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Summary record of the 1490th meeting

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co-operation with their neighbours, without being hindered by the operation of the most-favoured-nation clause.

47. The CHAIRMAN asked whether members of the Commission thought that articles 8, 9 and 10 could now be referred to the Drafting Committee.

48. Mr. QUENTIN-BAXTER said he was well aware of the tradition that the Commission's Drafting Committee was much more than a body that dealt with matters of form. In the current instance, however, the real subject of debate was whether the Commission proposed to alter radically the entire basis of the draft articles or whether it intended to do what was more usual on second reading of a draft, namely, to note any discrepancy or any need for adjustments to the text. The answer depended perhaps on the view taken by the Commission as to the role of the draft articles when they were completed. If the draft was to regarded as a dominant set of provisions in international law, very careful consideration must be given to the matters raised so graphically in the course of the discussion, namely, the developments that had taken place in the sphere of trade and the fact that many States of all kinds in all parts of the world found the institution of the most-favoured-nation clause an obstacle rather than a help.

49. The previous Special Rapporteur for the topic, Mr. Ustor, despite his devotion to the task of describing the operation of the most-favoured-nation clause accurately in law, had never sought to claim a primary place for his work. He had considered that it was sufficient to describe an institution so as to enable government lawyers and others to interpret existing treaties and decide how far they wished to depart from the principles enunciated in the draft when drawing up new clauses. It might be affirmed that the draft was describing a situation that had been overtaken by new developments, particularly at the multilateral level, but the work was none the less a contribution of high scholarship that made it easier to gain an understanding of complex institutions in the modern world.

50. Personally, he was not yet persuaded that the Commission should, or indeed could, fundamentally alter the basis and the proportions of the draft articles. If the draft appeared to claim for itself too absolute a status, that danger might be avoided by making minor changes in the wording, or more probably by supplying careful, balanced commentaries. At the current stage, however, he did not think that the discussions in the Commisson provided an adequate basis on which the Drafting Committee might deal with articles 8, 9 and 10, although such a basis might well emerge from consideration of the articles that followed.

51. Mr. USHAKOV (Special Rapporteur) said that the articles of the draft, in particular articles 8, 9 and 10 and articles 18 and 19, were all interrelated. The Commission could of course decide to wait until it had completed its consideration of the draft before referring the articles as a whole to the Drafting Committee. He was not sure, however, whether that was the best procedure to follow, or whether it was even possible.

The meeting rose at 1.10 p.m.

1490th MEETING

Wednesday, 31 May 1978, at 10.10 a.m.

Chairman: Mr. José SETTE CÂMARA

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

Visit of the Vice-President of the International Court of Justice

1. The CHAIRMAN said that it was a great honour to extend, on behalf of the Commission, a warm welcome to Mr. Nagendra Singh, Vice-President of the International Court of Justice. Mr. Nagendra Singh had been a distinguished member of the Commission from 1967 until 1972, when he had been appointed a judge of the Court. All members were familiar with his well-known writing on international law and his learned opinions delivered at the Court.

2. Mr. NAGENDRA SINGH (Vice-President of the International Court of Justice) said that he had been very touched by the kind invitation of the Commission to attend its meeting. It brought back many pleasant memories and bore witness to the strength of the ties that linked the International Court of Justice and the Commission. There was naturally a close relationship between the Court as the adjudicator and the Commission as the codifier of international law. Without precise and unambiguous law the adjudicator would be very handicapped, but codification of international law without the existence of an adjudicatory body would be tantamount to law-making in a vacuum. Justice needed both the judge and the legislator. He wished the Commission every success in its endeavours and was sure that its work would continue to command the admiration and respect of the world.

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 8 (Unconditionality of most-favoured-nation clauses),

ARTICLE 9 (Effect of an unconditional most-favoured-nation clause), *and*

ARTICLE 10 (Effect of a most-favoured-nation clause conditional on material reciprocity[1] (*concluded*)

3. Mr VEROSTA thought the best course would be to refer articles 8, 9 and 10 to the Drafting Committee. By the time the Committee came to consider them, it would have the benefit of the Commission's views on other important articles.

4. Mr. TSURUOKA noted that, although a number of members had expressed concern regarding articles 8, 9 and 10, no specific proposal for their improvement had been submitted. It must be acknowledged that article 10 followed logically from article 8, which recognized the freedom of the parties to conclude clauses accompanied by conditions. Article 26[2] also provided for the possibility for the parties to agree to different provisions. However, article 10 dealt expressly only with the effect of clauses made subject to the condition of material reciprocity. Provision should also be made, in the context of that article and without jeopardizing the fundamental idea underlying articles 8, 9 and 10, for the other conditions that might accompany a most-favoured-nation clause.

5. Jurists responsible for interpreting treaties had sometimes been embarrassed by the fact that certain trade treaties had contained a most-favoured-nation clause relating to imports and had at the same time established the right of the importing country to prohibit or limit the imports in question for health or other reasons. That question was obviously difficult to resolve. Mention might also be made of the case of most-favoured-nation clauses relating to the establishment of industrial activities, accompanied by the condition that subjects of the beneficiary State might enter the territory of the granting State only in order to engage in the activities in question. Those were not clauses conditional on material reciprocity. The question therefore arose which draft article applied to the case of the two types of clauses he had mentioned. The case would, in fact, seem to be covered in article 8 by the phrase "unless... the parties otherwise agree", but the effect of those clauses was not made clear in article 10.

6. He therefore suggested that a second paragraph be added to article 10, dealing with the effect of a clause made subject to a condition other than that of material reciprocity, and reading:

> "2. If a most-favoured-nation clause is made subject to conditions other than the condition of material reciprocity, the beneficiary State is entitled to most-favoured-nation treatment either to the extent permitted by such conditions or upon fulfilling such conditions, as the case may be."

7. Sir Francis VALLAT wished to ask the Special Rapporteur whether article 8, by implication, dealt only with the possibility of material reciprocity, or whether it allowed for other conditions to be agreed upon by the parties. If the latter were true, the text should be clear in that regard. If, on the other hand, articles 8, 9 and 10 were concerned solely with the condition of material reciprocity, that should also be made clear so that they did not give rise to disputes. The problem should be looked at anew in the light of the comments by Mr. Tsuruoka, particularly since the Special Rapporteur had pointed out that the condition of material reciprocity was a matter of the past. It was rarely encountered in treaties in modern times and was not essential to trade, which was the most important sphere affected by the operation of the most-favoured-nation clause.

8. Mr. JAGOTA recalled that at the 1488th meeting Mr. Calle y Calle had pertinently commented that article 9 used the word "conditions" in the plural, whereas article 10 dealt only with one "condition". It would seem, therefore, that a most-favoured-nation clause might be subject to different conditions, and that article 10 was concerned only with the condition of material reciprocity. In that case, there must be a lacuna in the articles, but it could be filled by adopting the sound proposal made by Mr. Tsuruoka.

9. Mr. USHAKOV (Special Rapporteur) said that, in his opinion, article 8 did not state any legal rule. It simply stated the obvious fact that clauses must be unconditional or conditional. Article 9 stated the legal rule applicable to the effect of unconditional clauses. In article 10, the Commission had dealt solely with a single category of conditional clauses, namely, the clause made subject to the condition of material reciprocity. The reason why the Commission had followed that course was because it had found that, in fact, there were no conditional clauses other than clauses conditional on material reciprocity, and those were virtually non-existent outside the sphere of consular or diplomatic relations.

10. The question therefore arose whether there really were other categories of conditional clauses. The possibility was not ruled out, and article 8 already made provision for it. Why then had the Commission not so far drafted any text relating to conditional clauses in general? First of all for practical reasons, because the Commission had actually found, as it had indicated in its commentary, that in relations between States there were no conditional clauses other than clauses conditional on material reciprocity. And secondly, because if the Commission tried to establish rules governing the application of conditional clauses, it would run up against innumerable difficulties. The concept of material reciprocity, as defined in article 2, was a specific concept, whereas there was an infinite variety of conditional clauses. It would therefore be very difficult to draft a text applicable to the various categories of conditional clauses, since provision would have to be made for solutions applicable in each of the different cases. For the specific case defined in article 2, it was possible to propose a

[1] For texts, see 1488th meeting, para. 33.

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

specific solution and to make provision for its legal consequences, but it would be difficult, if not impossible, to propose such solutions for a large number of different cases. How could anyone say at what time the most-favoured-nation clause began to operate under all imaginable conditions? Perhaps the agreements cited by Mr. Jagota at the 1488th meeting contained conditional clauses, and for his own part he would be very glad to see the texts of the agreements; but those texts would have to be interpreted before there could be any certainty that the clauses concerned really were conditional clauses.

11. It rested of course with the Commission to take a decision on the subject of conditional clauses, but personally he considered that the best course was to refer articles 8, 9 and 10 to the Drafting Committee, together with all the suggestions that had been made in the course of the discussion.

12. Mr. TABIBI said that the time had come to take a decision in respect of articles 8, 9 and 10. Articles 8 and 9 dealt with the unconditionality of most-favoured-nation clauses and posed no difficulties, for they were simply statements of fact. The Drafting Committee should now consider those two articles, together with article 10 and the amendment proposed by Mr. Tsuruoka, although he had some doubt as to whether article 10 dealt with a condition or a limitation. The Commission could then go on to examine article 11, which might to some extent affect the three articles in question.

13. Mr. SUCHARITKUL said that the problem under consideration had been made a good deal clearer during discussion, particularly by the explanations of the Special Rapporteur. In practice, most members had come across examples of other types of conditions, which might be described as conditions *ratione temporis,* under which most-favoured-nation treatment was enjoyed only from or up to a certain point in time, or was made conditional on other factors. Clearly, the Commission would have to take account of such conditions.

14. He accordingly endorsed the proposal by Mr. Tsuruoka, and suggested as an alternative for consideration by the Drafting Committee a new article, article 10 *bis,* to be entitled "Effect of a most-favoured-nation clause subject to other conditions" and worded along the following lines:

> "If a most-favoured-nation clause is made subject to other conditions, the beneficiary State acquires or forfeits the right to most-favoured-nation treatment only on fulfilment of or in accordance with the conditions agreed upon."

15. The CHAIRMAN said that if there were no further comments, he would take it that the Commission agreed to refer articles 8, 9 and 10 to the Drafting Committee for consideration in the light of the discussion.

It was so agreed.[3]

ARTICLE 11 (Scope of rights under a most-favoured-nation clause) *and*

ARTICLE 12 (Entitlement to rights under a most-favoured-nation clause)

16. The CHAIRMAN invited the Special Rapporteur to introduce articles 11 and 12, which read:

Article 11. Scope of rights under a most-favoured-nation clause

1. Under a most-favoured-nation clause the beneficiary State is entitled, for itself or for the benefit of persons or things in a determined relationship with it, only to those rights which fall within the scope of the subject-matter of the clause.

2. The beneficiary State is entitled to the rights under paragraph 1 only in respect of those categories of persons or things which are specified in the clause or implied from the subject-matter of that clause.

Article 12. Entitlement to rights under a most-favoured-nation clause

1. The beneficiary State is entitled to the rights under article 11 for itself only if the granting State extends to a third State treatment which is within the field of the subject-matter of the most-favoured-nation clause.

2. The beneficiary State is entitled to the rights in respect of persons or things within categories under paragraph 2 of article 11 only if they

(*a*) belong to the same category of persons or things as those which benefit from the treatment extended by the granting State to a third State and

(*b*) have the same relationship with the beneficiary State as those persons or things have with that third State.

17. Mr. USHAKOV (Special Rapporteur), introducing articles 11 and 12, wished to remind members of the considerations on which the Commission had based its drafting of those articles. As was indicated in paragraph (1) of the commentary, the rule that was sometimes referred to as *ejusdem generis* was generally recognized and affirmed by the jurisprudence of international tribunals and by diplomatic practice. However, although the meaning of that rule was clear, its application and interpretation were not always simple, and the Commission had cited a number of cases that had been brought before various judicial or arbitral tribunals. Those who drafted most-favoured-nation clauses were always confronted with the dilemma whether to draft the clause in very general terms, and risk impairing its efficacy if the *ejusdem generis* rule wre interpreted too strictly, or to draft it in very explicit terms by listing its specific spheres of applicaton, and risk producing an incomplete list. The difficulties encountered were made very clear in paragraphs (10), (12), (13), (14) and (15) of the commentary.

18. Article 11, paragraph 1, stated that the beneficiary State was entitled only to those rights which fell within the scope of the subject-matter of the clause. It was only in that area that the rights originated. For example, if the clause related to shipping, the beneficiary State could not claim most-favoured-nation treatment with respect to international trade. Para-

[3] For consideration of the texts proposed by the Drafting Committee, see 1520th meeting, para. 2, and 1521st meeting, paras. 38-43.

graph 2 stipulated that the beneficiary State was entitled to the rights under paragraph 1 only in respect of those categories of persons or things who or which were specified in the clause or implied from the subject-matter of the clause.

19. There were two limitations on entitlement to rights under a most-favoured-nation clause: first, the scope of the subject-matter of the clause and the persons and things specified in the clause and, secondly, the scope of the right extended to the third State by the granting State. Article 12, paragraph 1, dealt wth the case in which the State itself was the beneficiary and thus related more particularly to diplomatic or consular relations. Paragraph 2 dealt with the case of persons or things in the categories referred to in paragraph 2 of article 11. The beneficiary State was entitled to rights under the clause only if those persons or things (*a*) belonged to the same category of persons or things as those who or which enjoyed the treatment extended by the granting State to a third State, and (*b*) had the same relationship with the beneficiary State as those persons or things had with the third State. In paragraph (19) the Commission had explained why it had chosen that wording and had not wished to delve into all the intricacies of the notion of "like products".[4]

20. With regard to the comments on article 11, it was appropriate to mention first the view expressed by the Sixth Committee that the threefold condition of similarity of subject-matter, category of persons or things and relationship with the beneficiary State and a third State, which must be fulfilled under articles 11 and 12, was in keeping with the free will of the parties and with judicial practice (A/CN.4/309 and Add.1 and 2, para. 165). That comment was therefore favourable.

21. The Government of the Netherlands considered that articles 11 and 12 were designed to set out the *ejusdem generis* rule. It had expressed agreement with the sense of the articles but had made two comments on the wording used by the Commission (A/CN.4/308 and Add.1 and Add.1/Corr.1, sect. A). The proposal to replace the words "the same relationship" by the words "the same kind of relationship" did not seem to improve the text. He would point out that the words "the same relationship" had been chosen by the Commission after careful thought.

22. The Government of Luxembourg had submitted a written comment (*ibid.*) which, he considered, also applied to article 4 and should be taken into consideration thence forward.

23. He suggested that articles 11 and 12 be retained as they stood, apart from drafting improvements—although that could not be an easy matter. Neither governments nor the international organizations had raised any objections to articles 11 and 12, only some doubts concerning certain of the terms used and the wording of the articles. Perhaps, therefore, the two texts might be referred to the Drafting Committee.

24. Sir Francis VALLAT said that, in general, articles 11 and 12 were well drafted. The meaning of the word "persons", however, as used in the context of relations between persons and States, required clarification. When dealing with the most-favoured-nation clause, it was necessary to cover not only natural persons but also juridical persons, and to take account of the different terminology used in treaties when referring to the latter. The Drafting Committee should perhaps be asked to consider that point, with special reference to the need for a definition of the term "persons" in the draft articles.

25. The CHAIRMAN said that, if there was no further comment, he would take it that the Commission agreed to refer articles 11 and 12 to the Drafting Committee.

It was so agreed.[5]

ARTICLE 13 (Irrelevance of the fact that treatment is extended gratuitously or against compensation)

26. The CHAIRMAN invited the Special Rapporteur to introduce article 13, which read:

Article 13. Irrelevance of the fact that treatment is extended gratuitously or against compensation

The beneficiary State, for itself or for the benefit of persons or things in a determined relationship with it, acquires under a most-favoured-nation clause the right to most-favoured-nation treatment independently of whether the treatment by the granting State of a third State or of persons or things in the same relationship with that third State has been extended gratuitously or against compensation.

27. Mr. USHAKOV (Special Rapporteur) said that article 13, like other articles of the draft, was concerned only with an unconditional most-favoured-nation clause. That point should perhaps be brought out in the article.

28. Article 13 contained a very important rule for the interpretation of the unconditional clause. In substance, the article meant that the beneficiary State could claim the treatment extended by the granting State to a third State, whether such treatment had been extended gratuitously or against compensation.

29. In paragraph (1) of the commentary to article 13, the Commission once again drew a distinction between conditional and unconditional clauses. It added that the advantages extended by the granting State to third States might be classified in a similar manner: they might be granted unilaterally, as a gift, or against compensation. If the granting State unconditionally offered most-favoured-nation treatment to the beneficiary State, the issue was whether the latter's rights were affected by the fact that the promises of the granting State to the third State had made subject to certain conditions or not. On that point, the practice

[4] *Yearbook... 1976*, vol. II (Part Two), p. 33, doc. A/31/10, chap. II, sect. C, arts. 11 and 12, para. (19) of the commentary.

[5] For consideration of the texts proposed by the Drafting Committee, see 1521st meeting, paras. 34 and 35, and 36 and 37, respectively.

was inconsistent, as was apparent from the numerous examples given by the Commission in its commentary. For its part, the Commission had expressed its belief that the rule stated in article 13 was in conformity with modern thinking on the operation of the most-favoured-nation clause. For further details, he would refer members to paragraphs (7) and (8) of the commentary to the article.

30. With regard to oral comments, several representatives in the Sixth Committee had supported article 13 and had in some cases expressed the view that the rule stated was in conformity with modern thinking on the operation of the clause. Some had suggested the addition of a provision to the effect that the most-favoured-nation clause should either not mention any condition at all or should formulate such condition explicitly if a conditional clause was involved. It had also been suggested that article 13 should be combined with article 8 so that article 13 would be subject to the exception contained in article 8 regarding the principle of the independence of the contracting parties (A/CN.4/309 and Add.1 and 2, para. 170).

31. Among the written observations, he noted that the Government of Luxembourg considered that article 13 duplicated articles 8 and 9 concerning the unconditionality of the clause (A/CN.4/308 and Add.1 and Add.1/Corr.1, sect. A). The Government of the Netherlands, for its part, had raised the question whether the principle enunciated in article 13 also applied if the requirement of material reciprocity were laid down in the legislation of the granting State. If a third State met that requirement and its nationals thereby enjoyed a particular privilege, the beneficiary State should certainly not be able to claim that privilege without satisfying the requirement of material reciprocity (*ibid.*). Article 13, however, was concerned only with unconditional most-favoured-nation clauses; in his opinion, therefore, the observations by the Government of the Netherlands did not apply to that article.

32. There was a certain relationship between articles 9 and 13. Article 9, which concerned the effect of an unconditional most-favoured-nation clause, was couched in general terms, which article 13 was specifically intended to define more precisely. Article 13 fulfilled a need and should therefore be retained, although it should be made clear that it related only to unconditional most-favoured-nation clauses.

33. Mr. ŠAHOVIC also agreed that it should be made clear in the text that article 13 applied only to an unconditional most-favoured-nation clause. The reason why the Commission had referred to conditional clauses in certain passages in the commentary was essentially in order to show that a clause of that type did not fall within the scope of article 13. Moreover, the words "gratuitously or against compensation" might lead to misunderstanding. He had in fact asked himself the same questions as the Government of the Netherlands, and for that reason considered that some clarification was necessary.

34. Mr. CALLE y CALLE said that he understood the intent of article 13 to be that a most-favoured-nation clause concluded between a granting State and a beneficiary State would not be rendered conditional by reason of any compensation or other condition attaching to treatment granted to a third State. If that were so, then article 13, which dealt with the fact that the conditions imposed on a third State were irrelevant to a relationship between the beneficiary and granting States, should not be too closely linked to articles 8 and 9, which concerned the conditionality or unconditionality of such a relationship.

36. He noted that the Netherlands, in its comment on article 13 (A/CN.4/308 and Add.1 and Add.1/Corr.1, sect. A), had expressed doubt as to whether the argument advanced in paragraph (7) of the commentary would obtain if a requirement of material reciprocity were laid down in the legislation of the granting State. In his view, the concern expressed by the Netherlands was met by the terms of article 20 (The exercise of rights arising under a most-favoured-nation clause and compliance with the laws of the granting State).

37. Lastly, he suggested that, in order to bring the Spanish version of article 13 into line with the English and French versions, the words "en interés de" should be replaced by the words "en beneficio de".

38. Mr. VEROSTA noted that, in the opinion of the Special Rapporteur and Mr. Šahović, article 13 concerned only an unconditional most-favoured-nation clause, whereas in the opinion of Mr. Calle y Calle it might also relate to conditional clauses.

39. With regard to the wording, Sir Francis Vallat had suggested that it should be made clear in articles 11 and 12 that the term "persons" referred to juridical persons as well as natural persons. Since that term also appeared in article 13, alongside the term "things", the clarification should perhaps be made in article 2 (Use of terms).

40. Mr. SUCHARITKUL said that article 13 strengthened the presumptions in favour of the unconditionality of the most-favoured-nation clause. In his opinion, the expression "gratuitously or against compensation" should be understood as covering the condition of material reciprocity. Article 13 was therefore broader than articles 8 and 9 in its effects. It had the effect of eliminating the conditions of reciprocity or other compensation conditions in favour of the granting State. It also followed from the combined effect of article 13 and the presumption of unconditonality that the beneficiary State was entitled to more favourable treatment than the most favourable treatment originally extended to the third State. That presumption appeared to be in conformity with modern practice. It was interesting to note that, if the granting State wished to preserve reciprocity, it must make that an express condition. He wondered whether, by weakening the position of the granting State through the application of most favourable treatment, it would not nevertheless be possible to retain the balance sought by contemporary practice.

41. Mr. USHAKOV (Special Rapporteur) said that the treatment extended to the third State should be automatically extended to the State that was the beneficiary of an unconditional most-favoured-nation clause, regardless of the relationships between the granting State and the third State. Whether or not those relationships entailed compensation, they concerned only the granting State and the third State. The fact that there was a conditional clause linking them was irrelevant.

42. It might be asked whether reference should be made, in article 13, to persons and things having a specific relationship with the beneficiary State or with the third State. In fact, article 13 concerned the right to most-favoured-nation treatment and the expression "most-favoured-nation treatment", according to the definition given in article 5, covered not only the States concerned but also persons and things in a determined relationship with them.

43. It would probably be dangerous to define the term "persons" as applying equally to juridical persons and natural persons, as had been suggested. There was, in fact, a wide variety of most-favoured-nation clauses, and some might apply only to natural persons and others only to juridical persons. Only by examining each individual clause could it be determined which type of person was concerned, and the same applied to things.

44. Mr. JAGOTA said that, in his view, articles 13, 14 and 15 laid down rules of interpretation, and he therefore agreed with Mr. Calle y Calle regarding the intent of article 13. As he read it, that article referred to the rights of a beneficiary State arising under a most-favoured-nation clause. Those rights were independent of the relations between the granting State and a third State, so that such factors as the balance of advantage as between those two States, their motivation, the conditions on which treatment was extended and the nature of any compensation were all irrelevant. It was likewise irrelevant whether the clause, as it related to the rights of the beneficiary State, was conditional or unconditional; it could be either, but that matter was in any event regulated separately under draft articles 8, 9 and 10. Thus, the relations between the beneficiary State and the granting State were governed by the terms of the most-favoured-nation clause together with any conditions set forth in it, and did not necessarily have any connexion with the relations between the granting State and a third State. Viewed in that context, article 13 could serve as a useful caution to those who had to negotiate and draft most-favoured-nation clauses. They must ensure that any conditions were specified in the clause, failing which it would not be possible to rely on the relationship between the granting State and a third State.

45. For those reasons, it should be made clear in the commentary that articles 13, 14 and 15 laid down rules of interpretation on the application of the most-favoured-nation clause, and were not concerned with the substance of the rights arising under such a clause between a granting and a beneficiary State.

46. Mr. RIPHAGEN said that one of the difficulties with articles 13, 14 and 15 was that, under the draft articles, a conditional most-favoured-nation clause was nonetheless a most-favoured-nation clause. Those three articles, however, applied only in the case of an unconditional clause, whereas articles 8, 9 and 10 covered conditional clauses as well. He therefore considered that articles 13, 14 and 15 should specify whether the clause was conditional or unconditional.

47. Sir Francis VALLAT said it seemed apparent from paragraph 173 of the Special Rapporteur's report (A/CN.4/309 and Add.1 and 2) that article 13 was by implication dependent on the assumption that articles 8, 9 and 10 dealt with the condition of material reciprocity. If, however, article 10 (Effect of a most-favoured-nation clause conditional on material reciprocity) were to be amended, then the nature and content of article 13, as also of articles 14 and 15, would clearly be affected. Article 13 might be acceptable if the condition of material reciprocity were its sole basis, but the introduction of other conditions, or aspects of interpretation, would call for the most careful consideration on the Commission's part.

48. In the past, the Commission had been extremely cautions about laying down rules of interpretation and, if that were to be the sense of article 13, it would cause him no little concern. In such an event, however, the article should be reworded as a rule of interpretation and should not, as was now the case, be expressed as an absolute rule of law.

The meeting rose at 1 p.m.

1491st MEETING

Thursday, 1 June 1978, at 10.05 a.m.

Chairman: Mr. José SETTE CÂMARA

Members present: Mr. Ago, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. El-Erian, Mr. Francis, Mr. Jagota, Mr. Njenga, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sucharitkul, Mr. Tabibi, 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 13 (Irrelevance of the fact that treatment is extended gratuitously or against compensation)[1] (*concluded*)

[1] For text, see 1490th meeting, para. 26.