a number of special arrangements with the many countries on its frontiers and, so far as he was aware, there had been no case in which one of those countries had invoked a right to benefit from the advantages granted to another adjacent country under those special arrangements.

22. He strongly supported the position adopted by the Special Rapporteur. It would be extremely difficult to determine such matters as the extent of a frontier region and the type of relationships in those regions. At the same time, he had no objection to the course suggested by Mr. Martínez Moreno.

23. Mr. BILGE, referring to his remarks at the previous meeting,[1] said that he was now convinced that the draft should include a provision on the frontier traffic exception. The Commission could return to the matter when it came to consider article E, on the treatment extended to land-locked States. The draft which the Commission was preparing must be detailed, and difficulties might arise if some exceptions were mentioned and others not.

24. The CHAIRMAN said the Special Rapporteur had suggested that it might be possible, by means of a statement in the commentary, to elicit the views of Governments on the desirability of including an appropriate provision in the draft articles; he would be glad to hear the views of members on that suggestion.

25. Sir Francis VALLAT said it would be of considerable assistance to the Commission if the Special Rapporteur would prepare a formulation relating to the frontier-traffic exception.

26. Mr. ŠAHOVIĆ said he supported the idea of including a passage in the commentary, but a special provision would have to be inserted in the future convention sooner or later. He hoped that the Commission would be able to return to the question during the present session and would manage to find a solution satisfactory to all.

27. Mr. USHAKOV said that it would be useful to refer the question to the Drafting Committee and then decide whether or not an article was required.

28. The CHAIRMAN said it was his understanding that the Special Rapporteur would prepare a text. The Drafting Committee could then consider that text and advise the Commission on the best course to follow. If there were no further comments, he would take it that the Commission agreed to that procedure.

It was so agreed.[2]

Mr. Reuter, First Vice-Chairman, took the chair.

THE CUSTOMS-UNION ISSUE

29. The CHAIRMAN invited the Special Rapporteur to introduce section 11 of chapter I of his seventh report, dealing with the Customs-union issue (A/CN.4/293 and Add.1, paras. 40-64).

30. Mr. USTOR, Special Rapporteur, said that the Customs-union issue had arisen in the course of the discussion at the twenty-seventh session, when it had been finally decided that he should prepare a statement of his views for inclusion in the Commission's 1975 report and that the Commission would postpone further discussion until the present session.

31. The Customs-union issue did not arise in connexion with most-favoured-nation clauses in general, but only with regard to such clauses in commercial treaties, especially those relating to Customs duties. It was dealt with in the commentary to article 15 (Irrelevance of the fact that treatment is extended under a bilateral or multilateral agreement).[3] In fact, the question of Customs unions was not directly connected with article 15 as such but, in the course of the discussions on that article, some members had stated that they were prepared to accept the provisions of the article only for bilateral treaties, on the grounds that Customs unions were generally set up under multilateral treaties. In fact, examples could be given of Customs unions established bilaterally between two States only.

[1] See 1380th meeting, para. 41.

[2] For consideration of the text proposed by the Drafting Committee, see 1404th meeting, paras. 28-33.

[3] See *Yearbook... 1975*, vol. II, pp. 144 *et seq.*, document A/10010/Rev.1, chap. IV, sect. B, paras. 28-71 of the commentary to article 15.

32. During the discussions in the Sixth Committee at the thirtieth session of the General Assembly, a number of statements had been made on the question whether Customs unions should be regarded as an exception to the operation of the most-favoured-nation clause. His own position, that no such exception could be presumed, had met with the support of some representatives but had been strongly opposed by the spokesman for EEC and by some representatives of EEC member States. A number of representatives of developing countries had also expressed concern that the draft articles should include an exception to the operation of the most-favoured-nation clause with regard to benefits granted within groupings of developing States.

33. It had been suggested by one representative that the implied exception rule should apply in the case where the Customs union had been established after the conclusion of the agreement containing the most-favoured-nation clause; in the case where the granting State was already a member of such a union at the time of the conclusion of the agreement, the clause would extend to union benefits unless otherwise agreed (*ibid.*, para. 43). In the latter case when the member of a Customs union entered into an agreement containing the most-favoured-nation clause, with an outside State the parties would as a rule specifically exclude the union benefits from the operation of the clause.

34. To come now to the case where two States concluded a treaty containing a most-favoured-nation clause, without mentioning either in the treaty itself or in any subsequent agreement the possibility of one of them entering into a Customs union: if one of the two States entered into such a union and gave a pledge that the union benefits would not be extended to outsiders under a most-favoured-nation clause, a conflict would inevitably arise. The State which had entered the union would find itself bound by two conflicting sets of obligations. The beneficiary State under the most-favoured-nation clause could plausibly argue that it had made sacrifices and possibly large investments in order to maintain its position as an exporter to the market of the granting State, and that it would be deprived of that advantage overnight by the lowering of Customs duties by the granting State to its partners in the Customs union. The beneficiary State could thus claim that the granting State had broken its promise under the most-favoured-nation clause. Should the granting State object that the Customs union implied reciprocal advantages for it from the other members of the Union, the beneficiary State could justly reply that the most-favoured-nation clause was unconditional.

35. The conflict between the two sets of obligations incumbent upon the granting State should, in his view, be settled on the basis of the general rule of interpretation laid down in article 31 of the 1969 Vienna Convention on the Law of Treaties.[4] If the treaty embodying the most-favoured-nation clause did not contain any exception, no such exception could be assumed to exist except under relevant unwritten rules of international law.

36. The question therefore arose whether there existed a general rule of international law that an unconditional most-favoured-nation clause was subject to an automatic restriction which said that the granting State was not obliged to extend to the beneficiary State the same treatment as to members of the Customs unions which the granting State had joined. Upholders of the existence of such a rule adduced in support of it the widely accepted practice of including in bilateral treaties an exception relating to Customs unions. The States parties to bilateral commercial treaties frequently specified that their reciprocal most-favoured-nation clause should not apply to benefits granted to third States under a Customs union.

37. Further support for that view was offered by article XXIV of the GATT, in which some 80 States, including developed and developing countries, as well as socialist and capitalist countries, participated. That article contained elaborate provisions on Customs unions and free-trade areas and stated an exception in their case to the most-favoured-nation clause embodied in article II of the GATT. The exception, however, did not apply to all such unions or areas; very strict conditions were laid down in article XXIV for the release of parties from their obligation to grant most-favoured-nation treatment upon becoming members of Customs unions of free-trade areas. Only those Customs unions or free-trade areas which were trade-creating rather than trade-diverting benefited from the exception allowed under paragraph 4 of that article, which read:

> 4. The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.[5]

That passage had given rise to conflicting interpretations because of the difficulty of distinguishing clearly between trade-diversion and trade-creation measures.

38. Under paragraph 5 of article XXIV of the GATT, the duties and other commercial barriers existing prior to the union in the individual States should be replaced by a common system of barriers which was not on the whole higher or more restrictive than the general incidence of the pre-existing systems. That provision involved the problem of determining the "general incidence" of the pre-existing individual trade barriers, and that was a problem of higher mathematics. It was not, however, a provision that was of any great assistance to an outside State which had previously exported a particular commodity to one of the States members of the union. For example, if that export was meat, and the common Customs duties were higher than the previous individual duties, the meat-exporting country which was adversely

[4] For the text of the Convention, 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. 289.

[5] GATT, *Basic Instruments and Selected Documents*, vol. IV (Sales No. GATT-169-1), p. 43.

affected was not in any way compensated by the fact that the common barriers against another commodity, say fruit, were lower than the pre-existing individual barriers. The question of general incidence was totally irrelevant to an individual exporter concerned with the situation with regard to a particular product. That the conditions laid down in article XXIV were almost excessively strict was clear from the fact that the literature on the subject showed that no Customs union had yet been able to prove that it satisfied all of them. Article XXIV of the GATT was accordingly not a very strong argument in favour of the doctrine that there existed a general rule providing for an exception to the most-favoured-nation clause in the case ot Customs unions.

39. Nor was there any decisive force in the argument that a great many bilateral treaties embodying the most-favoured-nation clause stated the exception explicitly. On the contrary, that practice rather supported the opposite view. The fact that contracting States should find it necessary to state the exception suggested that, in the absence of an express stipulation, no general exception existed.

40. In actual fact, in cases where a State was bound by two conflicting promises, one under a most-favoured-nation clause and the other under a Customs union, there was some justice in the demands of both States. The dispute was usually settled by bargaining leading to an arrangement to grant compensatory advantages.

41. With regard to the practice of States in the matter, it was of interest to refer to the provisions of article 234 ot the Treaty establishing the European Economic Community, known as the "Treaty of Rome"; that article read:

> The rights and obligations resulting from conventions concluded prior to the entry into force of this Treaty between one or more Member States, on the one hand, and one or more third countries, on the other hand, shall not be affected by the provisions of this Treaty.
>
> In so far as such conventions are not compatible with this Treaty, the Member State or States concerned shall take all appropriate step to eliminate any incompatibility found to exist. Member States shall, if necessary, assist each other in order to achieve this purpose and shall, where appropriate, adopt a common attitude.
>
> Member States shall, in the application of the conventions referred to in the first paragraph, take due account of the fact that the advantages granted under this Treaty by each Member State form an integral part of the establishment of the Community and are therefore inseparably linked with the creation of common institutions, the conferring of competences upon such institutions and the granting of the same advantages by all other Member States.[6]

He assumed that the reference in the second paragraph of article 234 to the duty of the member State or States concerned to "take all appropriate steps to eliminate any incompatibility found to exist" meant resort to legal means. The EEC member State concerned would have to settle its dispute with the beneficiary of the most-favoured-nation clause by resorting to the peaceful means of settlement indicated in Article 33 of the United Nations Charter. It was thus clear from article 234 of the Treaty of Rome that the Customs union established by it did not of itself affect the obligations of one of its members under a most-favoured-nation clause.

42. Lastly, he would like to mention article 12 of the Charter of Economic Rights and Duties of States, adopted by the General Assembly in 1974.[7] That article proclaimed the right of all States to participate in any subregional, regional and interregional co-operation and imposed on all States engaged in such co-operation

> the duty to ensure that the policies of those groupings to which they belong correspond to the provisions of the present Charter and are outward-looking, consistent with their international obligations and with the needs of international economic co-operation, and have full regard for the legitimate interests of third countries, especially developing countries.

That article thus recognized the sovereign right of States to enter unions and other groupings—subject, however, to the condition that those groupings were both outward-looking and consistent with the international obligations of their members and did not affect the legitimate interests of third countries, especially developing countries. He believed that to be a satisfactory statement of the existing law.

The meeting rose at 1 p.m.

[6] United Nations, *Treaty Series*, vol. 298, p. 91.

[7] General Assembly resolution 3281 (XXIX).

1382nd MEETING

Tuesday, 2 June 1976, at 10.10 a.m.

Chairman: Mr. Abdullah EL-ERIAN
later: Mr. Paul REUTER

Members present: Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Rossides, Mr. Šahović, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat, Mr. Yasseen.

Most-favoured-nation clause (*continued*) (A/CN.4/293 and Add.1)

[Item 4 of the agenda]

THE CUSTOMS-UNION ISSUE (*continued*)

1. Mr. USTOR (Special Rapporteur) continuing his introductory remarks on the Customs-union issue, said that at the previous meeting he had referred to the view held in some quarters that there was a customary rule of general international law establishing an implicit exception to the application of the most-favoured-nation clause in circumstances arising from Customs unions. On that point, he drew attention to the 1969 judgment of the International Court of Justice discussed in the