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Summary record of the 975th meeting

Topic:
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document to be submitted by him. At a later meeting the Commission would consider whether the whole question should be dealt with as a separate item of the agenda in accordance with its previous decision, or whether that decision should be modified, perhaps by dealing with the question under "Other business".

It was so agreed.

The meeting rose at 1.30 p.m.

975th MEETING

Monday, 15 July 1968, at 3 p.m.

Chairman: Mr. José María RUDA

Later: Mr Erik CASTRÉN

Present: Mr. Ago, Mr. Albónico, Mr. Amado, Mr. Bartoš, Mr. Castañeda, Mr. El-Erian, Mr. Ignacio-Pinto, Mr. Kearney, Mr. Ramangasoavina, Mr. Rosenne, Mr. Tabibi, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Relations between States and inter-governmental organizations

(A/CN.4/195 and Add.1; A/CN.4/203 and Add.1-3; A/CN.4/L.118 and Add.1-2)

[item 2 of the agenda]

(resumed from the previous meeting)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE (*continued*)

ARTICLE 4 *bis* (Relationship between the present articles and other international agreements) (*continued*)

1. The CHAIRMAN invited the Commission to continue consideration of article 4 *bis*.[1]

2. Mr. AMADO said he approved of the present wording.

3. Mr. CASTRÉN said it had emerged from the discussion that all the members of the Commission, except one, agreed that article 4 *bis* was useful and necessary. Mr. Rosenne had proposed that it should be referred back to the Drafting Committee; personally, however, he thought that the Commission should settle the matter forthwith, as the Drafting Committee still had many articles to examine.

4. He was opposed to Mr. Eustathiades' suggestion that the wording of articles 4 and 4 *bis* should be brought into line by using the words "the present articles" in article 4 *bis* instead of "the provisions of the present articles". On the other hand, he thought the Commission should adopt Mr. Ago's suggestion and replace the words "shall not affect" by "are without prejudice to" in article 4 *bis*. It appeared that Mr. Amado had dropped his suggestion that the word "other" should be deleted, since he had just expressed his approval of the present wording of the article.

5. Mr. Ago and Mr. Eustathiades had advocated the deletion of the words "in force", while Mr. Ushakov had opposed it. In his own view, the text of the Vienna Convention on Consular Relations should be followed [2] and the words "in force" be retained. Some members had claimed that those words were ambiguous, as it was not clear whether they referred to agreements already in force or to agreements concluded in the future. But the commentary on article 71 of the Draft Articles on Consular Relations [3] stated that "the multilateral convention will apply solely to questions which are not governed by pre-existing conventions or agreements concluded between the parties".

6. Before the Vienna Conference on Consular Relations, two Governments—the Netherlands and Austria—had proposed that the scope of article 71 be extended to cover agreements which might be concluded in the future. During the Conference, Canada had supported that proposal, but before it could be voted on six other countries had suggested that a second paragraph be added to article 71, modelled on section 39 of article X of the Convention on Privileges and Immunities of Specialized Agencies.[4] The additional paragraph (article 73, paragraph 2, of the final text) provided that "Nothing in the present Convention shall preclude States from concluding international agreements confirming or supplementing or extending or amplifying the provisions thereof". The Netherlands, Canada and Austria had not pressed their proposal, because the new paragraph partly met their point.

7. He was against the deletion of the words "in force" because he believed that the agreements referred to in article 4 *bis* were those already in force on the date of entry into force of the convention, and not agreements which might be concluded in the future. Moreover, in preparing the text of article 71 of the draft on consular relations, the International Law Commission had interpreted that provision as relating to agreements already concluded, not to agreements which might be concluded in the future.

8. A possibility which the Commission might take into consideration was that of adding a provision modelled on article 73, paragraph 2, of the Vienna Convention on Consular Relations, though he did not think such an addition was necessary.

9. He was opposed to Mr. Rosenne's suggestion that the words "in force as between States or between States and international organizations" should be deleted, as it would make the terms of article 4 *bis* too general and imprecise.

10. Sir Humphrey WALDOCK said it was important to be absolutely clear as to whether it was the Commis-

[1] For earlier discussion, see 972nd meeting, paras. 40-89, and 974th meeting, paras. 42-77.

[2] See *United Nations Conference on Consular Relations, Official Records*, vol. II, p. 187, article 73.

[3] *Ibid.*, p. 41.

[4] See United Nations, *Treaty Series*, vol. 33, p. 284.

sion's intention to safeguard all other international agreements, whether concluded before or after the future convention. The question at issue was, for example, whether an agreement concluded later with a host State would prevail over the provisions embodied in the draft articles.

11. The CHAIRMAN said he understood the majority of members to be in favour of covering both present and future agreements.

12. Mr. USHAKOV said that States could always conclude new treaties, including headquarters agreements, with organizations; but he saw no need to provide for that possibility, which already existed under the law of treaties. In his view, article 4 *bis* should apply only to agreements already concluded. There was no doubt that special agreements would always prevail over the future convention. Article 4 *bis* had been drafted with a view to facilitating the accession of host States which had already concluded agreements with organizations and were not inclined to modify them.

13. He was in favour of the present wording of article 4 *bis*, subject to replacement of the words "shall not affect" by the words "are without prejudice to".

14. Mr. EL-ERIAN (Special Rapporteur) said it had been his understanding of the scope of article 4 *bis* that it merely sought to preserve the position of earlier treaties, especially the Convention on the Privileges and Immunities of the United Nations and the existing host agreements. He did not think the Commission should concern itself at that stage with the question of the relationship of the draft articles with later agreements; that was a matter which would be covered by the law of treaties, in particular by article 26 of the draft entitled "application of successive treaties relating to the same subject matter".[5]

15. Mr. ROSENNE said it was important that the text of article 4 *bis* should not only be flexible enough to protect existing agreements, but should also leave the way clear for future agreements. Use of the expression "without prejudice to" instead of "shall not affect" would achieve that result and was therefore a change of substance.

16. If it was desired to retain the words "as between States or between States and international organizations", they should be completed by adding a reference to agreements between international organizations. He himself, however, thought that that would make the text too heavy and that it was preferable to delete those words altogether.

17. Mr. AMADO stressed that the draft was only a provisional text, which still had to be examined by Governments. Mr. Rosenne's comment was logical, but for the present, he thought the article should be approved as it stood.

18. Mr. AGO said that, before referring article 4 *bis* back to the Drafting Committee, the Commission should decide whether the convention would or would not apply to agreements concluded after it had entered into force.

19. Mr. YASSEEN said that article 4 *bis* regulated a specific point and should not relate to future agreements. The content of agreements already in force was known, but that of agreements to be concluded in the future was not; the relationship between the present articles and future agreements should be governed by the general principles of the law of treaties.

20. Mr. USHAKOV said that article 4 *bis* related to existing agreements. If the Commission wished to say that States could derogate from the convention by concluding agreements in the future, another article should be drafted for that purpose. It was not possible to deal with future agreements in article 4 *bis*, because that article did not state a rule of *jus cogens*; organizations and host States would be able to derogate from the future convention by concluding new agreements. It was not possible to combine in article 4 *bis* two entirely different elements: agreements in force and the possibility of derogating from the future convention.

21. There was no need to draft a new article, since the possibility of derogating from a convention was already provided for in the general law of treaties.

22. Mr. ALBÓNICO said that article 4 had been drafted with only existing agreements in mind, because they were the only ones which could conceivably be affected. Since no one had claimed that the draft articles contained any rules of *jus cogens*, there was no question of future agreements being affected by them in any way.

23. Mr. CASTAÑEDA said he thought there must be a misunderstanding; the question was not whether the present articles would or would not derogate from agreements concluded in the future, but simply whether they would affect future agreements. It could be said with perfect legal logic that the present articles would not affect agreements concluded in the future, because article 4 *bis* was in the nature of a residuary rule.

24. Mr. YASSEEN said there was no need to state that future agreements would derogate from the draft articles, for in that matter the general rule applied that the later treaty prevailed over the earlier; future agreements would be later treaties which would in principle derogate from earlier treaties.

25. If the rule in article 4 *bis* was not stated, the future convention might be regarded as a general convention on the status of permanent representatives, modifying all earlier agreements. But the Commission did not intend it to have that purport or scope; it merely wished to emphasize the residuary nature of the convention. It was unnecessary to state that future agreements would prevail, because the general rule that a later treaty prevailed over an earlier treaty would apply.

26. Sir Humphrey WALDOCK said that article 4 *bis* reproduced the language of paragraph 1 of article 73 of the 1963 Vienna Convention on Consular Relations, entitled "Relationship between the present Convention and other international agreements". That article, however, contained a second paragraph, which read: "Nothing in the present Convention shall preclude States from concluding international agreements confirming or supplementing or extending or amplifying the provisions thereof".

27. It was the existence of that second paragraph in the Consular Convention which gave rise to the possibility of

[5] See *Yearbook of the International Law Commission, 1966*, vol. II. p. 214.

equivocal interpretations of the Drafting Committee's present text. In order to remove all ambiguity, article 4 *bis* should either deal with the question of future agreements or be amended. The Commission should then be clear whether it intended to deal with them in the same manner as in the 1963 Convention or not.

28. Mr. BARTOŠ said that the Commission should make clear what meaning it attached to article 4 *bis* of the draft, so that jurists interpreting the convention would know what the Commission's intention had been when drafting the article.

29. Members had referred to the provisions of the Vienna Convention on Consular Relations which, for the first time, had made a distinction between prior agreements, meaning agreements which had been made prior to the conclusion of the Convention and would therefore remain in force, and future agreements, meaning agreements which States might subsequently conclude, but only on condition that they confirmed, supplemented or developed the provisions of the Convention or extended its application. That was not only a distinction as to time, but also a distinction as to content. The doctrine thus introduced into international law was consequently a new one.

30. The problem raised by article 4 *bis* ought to be solved; the solution offered by article 73, paragraph 2, of the Vienna Convention on Consular Relations was not the only one possible; the Commission could accept or reject it, for the fact that a formula had been used in one case did not mean that a precedent had been established as an absolute rule of international law. Personally, he approved of that solution.

31. Nevertheless the opinion of the majority of the Commission should be known and the two alternative texts on the question placed in brackets so that Governments could state their views.

32. Mr. AMADO observed that the Commission had left a number of problems unsolved, including that of the article's position in the draft.

33. The Commission could not, at that stage, reach general agreement on the problem raised by article 4 *bis*, which was only a provisional text, so it should approve the article as at present worded. There was no need to draft a provision dealing with future international agreements.

34. He supported the proposal just made by Mr. Bartoš.

35. Mr. AGO said it would be well to include in the draft convention a rule that the provisions of earlier agreements remained valid, but the Commission must not give the impression that, once the draft convention had entered into force, it would no longer be possible to conclude agreements which departed from its provisions because they laid down more or less peremptory rules. That would prejudice the future of the Vienna convention on the law of treaties with regard to the rule of *jus cogens*.

36. There were wide differences between organizations, and that was what raised difficulties. The various international organizations must be allowed to draw up special rules if they saw fit, and any ambiguity on that point must be avoided. He was prepared to accept article 4 *bis*, but it was essential to state, possibly in another article, that international organizations could make agreements in the future which departed from the provisions of the convention.

37. Mr. AMADO said he found it unthinkable that the Commission should say that States could do as they pleased.

38. Mr. ROSENNE said he agreed with Mr. Ushakov that it would be advisable, from the point of view of drafting, to deal with the question of future agreements in a separate paragraph. Some provision was needed in any case, because the title of article 4 *bis* covered all international agreements, both past and future.

39. One reason that had been suggested for not including such a provision was that it was not possible to foresee later agreements. But in the draft on the law of treaties, the Commisson had included two articles which dealt with the relationship between earlier and later treaties, namely, articles 26 and 37.

40. Since it had been explained that article 4 *bis* dealt only with existing treaties, it would be necessary to change its wording and he suggested that the words "in force" be replaced by the words "which may be in force". The word "as" before "between States" was redundant.

41. He suggested that article 4 *bis* be referred back to the Drafting Committee with instructions to prepare explicit provisions on both earlier and later treaties.

42. Mr. RAMANGASOAVINA said that the purpose of the convention was to harmonize relations between States and international organizations, but article 4 *bis* introduced a discordant element. The article was liable to cause confusion, since it might give the impression that States could in future retain special privileged relations vis-à-vis other States, because they had already concluded treaties with international organizations. To protect the freedom of States, article 4 would probably suffice, subject to a few drafting changes.

43. Mr. YASSEEN said that article 4 *bis* was essential, because it emphasized the dispositive character of the convention and showed that there were no rules of *jus cogens* involved. There was no need to draft an article on future agreements, for the question of the relationship between such agreements and the existing conventions was already settled. On that point, the draft on the law of treaties reproduced the general solutions adopted in positive international law and the Commission did not seem to want any others.

44. Mr. USHAKOV observed that all the members of the Commission agreed that the provisions of the convention should not affect earlier agreements, since the accession of all States to the convention should be facilitated. That idea was clearly expressed in article 4 *bis*. Similarly, all members agreed that it should be possible in future to conclude agreements that derogated from the provisions of the convention. The question was how that idea could be expressed, and that was where opinions differed.

45. In his view, there should be no mention of future agreements, as that would not be good legal technique. What should be mentioned was the possibility of derogating from the provisions of the convention. That question seemed to be already settled by the provisions of

the draft on the law of treaties, but if it was not, a special article could be included on the possibility of derogating from the provisions of the convention.

46. The title of article 4 *bis*, "Relationship between the present articles and other international agreements", could lead to misunderstanding; it should be amended to make it clear that only existing agreements were meant.

47. Sir Humphrey WALDOCK said he agreed with Mr. Yasseen that the draft articles were intended to be dispositive in character. The fact was, however, that anyone who compared article 4 *bis* with article 73 of the 1963 Convention on Consular Relations might have very real doubts on the point.

48. He could not agree with the suggestion that it would not be proper legal technique to safeguard the position of later agreements in article 4 *bis*. It was precisely that technique that had been used in the 1963 Convention on Consular Relations. Moreover, article 26, paragraph 2, of the draft on the law of treaties had been included just because of the many examples of treaty provisions of that kind which he had given in the commentary.

49. In view of the contrast with article 73 of the Convention on Consular Relations, article 4 *bis* could not be left as it stood, since it might suggest that the draft articles could, in case of incompatibility, override later agreements.

50. The CHAIRMAN, speaking as a member of the Commission, said that there appeared to be general agreement that no rules of *jus cogens* were involved, and that existing treaties would continue in force unaffected by the Convention.

51. The problem before the Commission was one of legislative technique. In view of the existence of article 73, paragraph 2, of the Convention on Consular Relations, the question arose whether it was desirable to include a provision stating that the draft articles did not affect the right to conclude future treaties on the same subject-matter. That right derived from the general law of treaties, but some members had thought that it should be expressly safeguarded in view of the provisions of the Convention on Consular Relations.

52. Mr. USHAKOV said that the Vienna Convention on Consular Relations did not mention derogations; it only spoke, in article 73, paragraph 2, of "amplifying the provisions thereof", which was a very different matter. Article 73 ruled out the possibility of derogating from the provisions of the Convention. A paragraph on those lines could be added to the present draft; otherwise, another article would have to be drafted.

53. Mr. CASTRÉN said that if the Drafting Committee was to reconsider article 4 *bis*, it would need precise instructions. It must know whether the Commission wished to refer to future agreements in that article, or whether it intended to deal with them in a separate article. It was going to be a difficult task and it would certainly be easier to approve article 4 *bis* as it stood.

54. Mr. USTOR suggested, as a compromise, that article 4 *bis* be kept as it stood and that it be explained in the commentary that the Commission had not dealt with future agreements because the general rules of the law of treaties applied to them. Since the point was one of interpretation, it could be dealt with in the commentary.

55. Sir Humphrey WALDOCK said he could not entirely share Mr. Ushakov's optimism; in view of the similarity between article 4 *bis* and article 73, paragraph 1, of the Vienna Convention on Consular Relations, failure to deal with the matter of future agreements could well be interpreted as meaning that the draft articles left no room for any future agreements that might be incompatible with them.

56. The very least that should be done was to alter the wording of article 4 *bis* so as to depart from the language of article 73 of the Convention on Consular Relations. From that point of view, he favoured Mr. Rosenne's suggestion that the words "in force" should be replaced by the words "which may be in force".

57. Mr. KEARNEY said he would normally read the text of article 4 *bis* as relating to any international agreement which might be in force or which might come into force. In a number of articles of the draft on the law of treaties, in particular the important article 23, *pacta sunt servanda*, [6] the reference to treaties "in force" had covered both present and future agreements.

58. One possibility was to delete the words "in force" from article 4 *bis*, so as to make the meaning absolutely clear in that sense.

Mr. Castrén, first vice-chairman, took the Chair.

59. Mr. EL-ERIAN (Special Rapporteur) said that the discussion had revealed a sharp difference of opinion in the Commission, which would have to be resolved by a compromise; he therefore suggested that the article be referred back to the Drafting Committee for that purpose.

60. He wished to make it clear that he had never advocated that the draft articles should be regarded as rules of *jus cogens*, but had simply pointed out that any conflict between the articles and a later treaty would entail interpretation.

61. The CHAIRMAN said that, if there were no objection, he would take it that the Commission accepted the Special Rapporteur's suggestion.

It was so agreed.[7]

Most-favoured-nation clause

(A/CN.4/L.127)

[Item 3 of the agenda]

62. The CHAIRMAN invited the Commission to consider item 3 of its agenda. He drew attention to the Special Rapporteur's working paper (A/CN.4/L.127) and to the questionnaire he had submitted, which read:

"Does the International Law Commission agree with the view that:

"1. The problems of the clause should be dealt with primarily, but not exclusively, from the viewpoint of its role in international trade (see paras. 14 and 15 of the working paper)?

"2. The study of the clause should be confined to the legal aspects (see para. 16 of the working paper)?

[6] *Ibid.*, p. 210.

[7] For resumption of discussion, see 980th meeting, paras. 13-52.

"3. The Special Rapporteur's report should be based on the outline set out in the working paper?

"4. The report should contain a group of articles drafted as a sequel to the draft articles on the law of treaties, but the precise form of the work should be decided later?

"5. The articles should contain rules whose basic ideas are indicated in parts VIII-XIII of the working paper, or do the members of the Commission wish to suggest other problems?

"6. The Special Rapporteur should consult interested agencies (UNCTAD, GATT, etc.) through the Secretariat?"

63. Mr. USTOR (Special Rapporteur) said that the purpose of his working paper was not so much to provide information as to solicit the advice of the Commission before preparing his definitive report. He would not propose that the Commisson should hold a substantive discussion on the subject.

64. Commenting on his questionnaire, he said that paragraph 14 of the working paper indicated the fields in which most-favoured-nation clauses were generally applied. The legal rules were not likely to differ according to the field of application, though at that stage he was not absolutely certain on the point.

65. He presumed that the Commission would wish him to tackle the subject primarily from the point of view of international trade, and that it would wish him to deal with the legal aspects. However, there were different groups of legal questions connected with the clause. One comprised the questions whether there was an international obligation to abstain from discrimination in international trade and whether there was an obligation to conduct trade on a most-favoured-nation basis.

66. In 1964, UNCTAD had adopted general principle VIII which stated, *inter alia*, that: "International trade should be conducted to mutual advantage on the basis of the most-favoured-nation treatment and should be free from measures detrimental to the trading interests of other countries". In 1968, UNCTAD had again stressed the importance of the principle in resolution 22 (II). That general principle was in harmony with principles of international law, in particular the principle of the sovereign equality of States. The Special Committee on Principles of International Law concerning Friendly Relations and Co-operation between States had subscribed to the same idea, expressing it thus in 1967: "States shall conduct their international relations in the economic, social, technical and trade fields in accordance with the principles of sovereign equality and non-intervention ...".[8] The Commission on International Trade Law, when considering the topics to be dealt with, had refrained from placing the elimination of discrimination in laws affecting international trade on a priority list, pending the International Law Commission's action on the most-favoured-nation clause. The Commission would inevitably touch on those problems in the course of its studies, but they would not necessarily be its central concern.

[8] A/6799, para. 124.

67. Some delimitation of the Commission's task was necessary in order to clear the way for the interested agencies to deal freely with the problem of the use or non-use of the clause and with that of non-discrimination versus special preferences. The Commission's task was to tackle the questions which might arise when the clause actually appeared in a treaty, and, treating the topic as a sequel to the law of treaties, to consider what rules applied in addition to those in the draft convention on the law of treaties.

68. He hoped the Commission would ask him to draft a few articles, which might or might not form a protocol to the convention on the law of treaties, but to suspend the final decision on the form they should take.

69. His report, besides giving some historical background, might provide a brief history of the subject, an account of the use of the clause, a selective bibliography, a table of cases and general information by way of introduction.

70. Perhaps, in response to question 5, members might suggest additions to the articles.

71. Some specialized agencies had great experience in the application of the clause and could be of help to the Special Rapporteur and the Commission in deducing rules from practice; their advice might be sought. The Institute of International Law had decided in 1967 to study the most-favoured-nation clause as it appeared in multilateral treaties and had appointed a rapporteur on the subject, whose report would be submitted next autumn. He hoped to obtain much assistance from that report.

72. The CHAIRMAN said he congratulated Mr. Ustor on the working paper he had submitted, which would provide a useful basis for the Commission's discussions.

73. Mr. ALBÓNICO said that the Special Rapporteur's working paper was admirably clear and concise.

74. With regard to the questionnaire, he agreed that the matter should be dealt with primarily from the point of view of international trade and that the study should be confined to the legal aspects. The report should be based on the outline set out in the working paper and should contain draft articles formulated as a sequel to the articles on the law of treaties, though at that stage no decision should be taken on their final form. It should refer to the points made in parts III to XIII of the working paper. The Special Rapporteur should consult specialized agencies and scientific organizations, especially the Institute of International Law.

75. Mr. AGO said that question 2 of the questionnaire should be answered in the affirmative. The Commission was concerned with law and should not consider the economic or social value of the clause.

76. It should consider whether States could make use of the clause, and if so, how and with what effects. The problems of the clause, mentioned in question 1, should therefore be studied with reference to all its fields of application. Those fields were listed in paragraph 14 of the working paper. All possible cases should be taken into consideration.

77. With regard to questions 3 and 5, the report should be based on the outline set out in the working paper, particularly parts VIII - XIII.

78. For the time being he could not say whether any other problems should be examined though perhaps it would be advisable to consider what types of treaty the clause could apply to. A concrete example was provided by a treaty concluded between Switzerland and Italy on taxation questions. When Italy had signed the Peace Treaty, special treatment had been reserved for nationals of the signatory States, and Switzerland had then invoked the most-favoured-nation clause; but the Conciliation Commission had decided that the clause could not apply to the Peace Treaty.

79. It was perhaps rather too early to say what form the work should take (question 4). He was generally in favour of dealing with such matters in conventions, but it was possible that some other form would be more appropriate and the Special Rapporteur would certainly be able to give advice on that point.

80. With regard to question 6, it would be advisable for the Special Rapporteur to consult all the bodies that were familiar with the application of the clause.

81. Mr. ROSENNE said that the Special Rapporteur had produced an extremely useful working paper in which he had not taken a definite position, but had given a few hints as to what line he might wish to take. He (Mr. Rosenne) would also refrain from taking a position on the substance of the matter.

82. His answer to questions 1 and 2 of the questionnaire was that the clause should be analyzed as a legal institution; that would reveal the way in which it was applied. During earlier discussions on the subject, attention had been drawn to the fact that the clause was applied in widely different circumstances. The Special Rapporteur should not confine himself to its application to international trade. In fact, he fully agreed with the last sentence in paragraph 16 of the working paper.

83. His answer to question 3 was in the affirmative, but some thought should also be given to what was being done on the subject, at least by other United Nations bodies or specialized agencies. He had been surprised that the Special Rapporteur had not mentioned GATT in that connexion.

84. His answer to question 4 was the same as that of Mr. Ago.

85. Question 5 dealt with a matter that should be left to the Special Rapporteur's discretion.

86. Question 6 he would answer in the affirmative, with the proviso that the Commission should take care not to come into conflict with other organizations that might have special responsibilities in the field. It was unnecessary for the Commission to give the Special Rapporteur formal instructions as to what contacts should be made with scientific organizations. A few years previously the Commission had decided to exchange papers with the International Law Association and the Institute of International Law.

87. The CHAIRMAN,* speaking as a member of the Commission, said that his answer to question 1 was in the affirmative. Trade questions were the most important in connexion with the most-favoured-nation clause.

* Mr. Castrén.

88. His answer to question 2 was that the study of the clause should be confined to the legal aspects, with the reservation set out in the working paper, namely, without departing from the context of realities.

89. As to question 3, the Special Rapporteur's report should be based on the outline set out in the working paper.

90. It was too soon to give an answer to question 4. Question 5 must be answered in the affirmative, except that diplomatic protection was a separate question, with which it would be better not to deal—at least not in detail.

91. His answer to question 6 was that the Special Rapporteur should consult interested agencies; it could be left to him to decide which were the most appropriate.

The meeting rose at 6 p.m.

976th MEETING

Tuesday, 16 July 1968, at 10 a.m.

Chairman: Mr. José María RUDA

Present: Mr. Ago, Mr. Albónico, Mr. Amado, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Ignacio-Pinto, Mr. Kearney, Mr. Ramangasoavina, Mr. Rosenne, Mr. Tabibi, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Most-favoured-nation clause

(A/CN.4/L.127)

[Item 3 of the agenda]

(continued)

1. The CHAIRMAN invited the Commission to continue its consideration of item 3 of the agenda.

2. Mr. TAMMES said that the Special Rapporteur's valuable working paper (A/CN.4/L.127) on what was a comparatively unexplored subject showed that it had a great many facets. He supported the Special Rapporteur's approach of dealing with the topic essentially from the standpoint of its legal and formal aspects, and also his suggestion that the problems of the most-favoured-nation clause should be dealt with primarily from the point of view of its role in international trade.

3. The concluding paragraphs of the working paper rightly stressed the basic ideas in the matter; the section on the application of the clause to individuals was of particular importance. The Special Rapporteur correctly pointed out that the object of most-favoured-nation treatment was "not a State but its nationals, inhabitants, juristic persons and groups of individuals", who were in the final analysis the beneficiaries of the clause.

4. In the section dealing with customary and conventional exceptions to the operation of the clause, and