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Summary record of the 1485th meeting

Topic:
Most-favoured-nation clause

Extract from the Yearbook of the International Law Commission:-
1978, vol. I

national law by reflecting new trends whenever they became apparent. After examining the case of States, of international organizations and of supranational organizations, the Special Rapporteur had come to the conclusion that the draft should be confined to clauses contained in treaties concluded by States. In fact, the distinction between international organizations and supranational organizations was a matter of degree rather than of kind: some organizations appeared to be more supranational than others. Where integration was taken to its extreme, the result was a form of federal State, a situation that implied a transition from the realm of international organizations to that of States. In such circumstances, it became difficult to distinguish international organizations from supranational organizations. If the trend towards supranationality was to be taken into account, international organizations should be judged according to the powers that had actually been conferred upon them. It would be difficult to exclude from the scope of the draft an organization that had been empowered to conclude treaties containing a most-favoured-nation clause.

35. Consequently, he considered that it would be desirable if, without thereby changing the substance of the text of the draft, some means could be found of reflecting the current trend in favour of permitting international organizations to bind by treaty not only States but also entire peoples. An example of that trend was the progress towards an ever greater degree of integration within the Economic Community of West African States. The Commission should give expression to that general trend, if not in one or more articles, at least in the commentary.

36. Mr. QUENTIN-BAXTER agreed that the Commission was in no position at that stage to abandon distinctions that had been carefully drawn, or to confuse matters of drafting and substance by amending the opening, and governing, clauses of the draft articles. At the same time, the Commission would be ill-advised to give the impression that it was ignoring the presence of EEC, and organizations of like character, on the world scene. If it did so, it might be thought to be losing touch with the realities of international life.

37. EEC seemed to him to form a kind of infrastructure: it was neither above nor below the States which constituted its membership, but it provided a substitute for them in certain questions falling within its competence.

38. The substance of the question before the Commission was not, in his view, the distinction between treaties between States, on the one hand, and treaties to which international organizations were parties, on the other. One test that had rightly been stressed was whether the relationships in question were governed by international law or by constitutional law. Another question that he would stress as relevant to the issue was whether the entity concerned was acting in respect of territory, or merely in the general capacity of an international organization. The powers vested in the Security Council under Chapter VII of the United Nations Charter, as well as the many other real powers bestowed on international organizations by their members, were clearly to be distinguished from cases in which an international organization acted in respect of territory—in other words, in a role typically associated with a State. Possibly, in analysing the problem, the Commission had something to learn from the role of the United Nations Council for Namibia.

39. He did not think the Commission could ignore the possibility that States might—or might have to—choose an international organization as a mechanism for concluding agreements and conducting dealings at the international level regarding the territory of States. That kind of analysis did not, of course, resolve all the questions, for there remained the fundamental problem of the vast difference in the tests of competence applicable to States and to international organizations respectively. One aspect of that problem was that the EEC members held themselves bound in respect of their territory by the decisions made by EEC within its competence and on their behalf. To that extent, EEC performed a role analogous to that normally performed by the competent organs of the government of a State.

40. He concurred in the general view that the subject was so vast that the Commission could not hope to resolve it in the course of the second reading of the draft articles. He trusted, however, that the Commission would express its view, in its commentaries to the draft articles, as to the relationship of those articles to an organization such as EEC, which acted under powers conferred by States in regard to their territory.

The meeting rose at 1 p.m.

1485th MEETING

Wednesday, 24 May 1978, at 10.05 a.m.

Chairman: Mr. José SETTE CÂMARA

Members present: Mr. Calle y Calle, Mr. Díaz González, Mr. El-Erian, Mr. Francis, Mr. Jagota, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sucharitkul, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta.

The most-favoured-nation clause (*continued*) (A/CN.4/308 and Add.1 and Add.1/Corr.1, A/CN.4/309 and Add.1 and 2)

[Item 1 of the agenda]

DRAFT ARTICLES ADOPTED BY THE COMMISSION: SECOND READING (*continued*)

ARTICLE 1 (Scope of the present articles)[1] (*concluded*)

1. Mr. EL-ERIAN wished to enlarge on his previ-

[1] For text, see 1483rd meeting, para. 8.

ous statement (1484th meeting), in which he had dealt solely with the question of the definition of the term "State", by raising three main questions.

2. First, what was the purport of an article that sought to delineate the scope of the subject by providing that the articles should apply to most-favoured-nation clauses contained in treaties between States? To his mind, it signified that the draft articles, in their basic orientation and underlying philosophy, were clearly intended to apply to States. That did not mean that an individual article might not deal with the particular circumstances at a given case, but rather that the provisions of the draft articles must be considered, and interpreted, as a whole.

3. Secondly, what was meant by the term "State"? In his view, it was used in the sense attributed to it by the Commission in a number of other drafts, all of which referred to States without endeavouring to define the term. In its 1949 commentary to the draft declaration on the rights and duties of States, the Commission had explained that the word "State" was used in the sense commonly accepted in international practice.[2] Legally speaking, there was no difficulty in defining the term; indeed, a definition had been included by the Pan-American unions in one of their conventions. Essentially, however, the problem was one of recognition, which had caused some members of the community of nations to view certain entities in a different light from that in which they viewed other States.

4. As far as unions of States and international organizations were concerned, he considered that, despite certain similarities, there were fundamental differences between the two types of groupings. Unions of States—whether personal or real, or whether a confederation of States—generally consisted of a structure of States with common central powers. Further, a confederation of States was usually a step towards the creation of a federal or even unitary State, whereas an international organization provided the framework for international co-operation among States without necessarily being envisaged as a step towards the establishment of a State. At the time the Charter of the Organization of African Unity had been drafted, the idea of a confederation of African States, and even of an all-African government, had been mooted, but had been discarded in favour of a more practical association of States formed for the purpose of co-operation in certain areas.

5. The case of customs unions was particularly delicate. In the *Customs Régime between Germany and Austria* case (1931),[3] the Permanent Court of International Justice had held that Austria's entry into a customs union with Germany constituted an infringement of Austria's independence under article 88 of the Treaty of Saint-Germain-en-Laye. The vote, however had been very close, and a perusal of the concurring opinions of the majority was not very convincing. For his part, he did not see how entry into an association with another State for certain purposes could be held to involve an infringement of sovereignty.

6. Thirdly and lastly, the term "supranational" had been used in reference to EEC. He did not like that term, and noted that it did not appear in any treaty. Admittedly, EEC had exceptional powers; but, like the United Nations, which also had wide powers under the Charter, it remained international in character, inasmuch as it was an organization created by a treaty among a number of States. It was an association formed by the free will of its members, each of which was equally free to withdraw from membership.

7. Mr. DÍAZ GONZALEZ observed the draft articles were now at the second reading stage and should therefore be regarded as far as possible as an organic whole, as Mr. Šahović had said (1484th meeting). That did not mean that he was opposed to the introduction of any necessary amendment to the draft articles, but that such amendments should be made in the light of their implications for the draft articles as a whole.

8. It had rightly been stressed that the Commission was primarily concerned with the legal aspects of the most-favoured-nation clause and its applicaion. Of course, it could always consider the economic aspects, which were undoubtedly very important, but it should bear in mind that those aspects were already being dealt with by United Nations specialized agencies with greater competence in the matter. In his view, therefore, the Commission should maintain the dividing line which it had drawn between matters of law and matters of economics, while recognizing that there might be certain overlapping areas of interdependence.

9. Customs unions and associations of States were part of the reality of modern life and should be recognized as such. However, they were still at the evolutionary stage; in most cases they had yet to be firmly institutionalized and their characteristics fully defined. For that reason, a degree of caution was called for, although the door should be left open to introduce ways and means of providing for their case in international law. Article 3,[4] and in particular paragraph (*c*), paved the way to a certain extent. At some point, however, it would be necessary to determine whether what was involved was constitutional law or international law.

10. As provided in article 26, and explained in the commentary thereto, the draft articles were residuary in character. The special rules applicable to the most-favoured-nation clause were therefore to be interpreted in the light of the Vienna Convention on the Law of Treaties.[5] He did not think the Commission should attempt to define the term "State" at that

[2] *Official Records of the General Assembly, Fourth Session, Supplement No. 10* (A/925), para. 49.

[3] *P.C.I.J.*, series A/B, No. 41, p. 37.

[4] See 1483rd meeting, foot-note 1.

[5] *Ibid.*, foot-note 2.

point. In his view, article 1 should be left unchanged. After the Commission had completed its second reading of the whole draft, it might find it necessary to change one or more of the articles, but for the time being it should not attempt to do so.

11. Mr. RIPHAGEN endorsed the views expressed by Mr. Schwebel, Mr. Thiam and Sir Francis Vallat at the 1484th meeting; the articles would have little meaning if they did not deal with most-favoured-nation clauses in treaties concluded by or with international organizations. The purpose of those articles, in his view, was not to embroider the law of treaties but rather to give an interpretation of a particular clause that occurred in a number of treaties. He therefore saw no valid reason why the draft articles should not apply to most-favoured-nation clauses in treaties between an international organization such as EEC and States. Nor did he see any reason why a most-favoured-nation clause in a treaty concluded by an international organization should be interpreted differently from one in a treaty between States. On that understanding, there should be no conceptual difficulty in applying the articles to treaties between international organizations and States, despite the known difficulties in the law of treaties in general regarding treaties concluded by or with international organizations. In questions of State responsibility and succession of States, there was indeed a difference between international organizations and States, but those were different questions. Any international organization could accord most-favoured-nation treatment to a State. That was in keeping with the principle of equality of States and of non-discrimination between foreign States.

12. Indeed, despite the comment by IAEA (A/CN.4/308 and Add.1 and Add.1/Corr.1, sect. C, 2), it was still conceivable that at some stage a most-favoured-nation clause would be included in a treaty between the IAEA and a State, since a State that accepted IAEA's control might wish to ensure that it would not be treated differently from other countries.

13. A number of governments and international organizations had reproached the Commission for not taking sufficient account of modern developments. There was some truth in that reproach, particularly with regard to the development of regionalism and that of the new international economic order, both of which were very relevant to the most-favoured-nation clause. The Commission would therefore be well advised to take those developments into account and to provide that the draft articles should apply to most-favoured-nation clauses in treaties between entities other than States.

14. Mr. CEROSTA pointed out that the draft articles had been conceived as a supplement to the Vienna Convention on the Law of Treaties, which dealt only with treaties concluded between States in written form. If that concept was maintained, there would be no need to amend article 1: the draft would logically be applicable to most-favoured-nation clauses contained in treaties concluded between States in written form. However, the Commission now had before it EEC's comments on the draft (*ibid.*, sect. C, 2), suggesting that the text should also to apply to customs unions and other economic unions of States. He was surprised that EEC had not submitted comments at an earlier stage of the Commission's work. Moreover, none of the States members of the Community had endorsed the amendments proposed by EEC, although two of them—Luxembourg and the Netherlands—had expressed views fairly similar to those of EEC in their written comments (*ibid.*, sect. A). In addition, both Sir Francis Vallat (1484th meeting) and Mr. Riphagen had stressed that it was essential not to exclude customs and economic unions from the scope of the draft. The Commission should therefore take those views into account, if not in the draft itself, at least in the commentary.

15. From discussions with other members of the Commission, he had gained the impression that some of them considered that the problem was essentially a European one, whereas it was in fact a general one. The same theoretical and practical problems as now confronted them had existed as long as there had been customs unions, in other words, since the beginning of the 19th century. But now those unions were becoming more numerous and their rights and duties were growing. It would be remembered that there had been a customs union between Sweden and Norway from 1874 to 1895, a German customs union from 1834 to 1871, a customs and economic union between imperial Austria and the Kingdom of Hungary from 1867 to 1918, and, more recently, a customs union between Belgium, the Netherlands and Luxembourg. In all those cases, there had existed, in addition to the sovereign member States, an entity that had had international rights and duties and had acted in matters of foreign trade and customs as a partial subject of international law.

16. As Mr. Jagota had suggested (1484th meeting), the Commission should consider, article by article, whether the provisions of the draft ought to apply to customs and economic unions, and make appropriate amendments where necessary.

17. Mr. NJENGA regarded the draft articles as primarily a work of codification, except articles 21 and 27, which dealt with the exclusion in certain cases of the application of those articles to developing countries and might therefore be regarded as concerning the progressive development of the law. The extension of the draft articles to cover customs or economic unions as well as free-trade associations could likewise be regarded as progressive development. However, bearing in mind the widely differing nature of the various unions existing throughout the world, he did not think that the inclusion of a general rule to meet the case of only one organization, namely, EEC, could be justified on that ground. He agreed with the view of the Special Rapporteur, as expressed in his report, that the only union of that nature that appeared to exercise powers similar to those of a

State was EEC (A/CN.4/309 and Add.1 and 2, para. 73).

18. The former East African Community had been, in some respects, even more highly integrated than EEC; not only had it dealt with all matters connected with tariffs and the collection of customs dues, but it had also owned the railways and airways, as well as a number of research institutes. Even so, it would have been wrong to consider that Community as a State, and any agreements it had entered into had been in conjunction with its members, which were the guarantors of its performance of the agreements.

19. An amendment worded along the lines suggested by EEC in its comment (A/CN.4/308 and Add.1 and Add.1/Corr.1, sect. C, 6, para. 7) would be going too far, in his view, since the extent of the transfer of power that would be involved or required was not clear. Also, the extent of the residual powers which the member States of EEC would retain, and the reversionary rights that would come into play if a member withdrew from EEC, was no known. It was important to consider who would be responsible if, for example, EEC ceased to function. The questions of State succession that would arise would inevitably be highly complex, although less so if relations were established not only with EEC but also with the States concerned.

20. Organizations such as EEC operated within a constitutional framework that was based, in whole or in part, on delegated responsibility. It would be asking too much to impose that framework on the international community, since most States were not parties to it. It seemed to him that a member of the international community might well be at a loss if it wished to seek redress for the breach of an agreement entered into with EEC and containing a most-favoured-nation clause. For those reasons he agreed that, for the time being, the operation of the draft articles should be confined to States. That did not mean that the realities of the situation should be ignored; in fact, that was not the case, for article 3 made it abundantly clear that the legality of such organizations was not called into question, nor was the application of most-favoured-nation clauses between those organizations and States prevented. EEC and other international organizations would, however, be better advised to press for the exclusion of the operation of the most-favoured-nation clause, for which a much stronger case could be made out.

21. Mr. TSURUOKA explained that, whenever he refrained from commenting on an article, it was because he approved its content. In the case in point, although he shared the view of the Special Rapporteur, he wished to make a few comments in view of the vital importance of article 1.

22. There was no denying that EEC had extensive competence with respect to customs and trade, and in particular was empowered to conclude international agreements. It would nevertheless be very difficult to attempt to resolve in the draft the problems posed by the existence of unions such as EEC, and it would therefore be better to retain article 1 in its existing form, subject to possible drafting changes. The text of the article, moreover, had been adopted by the Commission after a thorough discussion of the question of customs and economic unions. At the stage the Commission had now reached, it would hardly be feasible for it to recast the many articles which it was formulated following its decision to restrict the scope of the draft to most-favoured-nation clauses contained in treaties between States. Besides, the draft did not deal solely with clauses relating to customs matters, EEC was constantly evolving, and it would be difficult to build a solid legal edifice on such shifting ground.

23. It should not be forgotten either that the Commission had already taken the problem into account, since article 3 provided that all the rules set forth in the articles would apply to a clause which would be subject to them under international law independently of the articles. Clearly, the draft was no hindrance either to the development or to the functioning of EEC. Article 26 showed clearly the residual nature of the draft and article 25 stipulated expressly that its provisions should not be retroactive. In those two articles, the Commission had also made allowance for the special case of customs and economic unions. It might, therefore, be helpful to emphasize in the commentary that the Commission had taken due account of the problem.

24. Mr. TABIBI said that the draft articles, once adopted in final form, would constitute a valuable instrument for international co-operation between developed and developing countries, and much of the credit would be owed to two distinguished jurists from the socialist countries, Mr. Ustor and Mr. Ushakov.

25. The purpose of the draft articles was to supplement the Vienna Convention on the Law of Treaties. The most-favoured-nation clause was always to be found in bilateral or multilateral treaties between States, and to extend the scope of the draft to cover customs unions and similar international organizations would create enormous difficulties. As Mr. Jagota had pointed out (1484th meeting), the Commission was dealing with international law and not with constitutional law. Naturally, the Commission could not remain blind to the great importance of organizations like EEC, but the best course would be to move ahead with its consideration of the articles and then, in the light of the discussion, to investigate the possibility of widening their scope. It should be remembered that governments would have an opportunity to express their views not only in the General Assembly but also at the future plenipotentiary conference.

26. The CHAIRMAN, speaking as a member of the Commission, said it should always be remembered that, as noted by previous speakers, the draft articles were intended as a complement to the Vienna Convention on the Law of Treaties, article 1 of which specified that the Convention applied "to treaties be-

tween States". Moreover, that Convention had been concluded at a time when EEC had already been in existence for some ten years. The convincing arguments advanced by some members of the Commission, that the scope of the draft should be extended to include EEC and other organizations, might be applied equally to some of the problems dealt with in the Vienna Convention. In reality, those arguments went beyond the most-favoured-nation clause and involved recognition of the treaty-making capacity of EEC and similar entities.

27. In the course of the United Nations Conference on the Law of Treaties, the question of treaties concluded between States and international organizations or between two or more international organizations had been left aside, and it now formed the subject of a separate draft being prepared by the Commission. Nobody attending that Conference had been in any doubt that EEC came under the heading of an international organization. Today, it might be claimed that EEC was in fact something more, but it must also be recognized that EEC was not a State. Consequently, the Commission was bound to follow the Vienna Convention and to confine the scope of the rules it was considering to treaties between States. Besides, article 3 contained a very helpful saving clause which made it clear that the draft did not affect existing treaties, while articles 25 and 26 dealt with the non-retroactivity of the draft and the freedom of the parties to agree on different provisions. Consequently, the web of bilateral and multilateral relations within EEC, would be fully preserved. For those reasons, article 1 should be retained in its existing form and referred to the Drafting Committee.

28. Mr. USHAKOV (Special Rapporteur) said that the problem of the applicability of the articles to treaties concluded by organizations such as EEC went beyond the bounds of the topic the Commission was engaged in studying. In his view, EEC could not be assimilated to a State, as suggested in the definition it had proposed for addition to article 2. Nor, strictly speaking, was it an international organization, since it had supra-State powers which international organizations such as the United Nations and its specialized agencies did not have. Unlike other international organizations, EEC enjoyed exclusive competence in certain spheres, which enabled it to conclude treaties on behalf of its members and even to legislate directly. No other international organization had such power. EEC constituted a new and unique phenomenon, which was neither a State nor an international organization, but an intermediate entity that might be termed a "supranational" organization. CMEA, for example, unlike EEC, was not a supranational institution. The Programme of socialist economic integration stated that "socialist economic integration is completely voluntary and does not involve the creation of a supranational institution",[6] and the Charter of CMEA guaranteed "respect for sovereignty and national interest".[7]

29. There could obviously be no question of ignoring the existence of EEC or its economic significance and the role it played in international trade. Sir Francis Vallat had said (1484th meeting) that account should be taken of the fact that EEC concluded agreements that were governed by international law. But what were the rules of international law applicable to agreements concluded by EEC? In the case of the activities performed by EEC as an international organization, they were the rules applicable to treaties concluded between States and international organizations or between two or more international organizations—rules that the Commission was in the process of drafting. But were the rules of the Vienna Convention on the Law of Treaties applicable when EEC performed supranational activities in respect of which it sought to be treated as a State, in other words, when it concluded treaties on behalf of its member States? That question could not be answered in the context of the draft articles under consideration, since it was essential to know first what were the rules applicable to treaties concluded between States and international organizations. As long as that question remained unanswered, it was impossible to say whether the draft articles should apply to treaties concluded by international organizations such as EEC. The question of the applicability of the draft articles must be settled in the more general context of the rules applicable to treaties concluded between States and international organizations or between two or more international organizations.

30. However, the question of the scope of the draft articles arose in relation not only to EEC but also to treaties concluded orally. Article 2, paragraph (*a*), defined a "treaty" as "an international agreement concluded ... in written form", but a most-favoured-nation clause might also be contained in an oral agreement. Admittedly, the safeguard clause in article 3 provided that "the fact that the present articles do not apply ... to a clause on most-favoured-nation treatment contained in an international agreement between States not in written form ... shall not affect ... the legal effect of any such clause", but it was none the less true that such a most-favoured-nation clause did not come within the scope of the draft articles, any more than did the "most-favoured-organization clause" to which UNESCO had referred in its comment (A/CN.4/308 and Add.1 and Add.1/Corr.1, sect.C, 1).

31. It would be impossible, however to produce a draft that took account of every eventuality, and he suggested that article 1 should be referred to the Drafting Committtee.

32. Following a brief procedural discussion, the CHAIRMAN suggested that article 1 be referred to the Drafting Committee and that the Commission

[6] A/C.2/272, p. 5.

[7] United Nations, *Treaty Series*, vol. 368, p. 266.

postpone its consideration of article 2 until after it had examined the remaining articles of the draft.

It was so agreed.[8]

The meeting rose at 12.55 p.m.

[8] For the consideration of the text proposed by the Drafting Committee, see 1521st meeting, paras. 13 and 14.

1486th MEETING

Thursday, 25 May 1978, at 11.35 a.m.

Chairman: Mr. José SETTE CÂMARA

Members present: Mr. Ago, Mr. Calle y Calle, Mr. Díaz González, Mr. El-Erian, Mr. Francis, Mr. Jagota, Mr. Njenga, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sucharitkul, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta.

Organization of work (*continued*)*

1. The CHAIRMAN said that the Enlarged Bureau had decided that, for the current session, the Planning Group should consist of Mr. Šahović, as Chairman, and Mr. Ago, Mr. Díaz González, Mr. El-Erian, Mr. Schwebel, Mr. Tabibi, Mr. Ushakov and Sir Francis Vallat. In accordance with the usual practice, any member of the Commission interested in taking part in the discussions of the Planning Group was welcome to attend its meetings.

2. The Enlarged Bureau had also recommended that a working group consisting of Mr. Quentin-Baxter as Chairman, and Mr. Calle y Calle, Mr. Njenga, Mr. Pinto and Mr. Yankov be appointed to study the item entitled "Review of the multilateral treaty-making process", included in the provisional agenda of the thirty-fourth session of the General Assembly.

3. If there were no objections, he would take it that the Commission agreed to those proposals.

It was so agreed.

The most-favoured-nation clause (*continued*) (A/CN.4/308 and Add.1 and Add.1/Corr.1, A/CN.4/309 and Add.1 and 2)

[Item 1 of the agenda]

DRAFT ARTICLES ADOPTED BY THE COMMISSION: SECOND READING (*continued*)

ARTICLE 3 (Clauses not within the scope of the present articles)

4. The CHAIRMAN invited the Special Rapporteur to introduce article 3, which read:

Article 3. Clauses not within the scope of the present articles

The fact that the present articles do not apply (1) to a clause on most-favoured-nation treatment contained in an international agreement between States not in written form, or (2) to a clause contained in an international agreement by which a State undertakes to accord to a subject of international law other than a State treatment not less favourable than that extended to any subject of international law, or (3) to a clause contained in an international agreement by which a subject of international law other than a State undertakes to accord most-favoured-nation treatment to a State, shall not affect:

(*a*) The legal effect of any such clause;

(*b*) The application to such a clause of any of the rules set forth in the present articles to which it would be subject under international law independently of the articles;

(*c*) The application of the provisions of the present articles to the relations of States as between themselves under clauses by which States undertake to accord most-favoured-nation treatment to other States, when such clauses are contained in international agreements in written form to which other subjects of international law are also parties.

5. Mr. USHAKOV (Special Rapporteur) said that article 3 was merely a saving or safeguard clause, whose wording was based on that of article 3 of the Vienna Convention on the Law of Treaties.[2] It did not expand the scope of the articles, as defined in article 1;[3] it merely indicated that the rules of general international law could apply, independently of the rules enunciated in the articles, to certain situations not provided for in the draft.

6. In the oral comments they had made in the Sixth Committee of the General Assembly in 1976, some representatives had said that article 3 could be retained, although its object was covered by article I and by the norms of general international law (A/CN.4/309 and Add.1 and 2, para. 99).

7. In its written comments, Luxembourg had expressed the opposite view that, if the artificial restrictions were removed from article 1, article 3 could be deleted without any difficulty (A/CN.4/308 and Add.1 and Add.1/Corr.1, sect. A). He could not share that point of view because he did not think that article 3 changed the meaning of article 1 in any way, since it did not limit the scope of the draft articles.

8. The Netherlands had stated that article 3 did not cover "the case of a most-favoured-nation clause in an agreement between two international organizations, one of which undertakes to accord to the other treatment not less favourable than that extended to any other subject of international law (whether or not a State)" (*ibid.*). He noted that, in a passage of its commentary, referred to by the Government of

* Resumed from the 1475th meeting.

[2] See 1483rd meeting, foot-note 2.

[3] *Ibid.*, foot-note 1.