attention. The first had been that of the right of innocent passage, which countries bordering on straits wished to maintain in a strict form, and freedom of transit, which was of particular interest to the large maritime powers, partly for reasons connected with the safeguarding of world peace. The second major problem had been that of the land-locked States, some of which had taken an extreme position and had advocated that the proposed 200-mile economic zone should be neither exclusive nor preferential, but should constitute a sort of condominium for the exploitation of the living and non-living resources of the sea. A less radical position had emerged from the negotiations, however, and was reflected in the formula now under discussion, which recognized the indisputable right of the land-locked States to access to the sea.

34. It was thus clear that, in international negotiations, an agreement along those lines was close at hand. The right in question, however, was also supported by strong arguments of equity and justice. The freedom of the high seas and recognition that they constituted a *res communis* had been upheld even before Grotius, by his forerunners Vitoria and Vásquez de Menchaca. The sea-bed and the ocean floor beyond the limits of national jurisdiction had now been recognized by the General Assembly as the common heritage of mankind, and it was therefore logical to acknowledge the right of the land-locked States to have access to the sea and thus be able to enjoy their share of that common heritage.

35. He was in favour of recognizing that principle, which had behind it the conscience of the world community, and he believed that it should not be weakened in any way by the adoption of language which might make it more acceptable to the majority, but which could have the effect of nullifying it. The drafting of article E could, of course, be improved, but it should be noted that it was close to the wording of article 110 of the informal single negotiating text prepared at the 1975 session of the Third United Nations Conference on the Law of the Sea. He urged that the wording adopted should not weaken in any way a rule which constituted progressive development of international law and related to a matter of major contemporary interest.

36. Mr. SETTE CÂMARA said he fully agreed with Mr. Yasseen that in the last 10 or 15 years the international community had become increasingly aware of the problem of the land-locked States. To that awareness an outstanding contribution had been made by Mr. Tabibi, who had been a crusader on behalf of the land-locked States.

37. The Special Rapporteur was to be commended for including the provisions of article E in the draft articles. The exception made in that article for the benefit of the land-locked States was necessary, and corresponded to the realities of contemporary life. Moreover, it already formed part of existing treaty law, since the 1965 Convention on Transit Trade of Land-Locked States was now in force. The preamble and article 10 of that Convention contained the principle which had since been incorporated in the text of article 110 of the informal single negotiating text prepared for the third session of the Third United Nations Conference on the Law of the Sea. All those developments confirmed that the principle underlying article E had the support of the international community.

38. Unlike some other members, he believed that the Special Rapporteur's text of article E was well-balanced. As Mr. Šahović had pointed out, it contained a negative part and a positive part, but he did not believe that the latter could have the effect of extending to any and every land-locked State, anywhere in the world, the right to invoke the benefit of the article. The words "unless it is a land-locked State" had to be read together with the remainder of the article, in particular its last part, which referred to treatment facilitating the exercise of the right of access to and from the sea of the land-locked third State concerned.

39. Special attention should be paid to the concluding words "on account of its special geographical position". For example, it was clearly out of the question for Czechoslovakia or Switzerland to invoke benefits accorded by Brazil to Bolivia and Paraguay. Nevertheless, two land-locked States could benefit from a similar treatment because of their special geographical position: in fact, Bolivia and Paraguay had treaties with Brazil concerning access to and from the sea, and one of those countries might well invoke a most-favoured-nation clause in order to claim benefits accorded to the other. That being so, he found the drafting of article E very ingenious.

40. He could accept the suggestion by Mr. Šahović that the words "unless it is a land-locked State" might be deleted, but he saw no objection to their being retained. He was entirely in favour of including an article on the lines of article E and felt certain that the Drafting Committee would be able to solve the problems raised during the discussion.

The meeting rose at 6.00 p.m.

1386th MEETING

Wednesday, 9 June 1976, at 10.15 a.m.

Chairman: Mr. Abdullah EL-ERIAN

Members present: Mr. Ago, Mr. Bilge, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Welcome to Mr. Njenga

1. The CHAIRMAN welcomed Mr. Njenga among the members of the Commission and congratulated him on his election.

2. Mr. NJENGA thanked the members of the Commission for the honour they had done to him. As a representative in the Sixth Committee of the General Assembly at its recent sessions, he had been much impressed by

the high quality of scholarship of the work of the Commission; he hoped that he would be able to make a constructive contribution to the tasks before it.

Most-favoured-nation clause (*continued*) (A/CN.4/293 and Add.1, A/CN.4/L.242)

[Item 4 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR (*concluded*)

ARTICLE E (Most-favoured-nation clauses in relation to treatment extended to land-locked States) [1] (*concluded*)

3. Mr. RAMANGASOAVINA noted that all members of the Commission agreed that the rule laid down in article E was well founded. Even those who had expressed reservations on the article had not contested the principle, but had questioned the need to formulate a rule which was already laid down in the 1965 Convention on Transit Trade of Land-locked States [2] and in article 110 of the informal single negotiating text prepared at the third session of the Third United Nations Conference on the Law of the Sea.[3] That rule was already accepted by the international community and resulted from a realization of the solidarity of States—an awareness that maritime States should take positive measures to remedy the disadvantage of land-locked States regarding access to the sea.

4. It was necessary to emphasize, however, as the Special Rapporteur had done in his report, that the Commission was not called upon to state a rule concerning the status or rights of land-locked countries, which were already set out in the 1965 Convention and in the proposed draft convention on the law of the sea. The latter convention had not yet been adopted, and even if it had, a similar and complementary rule should be stated in the draft articles on the most-favoured-nation clause. Those were two aspects of the same question: in the draft articles, the rule was formulated as a a main rule, whereas elsewhere it was only stated incidentally. Moreover, a maritime State and a land-locked neighbouring State could conclude a more general convention on various subjects as part of their arrangements for economic, cultural or other co-operation, and such a convention might contain provisions on the right of transit, which would then be merely one chapter of the convention. Hence it was natural that draft article E should cover only that aspect of the matter. What should perhaps be given greater emphasis was that the beneficiary States could not claim, under a most-favoured-nation clause, a special right of transit—the right of access to and from the sea—granted to a land-locked State.

5. He would therefore suggest that article E should be drafted to read:

> Most-favoured-nation treatment granted by a granting State to a land-locked third State shall not be extended to a beneficiary State, unless it is a land-locked State, if that treatment serves the purpose of facilitating the exercise of the right of access to and from the sea of that third State on account of its special geographical position.

By that wording he meant to emphasize that the beneficiary State, if it was not a land-locked State, could benefit under the most-favoured-nation clause from the advantages granted to a third State, unless they were specific advantages concerning the right of access to the sea which had been granted to that third State on account of its geographical position.

6. The obligation of the granting State to grant access to the sea to a neighbouring land-locked State was not only a treaty obligation, but also an obligation under international law resulting from the practice of States. It was not, of course, a peremptory obligation imposed on the granting State in the same way as a rule of *jus cogens*, but a conventional servitude. A beneficiary State which was not land-locked could not claim the same right. It was the special position of the land-locked State which was the source of the compensatory advantages granted to it.

7. Mr. AGO said that, as Mr. Ushakov [4] and Mr. Ramangasoavina had pointed out, a principle was taking shape in treaty law and, gradually, in customary law itself, according to which maritime States should grant certain transit and other facilities to neighbouring States which had no maritime frontier. That was a general principle, which had nothing to do with the most-favoured-nation clause, but which made the principle stated in article E even more serious. The article was clearly not intended to ensure that the beneficiary State of the most-favoured-nation clause would receive that general treatment which every maritime State must grant to land-locked States; the purpose was to grant it much more favourable special treatment, which was not granted to all neighbouring land-locked States, but only to some States. Those special facilities were usually accorded because the granting State had special relations with the beneficiary State and because the position of the beneficiary State was different from that of other land-locked States.

8. The Special Rapporteur had said that the most-favoured-nation clause was very dangerous. That was true, but it might be asked what the result would be if the Commission loaded its draft articles with clauses like those in article E. Either States would not conclude any more treaties containing a most-favoured-nation clause or, if they had already done so, they would denounce them as soon as possible; or else, if a maritime State was prepared to grant a land-locked State certain exceptional facilities because of its special position or because of the very friendly relations between them,

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[1] For the text, see 1385th meeting, para. 1.

[2] United Nations, *Treaty Series*, vol. 597, p. 3.

[3] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. IV (United Nations publication, Sales No. E.75.V.10), p. 168, document A/CONF.62/WP.8, document A/CONF.62/WP.8/Part II.

[4] See 1385th meeting, para. 7.

it would refrain from doing so through fear of being obliged to grant the same advantages to other States.

9. Thus article E raised not only a problem of drafting, but also a problem of substance. If the principle stated in that article was dangerous, its result was open to question. For his part, he did not believe that by adopting the standpoint proposed by the Special Rapporteur the Commission would in the end promote that extension of the most-favoured-nation clause which it had in view in codifying the principle.

10. Mr. USTOR (Special Rapporteur) said that the problem raised by Mr. Ago related not to article E as such, but only to the clause "unless it is a land-locked State", which excluded land-locked States beneficiaries of most-favoured-nation clauses from the exception provided for in the article. It really concerned the operation of the most-favoured-nation clause itself; the problem could arise in any situation in which the granting State promised special rights to a third State on special grounds. The case of a beneficiary land-locked State was only one example of such a situation.

11. The solution to that problem depended on the terms on which the most-favoured-nation pledge was given. He himself had not seen any example of a most-favoured-nation clause which was broad enough to cover access to the sea in general. Usually, the granting State promised most-favoured-nation treatment in respect of such specific matters as Customs or charges for transit by rail or road. He knew of no clause so vague that it could be interpreted as covering such privileges as a special area in a seaport or the use of warehouses.

12. The Secretariat had undertaken, in 1972, a study which would be ready for the second reading of the present draft and which would contain a survey of the most-favoured-nation clauses embodied in treaties published in the United Nations *Treaty Series*.[5] He hoped that survey would show in which fields the most-favoured-nation clause was used and what exceptions were placed upon it.

13. Mr. KEARNEY said that, largely owing to the efforts of Mr. Tabibi, a movement had taken shape to include in all conventions a clause dealing with the land-locked States. He himself favoured preferential treatment for those States, but he doubted whether there were many instances in which such facilities as a free port, access to the sea by rail or road, or special trading facilities extended by the granting State to a land-locked State had also been claimed by a beneficiary State under a most-favoured-nation clause. If any such instances existed, an article on the lines of article E would be necessary in the present draft. If not, the article might still be included as a precaution, despite the lack of legal necessity.

14. Bearing in mind the point raised by Mr. Ago concerning the general relationship of that problem to the rules of most-favoured-nation treatment, he was concerned about the best way of drafting the exception embodied in article E. There could be problems of interpretation concerning the application of some types of standard most-favoured-nation clause and some thought had to be given to that matter. For example, a clause promising most-favoured-nation treatment in regard to trade could lead to a dispute as to whether it covered the port facilities given to a third State which was land-locked; a clause covering the right of establishment might be invoked to claim certain manufacturing facilities extended to a land-locked State. Article E, as proposed by the Special Rapporteur, did contain a number of safeguards, but he thought the language should be sharpened in order to reduce the possibility of disputes.

15. The CHAIRMAN, speaking as a member of the Commission, said that the Special Rapporteur's commentary and the statement made by Mr. Tabibi [6] indicated that the international community wished to consolidate a branch of the law which would grant certain rights to the land-locked States because of their geographical position. That branch of the law was based both on the freedom of the seas—the *mare liberum* of Grotius—and on the concept of the high seas as *res communis*, which had been elaborated upon by the General Assembly when it had recognized the notion of the "common heritage of mankind".[7]

16. With regard to Mr. Ushakov's remarks on the lack of precision of the term "treatment" [8] used in article E, he agreed that the Drafting Committee should attempt to find a more precise term. For his part, he took the word "treatment" to refer, as in the expression "treatment of aliens", to a whole body of rights which constituted a legal status.

17. The principle underlying article E was in fact a simple one. The purpose of the article was to state that, if a certain treatment was given to a land-locked State, that treatment had to be excluded from the operation of a most-favoured-nation clause granted to another State, unless that other State was itself land-locked.

18. Article E dealt with the question of access to the sea, which clearly did not arise for countries which were not land-locked—the wording proposed by the Special Rapporteur made that point perfectly clear. In his commentary, the Special Rapporteur had also made it clear that he was dealing with the rights of land-locked countries not in general terms, but only with specific reference to the most-favoured-nation clause.

19. With regard to the problem of other land-locked States which, as explained by Mr. Ushakov, might give rise to some ambiguity, he believed that the reference to the exercise of "the right of access to and from the sea" and the qualification "on account of its special geographical position" established a presumption that the land-locked State invoking the most-favoured-nation clause had to be in a geographical position similar to that of the State to which the favourable treatment was extended by the granting State. In particular, it should require passage through the granting State to gain access

[5] See *Yearbook... 1973*, vol. II, p. 324, document A/8710/Rev.1, para. 75.

[6] 1385th meeting.

[7] Resolution 2749 (XXV).

[8] 1385th meeting.

to the sea. That being so, the wording of article E would have to be adjusted. But the problem involved more than the drafting; it related to the substance of the article itself. Article E would have to specify that the exclusion of the right of access to the sea from the operation of the most-favoured-nation clause did not apply to those land-locked States which were geographically in a position to benefit from that right of access.

20. Even if there was no extensive State practice in the matter, he was inclined, like Mr. Kearney, to favour the inclusion of article E in the draft as a precautionary measure, subject to sharpening the text in order to avoid the difficulties pointed out during the discussion.

21. Mr. TABIBI referring to Mr. Hambro's remarks,[9] said that when he himself had described the subject-matter of article E as simple, he had meant that the rule embodied in it was clear, since it was no more than an expression of established law, as shown by article 110 of the informal single negotiating text which had been prepared for the Third United Nations Conference on the Law of the Sea at its third session. In reasserting that view, it was not his intention to minimize in any way the drafting difficulties involved: he agreed with Mr. Hambro that the wording should be carefully reviewed by the Special Rapporteur and the Drafting Committee.

22. He welcomed the reference by Mr. Martínez Moreno[10] to the early Spanish writers on international law, who had been the forerunners of Grotius. Vitoria, in particular, had recognized the high seas as *res communis* and *res publica*. He had thus expressed a view contrary to the policy of his own country—unlike Grotius, who had been working for the Dutch East India Company. The important point for the land-locked States was that Grotius had recognized, as a limitation of territorial sovereignty, the right of innocent passage not only through the territorial sea, but also over land. On that point Grotius had written:

> ... even over land which has been converted into private property either by States or individuals, unarmed and innocent passage is not justly to be denied to persons of any country, exactly as the right to drink from a river is not to be denied.[11]

That right of passage both through the territorial sea and over land was based on concepts of natural law which had been recognized at all times, not only by legal writers but also by religion and custom. The Old Testament could be cited on that point, and so could Justinian's *Digest* in which, under *jus gentium*, the use of shores was acknowledged to be just as public as the use of the sea itself.

23. His own views on the right of innocent passage through the territorial sea and overland through transit countries had met with the approval of Mr. François, formerly the Commission's Special Rapporteur for the law of the sea, and as a result of the discussions in the Sixth Committee of the General Assembly the question of free access to the sea of land-locked countries had been placed before the first United Nations Conference on the Law of the Sea under paragraph 3 of General Assembly resolution 1105 (XI).

24. With regard to the example given by Mr. Ago[12] of the special facilities granted to Switzerland by Italy, which clearly could not be extended to other land-locked States, it was necessary to keep separate two questions which could be confused: first, the right of free access to the sea on the basis of the fundamental principle of the freedom of the seas and of the special geographical problem of land-locked States and, second, the general right of transit, covered by the 1921 Convention and Statute on Freedom of Transit,[13] which dealt with the question of transit as a whole, and by the 1923 Convention and Statute on the International Régime of Maritime Ports.[14] Switzerland had an exclusive right to the treatment accorded to it by Italy if that treatment was more favourable than the treatment legally required for all land-locked States.

25. That point was covered by article 10, paragraph 2, of the 1965 Convention on Transit Trade of Land-locked States which referred to the granting to a land-locked State of "facilities or special rights greater than those provided for in this Convention",[15] which could be limited to the particular land-locked State concerned. The concluding proviso of that paragraph reserved the right of another land-locked State to invoke a most-favoured-nation clause to claim the same facilities or special rights. Another land-locked country of the region would thus be able to benefit from those facilities, but that result could be avoided by making a suitable reservation in the treaty containing the most-favoured-nation clause.

26. In any case, there was no doubt about the treatment which all land-locked States were entitled to by virtue of their right of free access to the sea, and the Commission could retain article E. He found the text proposed by the Special Rapporteur acceptable, but if any clarification were needed the Drafting Committee might consider making use of the wording of article 10, paragraph 2, of the 1965 Convention.

27. Mr. PINTO reiterated his view that a provision on the lines of article E should be included in the draft, but that it should cover, in general terms, the whole issue of land-locked States, and not be restricted to the question of the right of access.

28. He therefore suggested the following redraft of article E for the consideration of the Special Rapporteur:

> A beneficiary State is not entitled under a most-favoured-nation clause to any treatment accorded to a third State by virtue of the fact that it is land-locked or otherwise geographically disadvantaged, unless the beneficiary State is itself so land-locked or otherwise

[9] *Ibid.*, para. 24.

[10] *Ibid.*, para. 34.

[11] Grotius, *Mare Liberum*, chap. V (trans. by R. Van Deman Magoffin for Carnegie Endowment edition (New York, Oxford University Press, 1916).

[12] See 1385th meeting, para. 6.

[13] League of Nations, *Treaty Series*, vol. VII, p. 11.

[14] *Ibid.*, vol. LVIII, p. 285.

[15] United Nations, *Treaty Series*, vol. 597, p. 54.

geographically disadvantaged and belongs to a category of such States which, because of their level of economic development and geographic relationship to the granting State, would be entitled to claim such treatment from the granting State.

29. He agreed with Mr. Hambro that the drafting of article E was not at all easy. He also realized that his own suggested redraft, by broadening the scope of the article to cover matters other than right of access and States that were geographically disadvantaged as well as land-locked States, would lead the Commission into difficult areas, but he thought it went to the root of the problem. The latter part of his text would limit the category of States which could benefit from the exception to the rule stated in the first part of article E. The words "geographic relationship to the granting State" would confine the scope of the exception to countries in the same region or subregion.

30. Mr. BILGE said he was in favour of article E. He thought the Commission should not try to determine the rights and facilities to be granted to land-locked States; it should leave that task to the relevant conventions. Moreover, the conditions and modalities for the granting of such rights and facilities were governed by bilateral agreements, as indicated in articles 109, 110 and 112 of the in formal single negotiating text prepared at the third session of the Third United Nations Conference on the Law of the Sea. Similarly the Commission was not required to determine which States would benefit from the advantages granted to land-locked States, since the beneficiary States were determined by the relevant bilateral agreements. Hence the draft articles should provide for a general exception to the most-favoured-nation clause, covering the rights and facilities to be granted to land-locked States.

31. He therefore suggested the following simpler text:

Exception for land-locked States

The rights and facilities established in favour of a land-locked State on account of its special geographical position cannot be extended to other States by the operation of the most-favoured-nation clause.

32. That text defined neither the rights and facilities granted to land-locked States, nor the beneficiary State. The words "unless it is a land-locked State", in the article proposed by the Special Rapporteur, might imply that all land-locked States should benefit from the same transit and other rights; but the question of those rights and facilities must be settled by bilateral agreements. The article should cover only the case in which the granting State and the land-locked beneficiary State were closely linked.

33. Mr. USTOR (Special Rapporteur) said that the text suggested by Mr. Pinto broadened the scope of article E. He had no wish to adopt a conservative attitude, but the question did arise whether the Commission had unlimited powers in regard to the progressive development of international law. The principle of access to the sea for land-locked States had been considered by international bodies for a long time, and in view of the near unanimity reached, it could now be embodied in the draft articles. But Mr. Pinto's text, by encompassing other matters such as fishing rights and exploitation of the economic zone, entered a domain in which it was difficult to determine whether exceptions were warranted by State practice. More particularly, the words "or otherwise geographically disadvantaged" would present a formidable problem of definition. The idea underlying the proposal was extremely logical and might well come to form a rule of international law, but it would be premature to incorporate it in the draft at the present time.

34. It had been pointed out, quite correctly, that it was not the task of the Commission to deal with the objective rights to be granted to land-locked States by the international community. Article E simply consolidated the special, but nonetheless basic rights of land-locked States under general international law. The most favoured-nation clause would apply only when a coastal State granted greater privileges to a land-locked State. For example, if one of two land-locked States bordering on a coastal State was accorded extra privileges, the other neighbouring land-locked country would be entitled to claim them under a most-favoured-nation clause. It was true, as Mr. Kearney had noted, that problems of interpretation would arise, but that was an inherent difficulty in the application of the most-favoured-nation clause and the Commission could do little more than state the *ejusdem generis* rule, which was already embodied in article 11.[16]

35. He was gratified to note that members endorsed the principle set out in article E. Obviously, some redrafting was necessary and it might well prove easier to break the text down into two or possibly three separate articles. Mr. Bilge had suggested a simpler wording, but the more elaborate versions prepared by the Drafting Committee would doubtless meet with his approval.

36. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission agreed to refer article E to the Drafting Committee for consideration in the light of the discussion.

It was so agreed.[17]

PROVISIONS IN FAVOUR OF DEVELOPING STATES: MOST-FAVOURED-NATIONS CLAUSES IN RELATION TO TREATMENT UNDER A GENERALIZED SYSTEM OF PREFERENCES (ARTICLE 21)

37. The CHAIRMAN invited the Special Rapporteur to introduce chapter II of his report (A/CN.4/293 and Add.1) on provisions in favour of developing States, beginning with sections 1 to 3, which dealt with article 21, provisionally adopted at the twenty-seventh session.

38. Mr. USTOR (Special Rapporteur) said that the Commission was not in a position to establish rules under which the developed States would make greater efforts to assist the developing States and to redress the wrongs they had suffered before they became inde-

[16] For the text of the articles already adopted by the Commission, see *Yearbook... 1975*, vol. II, pp. 120 *et seq.*, document A/10010/Rev.1, chap. IV, sect. B.

[17] For consideration of the text proposed by the Drafting Committee, see 1404th meeting, paras. 12-27.

pendent. Its endeavours to incorporate a general rule in favour of the developing countries in the draft would be only a modest contribution to the law of development.

39. Article 21 (Most-favoured-nation clauses in relation to treatment under a generalized system of preferences) had been adopted tentatively because of some hesitancy as to whether a provision of that kind, dealing to some extent with economic matters rather than law, was in harmony with the remainder of the draft. However, the rule embodied in the article had been adopted by consensus by UNCTAD, and it was only appropriate that the subject of such agreement should become a rule of international law.

40. In the Sixth Committee of the General Assembly, at its thirtieth session, many representatives had welcomed article 21 as progressive development of international law and as a token of the fact that the Commission sought, within its recognized limits, to heed the interests of the developing countries. One objection had been that the generalized system of preferences was, by its very nature, of limited duration. But the idea had already been advanced that the system should continue, at least until such time as the very notion of a "developing country" disappeared. Another objection had been to the wording of the article: it had been maintained that there was no clear dividing line between the concepts of developed and developing countries. However, the problem of distinguishing between those two categories of countries did not arise in regard to article 21. The generalized system of preferences was a compromise system and the donor States themselves determined the countries to which the preferences would apply. A trend had emerged in UNCTAD to urge donor States to broaden the preferences *ratione personae*, so that the preferences would be as universally applicable as possible, and *ratione materiae*, so that the product coverage of the generalized system of preferences would be as wide as possible.

41. Some representatives in the Sixth Committee had held that the Commission was not the most appropriate body to deal with such a technical question, and that article 21, which was closely connected with economic matters, had no place in draft articles of a legal character. In his opinion, it was essential to include an article containing provisions in favour of developing countries and, in the light of the majority view expressed in the Sixth Committee, article 21 should not be deleted. Naturally, since the article referred to the generalized system of preferences, it was concerned with international trade. Up to the present, the question of preferences in such matters as establishment and consular relations had not been raised. The article would indirectly foster the tendency to grant preferential rights to developing countries, because donor States would be free to do so without having to accord the rights to developed countries.

42. Mr. BILGE reminded the Commission that Mr. Hambro had proposed several alternatives for the exception relating to Customs unions and free-trade areas (A/CN.4/L.242). He asked the Special Rapporteur what he thought of those proposals; he himself intended to supplement the proposed texts so that they would also meet the needs of associations of developing countries. Thus amended, those texts might be considered by the Drafting Committee.

43. Mr. USTOR (Special Rapporteur) said that he found the proposed texts unacceptable.

The meeting rose at 12.55 p.m.

1387th MEETING

Thursday, 10 June 1976, at 10.15 a.m.

Chairman: Mr. Abdullah EL-ERIAN

Members present: Mr. Ago, Mr. Bilge, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Njenga, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Most-favoured-nation clause (*continued*) (A/CN.4/293 and Add.1, A/CN.4/L.242)

[Item 4 of the agenda]

PROVISIONS IN FAVOUR OF DEVELOPING STATES: MOST-FAVOURED-NATION CLAUSES IN RELATION TO TREATMENT UNDER A GENERALIZED SYSTEM OF PREFERENCES (ARTICLE 21) (*concluded*)

1. Mr. USTOR (Special Rapporteur) said that the Commission was fully aware of the situation with regard to article 21, which had been considered at length and tentatively adopted at the twenty-seventh session.[1] In view of the discussion in the Sixth Committee of the General Assembly at its thirtieth session, the draft on the most-favoured-nation clause should not neglect a matter of such importance and interest to the developing countries. Article 21 should therefore be definitively adopted on first reading, and it could now be referred to the Drafting Committee for any changes in wording considered necessary before its adoption.

2. Mr. HAMBRO said it was true that considerable discussion had already taken place on article 21. He was entirely in agreement with the principle embodied in the article and agreed that it should be referred to the Drafting Committee.

3. Mr. YASSEEN said that article 21 was acceptable and could be referred to the Drafting Committee. The international community was now endeavouring to provide developing countries with a means of overcoming their economic difficulties. Several such means had been devised, including the establishment of a non-discriminatory and non-reciprocal system of preferences. It was logical that the most-favoured-nation clause should not hinder the application of that system.

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[1] For the text of the article, see *Yearbook... 1975*, vol. II, p. 121, document A/10010/Rev.1, chap. IV, sect. B.