Most-Favoured-Nation Clause

Akbar Rasulov, Robin Geiß, Meinhard Hilf

Content type: Encyclopedia entries
Product: Max Planck Encyclopedias of International Law [MPIL]
Module: Max Planck Encyclopedia of Public International Law [MPEPIL]
Article last updated: February 2021

Subject(s):

Taxation — Developing countries — Most-favoured-nation treatment (MFN) — BITs (Bilateral Investment Treaties) — Peace treaties — Vienna Convention on the Law of Treaties — Treaties, effect for third states — Ejusdem generis rule

Published under the auspices of the Max Planck Institute for Comparative Public Law and International Law under the direction of Professor Anne Peters (2021–) and Professor Rüdiger Wolfrum (2004–2020).

A. Notion

1. Definition

1 A most-favoured-nation ('MFN') clause is a treaty provision whereby one → *State* (the granting State) undertakes the obligation to accord to another State (the beneficiary State), in a designated sphere of economic or other relations, treatment not less favourable than the treatment it extends in the same sphere to any other third State. The object of an MFN obligation may extend to the treatment accorded by the granting State to the beneficiary State itself as well as to its nationals or to the products or services originating in or destined for its territory. The basic aim of an MFN clause is to provide the beneficiary State with the legal assurance that the highest level of protection and benefits which the granting State accords to any of its existing or future partners will also be extended to the beneficiary State. Though the core idea behind the MFN principle thus remains relatively straightforward, the actual legal provisions expressing this standard in practice may be drafted in many different ways. As a result, Lord McNair's one-time observation that although it may be 'customary to speak of *the* most-favoured-nation clause, there are many forms of the clause, so that any attempt to generalize upon the meaning and effect of such clauses must be made, and accepted, with caution' (McNair 273) can still be considered pertinent to a large extent. The definition of the MFN clause used in this article is modelled on the definition proposed by the → *International Law Commission (ILC)* in its Draft Articles on Most-Favoured-Nation Clauses prepared in 1978 (Report of the ILC on the Work of its Thirtieth Session 33, 41). However, as the more recent Final Report of the Study Group on the Most-Favoured-Nation Clause (2015) correctly points out, '[t]he circumstances that existed when the Commission dealt with the MFN clause … have changed significantly' (Final Report of the Study Group on the Most-Favoured-Nation Clause [2015] para. 20). While the original materials prepared by the Commission and its rapporteurs still provide a valuable source of information in understanding the role and function of MFN clauses, numerous developments have taken place in international law since then that have supplanted many of the insights contained in those materials. The practice of MFN clauses continues to evolve, and the only general conclusions that can be drawn from it with any degree of certainty are that the obligation to extend MFN treatment has not, as of today, reached the status of a customary rule, and any interpretative issues that may arise in the context of applying MFN clauses must be resolved in accordance with the general rules of the law of treaties (→ *Interpretation in International Law*; → *Treaties, Interpretation of*).

2. Function and Effects

2 As a legal device, MFN clauses perform a number of different functions. At the most immediate level, they help to promote equality between States by preventing the possibility of differential treatment (→ *States, Sovereign Equality*). Indeed, in the words of the → *International Court of Justice (ICJ)*, this, in a certain sense, constitutes the main purpose of the MFN regime: 'to establish and to maintain at all times fundamental equality without discrimination among all of the countries concerned' (→ *United States Nationals in Morocco Case* [Judgment of 27 August 1952] 192). Seen from this perspective, the principal function of MFN clauses would be to insure the beneficiary State against discrimination and establish an equality of opportunity between it and third States (Schwarzenberger [1945] 99).

3 Depending on their formulation, MFN clauses may give rise to obligations of conduct as well as obligations of result. Thus, for example, the MFN provision contained in Art. I (1) General Agreement on Tariffs and Trade ('GATT'; → *General Agreement on Tariffs and Trade [1947 and 1994]*) requires the contracting parties to accord the exact same advantages, favours, privileges, and immunities to all → *like products* originating in or destined for the territories of all other contracting parties. In practice, this clause has been

interpreted as mandating the GATT contracting parties to ensure the equality of treatment for the respective categories of products not only in law (eg how these products are classified formally) but also in fact (eg what advantages are actually accorded to them). This arrangement is commonly believed to establish a more effective system of protection against discriminatory trade policies (*Canada – Certain Measures Affecting the Automotive Industry—Report of the Appellate Body* [31 May 2000] para. 78).

4 At the more systemic level, MFN clauses can also serve the function of promoting international peace and reinforcing multilateralism (→ *Unilateralism/Multilateralism*). By reducing the scope for protectionist and discriminatory policies, MFN arrangements can defuse tensions in the international arena and prevent the escalation of international disputes. This holds true especially for the so-called unconditional MFN clauses where the extension by the granting State to the beneficiary State of concessions accorded by it to a third State is not made contingent upon the provision by the beneficiary of the exact same 'amount' of concessions as those received by the granting State from that third State. The automatic and non-reciprocal character of the obligation to extend benefits in such cases not only helps to prevent the potential distortion of the level playing field but also alleviates whatever concerns the beneficiary State might otherwise have about the granting State's commitment to equality or its intentions for the future. The fact that all favours granted to a third State will automatically apply also to the beneficiary State means that the latter is guaranteed to benefit from the most advantageous arrangements accorded by the granting State to its partners even if such arrangements are established after the conclusion of the agreement between the granting State and the beneficiary State. Seen in this light, the use of unconditional MFN clauses can be said to strengthen the general trend towards multilateralism and harmonization in the international arena, while also limiting the potential for regime fragmentation (→ *Unification and Harmonization of Laws*; → *Fragmentation of International Law*). At the same time, by creating opportunities for free-riding behaviour, unconditional MFN clauses, it has been noted, can also reduce the incentives for the negotiation of more beneficial arrangements and concessions. If State A is required to accord the exact same concessions which it agreed with State B to State C, without State C having to reciprocate, this not only makes any exchange of concessions which State A agrees with State B a lot more 'costly' to State A but also lowers whatever bargaining leverage it might otherwise have against State C (Trebilcock Howse and Eliason 57–59). One potential consequence of this might be to discourage State A from increasing the level of concessions it negotiates with State B or even from entering into a relationship with State C in the first place.

5 In the realm of international trade, the use of MFN clauses is typically said to lead to an overall liberalizing effect. This is due to the fact that harmonizing the levels of trade concessions usually results in the overall lowering of trade barriers. Seen from this angle, MFN clauses can be said to function as trade-promoting devices. They help reduce obstacles to free trade and create conditions for greater trade turnovers. In the realm of international investment law, by contrast, the effects of MFN clauses have been more noticeably political, as MFN clauses typically help to tip the balance of power between the host States and foreign investors in favour of the latter. The reason for this is that an MFN clause contained in a bilateral investment treaty ('BIT') will often enable investors from State A operating in State B to invoke against State B any number of substantive and procedural rights and privileges that have been secured from it by other States for the benefit of their own nationals, without at the same time running the risk of suffering any corresponding contraction of such rights and privileges if those other States' agreements with State B turn out to be less generous in terms of protections they afford to foreign investors than the agreement concluded between State A and State B (*MTD v Chile*; *Bayindir v Pakistan*; *CME v Czech Republic*) (→ *Investments, Bilateral Treaties*). In terms of its distributional impact, this arrangement has been noted to result in heavily biased power

dynamics. The harmonizing and multilateralizing logic of MFN clauses in international investment law thus serves to undermine the regulatory → *sovereignty* of capital-importing States by erasing their capacity to negotiate different deals with different foreign investor communities and to resist the investors' demands for more investment-friendly reforms.

3. Fields of Application

6 Historically, MFN clauses have mostly been a feature of bilateral → *treaties of friendship, commerce and navigation*. A typical example can be found in the Treaty of Peace and Commerce between Great Britain and Sweden ([signed 11 April 1654] 1 BSP 691), which provided: 'The People, Subjects, and Inhabitants of both Confederates, shall have and enjoy in each other's Kingdoms, Countries, Lands, and Dominions, as large and ample privileges, relaxations, liberties, and immunities, as any other Foreigner at present doth, or hereafter shall enjoy'. MFN clauses were also often included in treaties concerning diplomatic and consular relations, for example in the Consular Convention between the Kingdom of Italy and the Turkish Republic ([signed 9 September 1929, entered into force 13 April 1932] 129 LNTS 195; → *Consular Treaties*). In this particular area, MFN clauses would usually provide guarantees with respect to the maintenance of diplomatic and consular premises, and with respect to the privileges granted to diplomatic and consular personnel. From the 1960s onwards, the advent of the Vienna conventions on diplomatic and consular relations (Vienna Convention on Diplomatic Relations [done 18 April 1961, entered into force 24 April 1961] 500 UNTS 95; Vienna Convention on Consular Relations [concluded 24 April 1963, entered into force 24 April 1961] 500 UNTS 95; → *Vienna Convention on Diplomatic Relations [1961]*; → *Vienna Convention on Consular Relations [1963]*) gradually removed the need for MFN clauses in this particular area. Recent years have seen a general narrowing of MFN's field of application. Today, MFN clauses have their greatest impact in the areas of international trade and investment. At the same time, side by side with this trend towards the relative narrowing of MFN's scope, there has also emerged another trend towards the gradual widening of MFN's legal effects, as MFN clauses included in some BITs have started to be used to expand not only those treaties' substantive provisions, but also their procedural and dispute-settlement arrangements (→ *Maffezini v Spain Case*; → *Jurisdictional Impact of Most Favoured Nation Clause*).

7 The GATT, the → *General Agreement on Trade in Services (1994)* ('GATS'), and the → *Agreement on Trade-Related Aspects of Intellectual Property Rights (1994)* ('TRIPS') are the most prominent examples of multilateral → *treaties* containing an MFN clause in the field of international trade. However, the Convention relating to the Status of Refugees ([signed 28 July 1951, entered into force 22 April 1954] 189 UNTS 150) and the Convention relating to the Status of Stateless Persons ([done 28 September 1954, entered into force 6 June 1960] 360 UNTS 130) demonstrate that the clause can also be employed in a far wider context (→ *Aliens*; → *Refugees*; → *Stateless Persons*).

8 On the basis of the list elaborated by the Special Rapporteur of the ILC a more general, albeit non-exhaustive overview of areas in which MFN clauses are employed can be given as follows:

a) International regulation of trade and payments, eg exports, imports, customs tariffs (→ *World Trade, Principles*);

b) International investment protection (→ *Investments, International Protection*);

c) Transport in general and treatment of foreign means of transport, in particular ships, aircraft, trains, motor vehicles (→ *Traffic and Transport, International Regulation*);

d) Establishment of foreign physical and juridical persons, their personal rights and obligations;

e) Establishment of diplomatic, consular and other missions, their privileges and immunities, and treatment in general;

f) International taxation (→ *Taxation, International*);

g) Protection of intellectual and industrial property (→ *Industrial Property, International Protection*);

h) → *Recognition of foreign legislative and administrative acts*; and

i) Administration of justice, eg access to courts and tribunals (→ *Recognition and Enforcement of Foreign Arbitral Awards*; → *Recognition and Enforcement of Foreign Judgments*).

9 Clauses relating to most-favoured treatment are also applicable to subjects of law other than States. For example, the clause entailed in Art. VIII (4) Constitution of the → *Food and Agriculture Organization of the United Nations (FAO)* ([adopted 16 October 1945, entered into force 16 October 1945] 145 BSP 910) could be referred to as a 'most-favoured international organization' clause. Art. VIII obligates members of the FAO, inter alia, to accord to staff members of the FAO other than the Director-General and the senior staff the immunities and facilities which they accord to equivalent staff members of other public international organizations. The purpose of such a provision is to establish and benefit from a general scheme to be accorded to the staff of all international organizations facing similar difficulties while discharging their duties.

B. Historical Development

10 A historical study of the use of MFN regimes shows rather convincingly that the concept of the MFN clause can receive many different expressions in practice.

1. Early History

11 The earliest recorded uses of MFN-style clauses can be traced to the middle of the 11th century. By the 13th century, MFN clauses were in active use all throughout the Mediterranean region. Italian, French, and Spanish merchants actively employed MFN clauses in their dealings with one another, as well as with the Arab princes of northern Africa (Trebilcock Howse and Eliason 54). When their efforts to exclude their competitors met with failure, they would seek to secure from one another trading opportunities at least equal to those of their rivals. Reciprocal versions of the MFN clause did not generally appear before the 15th century and, coinciding with the gradual growth of world commerce, only became common in the 17th century when the MFN clause was discovered as a convenient shorthand to incorporate by way of reference advantages previously granted in other treaties (Jackson 250; → *Reciprocity*). With the gradual decline of → *mercantilism*, the trend towards a wider use of reciprocal MFN clauses in international trade continued.

12 Throughout this time unilateral MFN clauses, nevertheless, remained a constant feature of → *peace treaties* and capitulatory regimes, eg in the → *capitulations* elicited by European rulers from the Ottoman Empire, from South Asian powers, and from China. In the context of peace treaties MFN clauses often served as a tool for the victorious powers to secure their participation in any new → *concessions* other victorious powers would extort from the granting State in future conflicts. It was not until the French-Turkish Peace Treaty of 1802 that a Western State concluded a treaty with Turkey that contained a reciprocity clause (Turkish Act of Accession to the Definitive Treaty of Peace between France, Great Britain, Spain, and the Batavian Republic [signed 27 March 1802] (1801–03) 56 CTS 299).

2. From the 18th Century until World War I: The Conditional and the Unconditional Most-Favoured-Nation Clause

13 The phrase 'most-favoured nation' found its way into the → *commercial treaties* of the 18th century when political and commercial treaties became more clearly differentiated. Until the late 18th century MFN clauses were often drafted in an unconditional manner, ie the right to most-favoured-nation treatment would arise automatically as soon as a third State was accorded more favourable advantages than the beneficiary State with regard to the respective subject-matter.

14 However, economic policies of States did not always match with the equalizing dynamic entailed in this automatism. With the Treaty of Amity and Commerce between the United States and France ([done 6 February 1778] 8 Statutes at Large 12 [1848]) a new version of the MFN clause emerged, the so-called conditional MFN clause (→ *Conditionality*). This version lacked the automatism entailed in the unconditional version as the obligation to extend MFN treatment arose only on the condition that the beneficiary State agreed to provide the granting State with compensation equivalent to that given to it by the third State. Technically, a conditional MFN clause constitutes a *pactum de contrahendo* (→ *Pactum de contrahendo, pactum de negotiando*). The beneficiary State and the granting State merely undertake to enter into negotiations to grant each other certain advantages similar to those granted to third countries. Conditional MFN clauses were used particularly actively by the United States, which sought in this manner to secure protections for its growing industry. Indeed, the wording of Art. II US-French Treaty of 1778, according to which the respective beneficiary would enjoy the favours granted to other nations 'freely, if the Concession was freely made, or on allowing the same Compensation, if the Concession was Conditional', became the model for practically all commercial treaties of the United States until 1923. After the Napoleonic period, in the years 1830–60, the conditional version of the clause was transiently prevalent also in Europe.

15 The so-called Chevalier-Cobden Treaty (Treaty of Commerce between Great Britain and France [signed 23 January 1860, entered into force 4 February 1860] 50 BSP 13), a bilateral treaty of commerce in which Great Britain and France granted each other unconditionally the status of a most-favoured nation, marked the end of conditional MFN clauses in Europe. Henceforth a wave of liberal economic sentiment elevated the unconditional version of the MFN clause to become the universal basis of a vast system of commercial treaties (Snyder 239; Clavin and Dungy 556). This ascendancy continued until World War I, and it is from this time that the famous designation of the clause as 'the corner-stone of all modern commercial treaties' originates (Hornbeck 395).

3. The Modern Version of the Clause: Attempts at Codification

16 The unilateral version of the MFN clause made its reappearance on the international stage in the peace treaties concluding World War I, namely in Art. 267 → *Versailles Peace Treaty (1919)* (Treaty of Peace between the Allied and Associated Powers and Germany [signed 28 June 1919, entered into force 10 January 1920] [1919] 225 CTS 188); in Art. 220 → *St Germain Peace Treaty (1919)* (Treaty of Peace between the Allied and Associated Powers and Austria [signed 10 September 1919, entered into force 16 June 1920] 112 BSP 317); in Art. 150 → *Neuilly Peace Treaty (1919)* (Treaty of Peace between the Allied and Associated Powers and Bulgaria [signed 27 November 1919, entered into force 20 April 1920] [1919] 226 CTS 332), and in Art. 203 → *Trianon Peace Treaty (1920)* (Treaty of Peace between the Allied and Associated Powers and Hungary [signed 4 June 1920, registered 24 August 1921] 6 LNTS 187). In the case of Germany, the victorious Allies were unilaterally granted unconditional MFN treatment for five years, and in the case of Austria, Bulgaria, and Hungary for three years. A considerable measure of disagreement, however, that had developed between the Allies during the war—France advocated the repudiation of all pre-existing MFN commitments, Britain and the United States campaigned against that—foreshadowed the political wrangling that was to follow later (Clavin and Dungy 561–66).

17 In the aftermath of World War I, the poor state of the European economy triggered the adoption of more restrictive economic policies that led to a general decline in the use of MFN clauses. In some cases, this was further exacerbated by the politics of imperialism: the 'imperial preference' system adopted by the British Empire became an important obstacle for the multilateralization of the new international trade regime (Clavin and Dungy 577–78). Thanks to the gradual economic recovery that followed the immediate post-war period, however, by the end of the 1920s the MFN clause began to make a tentative comeback. By 1923, the United States, in light of its altered position in the world economy, took the decision to abandon the use of conditional MFN clauses in favour of the unconditional version. The conditional version of the clause henceforth fell into disuse, as the assumption that the use of unconditional MFN clauses would not only help promote greater trade turnovers but also could defuse many political tensions resulting from trade disputes started to take root. Endorsed by President Wilson in his 'Fourteen Points', by the early 1930s this belief was also actively endorsed by the newly resurgent Soviet Union (Address of the President of the United States Delivered at a Joint Session of the Two Houses of Congress [8 January 1918] in United States Department of State [ed] *Papers relating to the Foreign Relations of the United States 1918* Supp 1 *The World War* [United States Government Printing Office Washington 1933] 12; → *Fourteen Points of Wilson [1918]*; Litvinov 127–28).

18 The widely shared perception of the clause's importance triggered calls for studies of its use in commercial treaties and prompted first attempts at codification (→ *Codification and Progressive Development of International Law*). In the end, however, the Committee of Experts for the Progressive Codification of International Law of the → *League of Nations* arrived at the conclusion that the adoption of a general convention, even though desirable, would encounter serious obstacles. Some of this reasoning was probably a reflection of the general shift in legal-political opinion: the co-optation of MFN arguments by the proponents of the Austro-German customs union threw in stark relief the fundamental susceptibility of MFN narratives to politicization (Clavin and Dungy 578). The study of the subject continued throughout the interwar period under the auspices of the Economic Committee of the League of Nations and was returned to with regular intervals at different international conferences. In 1936 the → *Institut de Droit international*, intending to promote an unofficial codification of the topic, adopted a resolution on the effects of MFN clauses in

matters of commerce and navigation proposing a number of guidelines for the formulation of MFN clauses in the future.

19 Even though no formal agreement had been reached during the interwar period, support for the use of unconditional MFN clauses remained widespread. It is against this background, that in 1947, the principle of MFN treatment was incorporated into Art. I of the newly adopted GATT:

> With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation … any advantage, favour, privilege or immunity granted by any contracting party to any product … shall be accorded immediately and unconditionally to the like product … of all other contracting parties.

The importance of the MFN clause contained in Art. I GATT came subsequently to be reflected in its characterization as 'a cornerstone of the GATT and … one of the pillars of the WTO' (WTO *Canada – Certain Measures Affecting the Automotive Industry—Report of the Appellate Body* para. 69).

20 The desirability of conducting international trade on the basis of an unconditional MFN arrangement has also been acknowledged in other international regimes, such as, for example, in Art. 8 General Principles adopted by the first → *United Nations Conference on Trade and Development (UNCTAD)* (UNCTAD 'General and Special Principles' in 'Final Act' [15 June 1964] UN Doc E/CONF.46/141 vol 1, 18), Art. 26 → *Charter of Economic Rights and Duties of States (1974)* (UNGA Res 3281 [XXIX] [12 December 1974] GAOR 29th Session Supp 31 vol 1, 50), in the → *Helsinki Final Act (1975)* (Conference on Security and Co-operation in Europe: Final Act of Helsinki [adopted and entered into force 1 August 1975] (1975) 14 ILM 1292), in Art. II GATS in 1994, and in Art. 1 TRIPS in 1994. In the → *United Nations (UN)* context, codification efforts gained a new momentum in the 1970s, when the ILC began work on what eventually became a draft document consisting of 30 articles that was submitted to the UN General Assembly ('UNGA'; → *United Nations, General Assembly*) in 1978. The purpose of the document was to serve as the basis for a future multilateral convention on the use of MFN clauses. In the end, however, the convention never materialized. It was only in 1991 that the UNGA finally brought the draft articles to the attention of Member States and intergovernmental organizations, recommending them 'for their consideration in such cases and to such extent as they deem appropriate' (UNGA 'Provisional Verbatim Record of the 67th Meeting' [23 December 1991] UN Doc A/46/PV.67; UNGA 'Consideration of the Draft Articles on Most-Favoured-Nation Clauses: Report of the Sixth Committee' [15 November 1991] UN Doc A/46/655). In 2006, the ILC's Working Group on the Long-Term Programme of Work returned to the topic, raising the possibility of bringing the subject of MFN clauses back on the ILC's agenda. In 2008, the Commission established a new study group to consider the topic in greater detail but with a particular focus on the use of MFN clauses in the context of investment agreements. In 2015, after 24 meetings, the Study Group finally submitted its report. The report focuses primarily on issues relating to the interpretation of MFN clauses and refrains from providing any recommendations on substantive matters. Though the usefulness of the 1978 draft articles still remains questionable, during the discussions held in the Sixth Committee (→ *United Nations, Sixth Committee*), it has been generally agreed that the ILC should not try to produce any new draft articles on the subject of MFN, nor revise the 1978 draft articles, but only identify trends in the interpretation of MFN clauses and on that basis provide guidance for treaty negotiators, policymakers, and legal practitioners (Final Report of the Study Group on the Most-Favoured-Nation Clause [2015] para. 7).

C. Current Legal Situation

1. General Rules of Application

21 The obligation to extend MFN treatment is not a rule of → *customary international law*, nor can a right to such treatment be derived from the general principle of sovereign equality. Some scholars have argued that in the absence of exceptional circumstances it would be an → *unfriendly act* for a State to refuse, without serious reasons, another State's offer to establish an MFN regime between them (see Ustor 'Most-Favoured-Nation Clause' in R Bernhardt [ed] *Encyclopedia of Public International Law* vol 3 [Elsevier Amsterdam 1997] 468–73, 470). There is no evidence, however, that → *State practice* supports this view.

22 As treaty provisions, MFN clauses are subject to the general rules of treaty interpretation. Historically, one of the most significant interpretative issues raised by the use of MFN clauses concerned the conditionality of the obligations imposed under the clause (eg Treaty between the United States of America and the French Republic [done 30 April 1803] 8 Statutes at Large 200 [1848], the so-called 'Louisiana Purchase'). Today, the most common interpretative problems that arise in relation to MFN clauses revolve around the extent of the MFN entitlement and the scope of the treatment that the granting State has to provide under an MFN clause.

23 Unilateral MFN clauses, historically a common feature of capitulatory regimes and peace treaties, have now largely fallen into disuse. They are resorted to only in very rare cases, such as when MFN treatment is accorded to the ships of a land-locked State that is not, by virtue of its geographical circumstances, able to offer the granting State equal treatment in return (→ *Land-Locked States*).

24 Depending on the exact wording of the MFN clause in question, a party to a treaty including such a clause may act both as the granting State and the beneficiary State at the same time. A classical illustration of this scenario is Art. I GATT. In many cases in the contemporary practice, MFN clauses are also paired with a national treatment clause (→ *National Treatment, Principle*). While an MFN clause, as a *renvoi* to another treaty, prohibits the granting State from discriminating among its international partners, a national treatment clause, as a *renvoi* to municipal law, prohibits it from discriminating against foreign nationals and products. A classical illustration of a national treatment clause can be found in Art. III GATT.

(a) Source of the Right to Most-Favoured-Nation Treatment

25 The right of the beneficiary State to receive from the granting State MFN treatment is anchored solely in the MFN clause itself and not in any other source. It is the treaty which contains the MFN clause—the so-called basic treaty—that provides the legal basis for the beneficiary State to demand the extension of additional advantages, rights, and benefits presumed by the concept of the MFN treatment (→ *Anglo-Iranian Oil Company Case* [Judgment of 22 July 1952] 110). The third-party treaty on the basis of which the actual scope and content of these additional advantages, rights, and benefits may be established, from the legal point of view, remains a *res inter alios acta* for the beneficiary. The use of MFN clauses thus does not constitute an exception to the rule that treaties produce effects only as between the contracting parties (*pacta tertiis nec nocent nec prosunt*; see Art. 34 Vienna Convention on the Law of Treaties [concluded 23 May 1969, entered into force 27 January 1980] 1155 UNTS 331; → *Vienna Convention on the Law of Treaties [1969]*; → *Treaties, Third-Party Effect*).

(b) The Clause's Scope Ratione Temporis

26 The initiation as well as the termination of the clause's effects hinge on the conduct undertaken by the granting State towards third States. The MFN clause begins to operate, ie the right to more favourable treatment arises as soon as any third State is accorded more favourable advantages, rights, or benefits than the beneficiary (*United States Nationals in Morocco Case* [Judgment of 27 August 1952] 187). The mere fact of the granting State extending a more favourable treatment to a third State—be it the product of its treaty obligations, a legislative act, an administrative decision, or any other action undertaken by the granting State—is sufficient to activate the MFN clause. Depending on its formulation, the rights of the beneficiary State may accrue to it irrespective of whether the third State in fact avails itself of the benefits owed to it.

27 The clause ceases to operate at the moment when the extension of the relevant treatment by the granting State to the third State is terminated or suspended (*United States Nationals in Morocco Case* [Judgment of 27 August 1952] 191). The beneficiary State will have no right to claim the perpetuation of the favours extended to the third State, nor can it object to the termination of the third-party treaty (Jaenicke 498). Moreover, as a general rule the rights derived from a most-favoured-nation clause may also be brought to an end by virtue of the termination or suspension of the treaty containing the clause on the basis of the provisions laid out in section 3 Vienna Convention on the Law of Treaties.

(c) The Clause's Scope Ratione Materiae

28 The extent of the rights to which the beneficiary State may lay claim is confined by two factors. Firstly, according to the *ejusdem generis* principle, it may not claim any other rights than those which fall within the subject-matter of the MFN clause in question. Secondly, the extent of the favours due to the beneficiary State may not exceed the extent of the benefits accorded by the granting State to the third State. Traditionally, it would be commonly assumed that the concept of benefits in this context covered only substantive advantages, rights, and privileges. In the case of *Maffezini v Spain*, however, an investment tribunal took the view that, under some circumstances, it could also be extended to procedural and jurisdictional matters: 'if a third party treaty contains provisions for the settlement of disputes that are more favorable to the protection of the investor's rights and interests than those in the basic treaty, such provisions may be extended to the beneficiary of the most favored nation clause as they are fully compatible with the *ejusdem generis* principle' (*Maffezini v Spain* [2000] para. 56). Since then, it seems safe to conclude, the standard assumption in international law has become that, depending on its formulation, an MFN clause can be used to broaden not only the core substantive provisions of the basic treaty but also its procedural and jurisdictional scope, such as when the basic treaty limits the availability of a particular dispute settlement procedure to a certain type of disputes or to disputes the resolution of which proceeds according to a specific procedure (Final Report of the Study Group on the Most-Favoured-Nation Clause [2015] para. 81).

(d) Conditions and Exceptions

29 Though conditional MFN clauses in the classical sense of the term are no longer used in contemporary international relations, most MFN regimes today still rely on various 'conditioning' terms. The reason for this is simple: unconditional MFN arrangements can be risky. They ensure equal rights but not necessarily an equality of material advantages. The employment of unconditional clauses thus carries a significant degree of uncertainty for the contracting parties. In recognition of this fact, State practice has generated a wide range of legal devices in the form of various restrictions and exceptions.

30 According to Art. IX (3) Marrakesh Agreement establishing the World Trade Organization ([adopted 15 April 1994, entered into force 1 January 1995] 1867 UNTS 154) any obligation imposed on a member State of the → *World Trade Organization (WTO)* under WTO law may be suspended pursuant to a special dispensation granted by the ministerial conference of the WTO. In addition to this, the WTO legal system also contains a whole range of other provisions that limit the operation of the various MFN clauses included within it. For example, according to Art. XIV GATT the contracting parties may set aside their MFN obligations to safeguard their balance of payments. They may also waive the MFN obligations in circumstances provided for under Art. XXV (5) GATT (regional integration exceptions) (→ *Waiver*). Art. XXIV (3) (a) GATT allows exceptions regarding frontier traffic with adjacent countries and Art. XX GATT entails a series of general exceptions for measures necessary to protect human, animal, or plant life or health (→ *Sanitary and Phytosanitary Measures*); to secure compliance with laws and regulations which are not otherwise inconsistent with the provisions of the GATT; to protect public morals; or relating to the conservation of exhaustible natural resources. In a similar fashion, Art. XXI GATT allows deviation from most-favoured-nation treatment for national security reasons. In recent practice, the two most significant challenges to the MFN regime in the GATT have been the exception relating to → *customs unions* and → *free trade areas* entailed in Art. XXIV GATT and the implementation of a 'generalized, non-reciprocal, non-discriminatory system of preferences' under the so-called Enabling Clause (see paras 35–37 below).

2. Special Legal Problems

(a) The Ejusdem Generis Principle Applied in Practice

31 In the absence of distinct specifications within a clause, the ascertainment of what subject-matters, persons, or things fall within the same category has proven to be rather difficult as it hinges on the interpretation of the intended scope of the clause. International jurisprudence contains ample evidence of the difficulties appertaining to the application of the clause in practice. In the recent past such problems can be seen in particular in the context of modern investment treaties, which nowadays regularly include MFN clauses. Here, a rather mechanical application of the clause disregarding the parties' original intentions poses the risk of altering treaty arrangements specifically made by the parties and extending MFN treatment to areas which were not meant to be included (Dolzer and Schreuer 186–87).

32 The first attempts to offer a systematic resolution to the question to what extent MFN clauses have the potential of altering the treaty arrangements of the basic treaty can be traced to the 1950s. In the *United States Nationals in Morocco Case*, the ICJ touched upon the question whether a clause contained in a treaty of commerce could be understood to cover → *consular jurisdiction* ([Judgment of 27 August 1952] 191). Four years later, the Commission of Arbitration in the → *Ambatielos Case* opted for a somewhat broader understanding of the legal mechanics of the MFN obligation, holding that '"the administration of justice", when viewed in isolation, [was] a subject-matter other than "commerce and navigation", but this [was] not necessarily so when it [was] viewed in connection with the protection of the rights of traders' (*Ambatielos Arbitration [Greece v United Kingdom]* [6 March 1956] 107). It is largely on the basis of this reasoning that at the turn of the century the *Maffezini* tribunal arrived at the conclusion that there existed 'good reasons to conclude that today dispute settlement arrangements are inextricably related to the protection of foreign investors, as they are also related to the protection of rights of traders under treaties of commerce' (*Maffezini v Spain Case [Decision of the Tribunal on Objections to Jurisdiction of 25 January 2000]* para. 54). Subsequently, however, another ICSID Tribunal adopted a more restrictive understanding by excluding from the clause's scope such provisions in third-party treaties as would refer to 'the core of matters that must

be deemed to be specifically negotiated by the Contracting parties' (*Técnicas Medioambientales Tecmed SA v United Mexican States [Award of 29 May 2003]* para. 69) (→ *International Centre for Settlement of Investment Disputes [ICSID]*; → *Investment Disputes*; → *Arbitration: International Centre for Settlement of Investment Disputes [ICSID]*). This more restrictive interpretation was later reaffirmed in several other investment-related cases, one of which held that: '[A]n MFN provision in a basic treaty does not incorporate by reference dispute settlement provisions in whole or in part set forth in another treaty, unless the MFN provision in the basic treaty leaves no doubt that the contracting parties intended to incorporate them' (*Plama Consortium Limited v Republic of Bulgaria [Decision on Jurisdiction of 8 February 2005]* para. 223; see also *Salini Costruttori SpA and Italstrade SpA. v Hashemite Kingdom of Jordan [Decision of the Tribunal on Jurisdiction of 29 November 2004]* paras 102–19). At the same time, in another ICSID case, the tribunal went even further than the *Maffezini* tribunal by allowing the claimant to use an MFN clause to 'import' a State's → *consent* to a particular arbitral forum found in another BIT (*Garanti Koza v Turkmenistan [Decision on Jurisdiction of 3 July 2013]* ICSID Case No ARB/11/20; see also De Brabandere). While it is not clear to what extent this division of opinion reflects anything more far-reaching and substantive than formal differences in the construction of the respective MFN clauses, it seems unlikely that a further extension of the *Maffezini* approach would go unchallenged. The common position within the international investment law community still remains that an investor that does not meet the jurisdictional conditions under the basic treaty should not generally be able to circumvent this fact by invoking an MFN provision (Final Report of the Study Group on the Most-Favoured-Nation Clause [2015] paras 104–14).

33 The negotiating history of the → *Dominican Republic-Central America Free Trade Agreement (2004)* ('CAFTA-DR') reflects how such ambiguities in the interpretation of MFN clauses can be avoided by way of careful drafting. The parties to the CAFTA-DR, referring explicitly to the *Maffezini Case*, included a footnote in the negotiating history to reflect their shared interpretation, providing that the particular MFN clause entailed in the investment chapter of this agreement does not encompass international dispute resolution mechanisms 'and therefore could not reasonably lead to a conclusion similar to that of the *Maffezini Case*'.

(b) Free Trade Areas and Customs Unions

34 International trade law recognizes two main types of regional trade integration arrangements: free trade areas and customs unions. The main difference between them is that in the latter case all parties must maintain the same external tariffs and trade policies vis-à-vis the rest of the world, whereas in the former case they only have to work towards the elimination of tariff and non-tariff barriers in their trade with one another. Art. XXIV GATT therefore authorizes the establishment of regional integration arrangements only if certain conditions are met. As of 15 February 2021 there were 341 → *regional trade agreements* in force (<https://rtais.wto.org/UI/PublicAllRTAList.aspx> [15 February 2021]). Regional trade agreements are generally considered to be a threat to the MFN regime established under Art. I GATT. This does not mean that they are necessarily also a threat to the WTO's overall goals and objectives. If they are designed in such a way that they do not penalize non-regional trade, ie trade coming from or destined for the rest of the world, regional trade agreements can help accelerate the process of trade liberalization and potentially contribute to economic growth. However, even in this case, the process of their multiplication will undermine the general integrity of the level playing field established under the GATT MFN clause by fragmenting the global trading space into a panoply of crisscrossing and overlapping 'regions' and reinforcing the so-called 'spaghetti bowl' effect.

On this basis some authors have gone so far as to question the future of the MFN rule as a fundamental principle of international trade (Cone 564, 583).

(c) Preferences for Developing States

35 The trade needs of a developing economy are substantially different from those of a developed economy (→ *Developing Countries*). The question how to accommodate this asymmetry has plagued international trade law since the start of → *decolonization*. In the second half of the 1960s, in response to the growing demands of the developing countries for better and more preferential conditions of market access, the idea of setting up what later came to be called a 'generalized system of preferences' ('GSP') gradually began to take root. The basic contours of the GSP regime were first discussed directly at the second session of UNCTAD in 1968. In 1971, the GATT contracting parties, following the lead of UNCTAD, decided to waive the requirements imposed under the MFN clause of Art. I GATT for a period of 10 years, permitting developed countries to grant preferential tariff treatment to the exports of developing countries. Against the background of the continuing decolonization struggles and the → *new international economic order (NIEO)* initiative, in 1979, this arrangement was extended further and formalized on the basis of the 'Decision on Differential and More Favourable Treatment, Reciprocity, and Fuller Participation of Developing Countries'. This decision, known today as the 'Enabling Clause', brought the GSP regime into the GATT legal order. Crucially, however, rather than imposing on the developed countries a duty to grant the developing world preferential conditions of trade, as the proponents of the NIEO had originally advocated, the Enabling Clause only gave them permission to do so. Importantly, the debate about GSP that took place during this period once again revived the fundamental divergence between the French and the Anglo-American approaches. The theory of the so-called 'international law of development' (*droit international du développement*) that became prominent in the French-speaking literature during the 1970s and the 1980s in the end came to advocate not only a principled rejection of all versions of MFN formalism but also the adoption of something akin to a positive discrimination duty in favour of the developing countries (Pellet [1987]; Bennouna [1983]; Flory [1977]). Of particular relevance in this context became the concept of compensatory inequality and the advocacy of 'double standards' in relation to the principle of non-discriminatory treatment. While both of these propositions attracted a great deal of attention even from the most conservative elements of the Francophone international law establishment, neither of them enjoyed any prominence in the English-speaking literature (Feuer [1991]; Virally [1983]; de Lacharrière [1973]).

36 Originally conceived as a system that was supposed to be generalized and non-discriminatory, the GSP regime as it eventually came to be implemented under the Enabling Clause consists now of a series of individual national schemes which differ in many respects, not least with regard to product coverage and → *rules of origin*. The introduction of preferential treatment remains voluntary, any preferences issued may be revoked at any time, and donor countries continue to reserve the right to apply such preferences on a selective basis, ie to grant them to some but not all developing countries. No less importantly, the granting of preferences is often made contingent on the developing country's attainment of various non–trade-related objectives, such as labour, environmental, or criminal justice–related goals. Unsurprisingly, the political biases of the GSP and its broader geopolitical implications have been called into question.

37 The question of conditioning the granting of preferences under the Enabling Clause most notably came to the fore in the dispute between India and the → *European (Economic) Community* regarding the conditions under which the EC accorded tariff preferences to developing countries. In its decision of April 2004, the WTO Appellate Body concurred with the Panel's finding that the Enabling Clause did not exclude the applicability of Art. I (1) GATT 1994, but constituted an exception thereto (WTO *EC – Conditions for the Granting of*

Tariff Preferences to Developing Countries—Report of the Appellate Body para. 190) (→ *Appellate Body: Dispute Settlement System of the World Trade Organization [WTO]*; → *Panel: Dispute Settlement System of the World Trade Organization [WTO]*). It rejected, however, the Panel's argument that the Enabling Clause generally required identical tariff preferences to be accorded to all developing countries without differentiation, holding instead that the requirement for non-discriminatory treatment envisaged under the Enabling Clause only required identical treatment of similarly-situated beneficiaries, assessed in the light of their respective levels of development, financial, and trade needs (ibid paras 153, 163). In so finding, the Appellate Body in effect approved the practice of conditional GSP programs.

D. Conclusion

38 There exists no single correct way to construct an MFN regime. Many different versions of MFN clauses are used in contemporary practice. As a legal device, MFN clauses offer States a flexible mechanism that can be adapted to different contexts and tailored according to different interests. Even though the recent proliferation of regional trade agreements carries the potential to undermine the effectiveness of the most prominent MFN regime in contemporary international law—the MFN regime of the WTO—the continuing employment of MFN clauses in other international legal contexts, not least in international investment law, demonstrates their enduring relevance and effectiveness.

Select Bibliography

SK Hornbeck 'The Most-Favored-Nation Clause' (1909) 3 AJIL 395–422.

M Litvinov 'Litvinov at Geneva' (1931) 9 Soviet Union Review 122.

B Nolde 'La clause de la nation la plus favorisée et les tarifs préférentiels' (1932) 39 RdC 5–130.

G Schwarzenberger 'The Most-Favoured-Nation Standard in British State Practice' (1945) XXII BYIL 96–121.

G Schwarzenberger 'The Province and Standards of International Economic Law' (1948) 2 ILQ 402–20.

RC Snyder *The Most-Favored-Nation Clause: An Analysis with Particular Reference to Recent Treaty Practice and Tariffs* (King's Crown Press New York 1948).

G Jaenicke 'Meistbegünstigungsklausel' in H-J Schlochauer (ed) *Wörterbuch des Völkerrechts* vol 2 (De Gruyter Berlin 1961) 497–503.

AD McNair *The Law of Treaties* (Clarendon Oxford 1961).

R Zinser *Das GATT und die Meistbegünstigung: Das Kernstück des GATT und seine Bedeutung für die internationalen Wirtschaftsbeziehungen* (Lutzeyer Baden-Baden 1962).

JH Jackson *World Trade and the Law of GATT: A Legal Analysis of the General Agreement on Tariffs and Trade* (Bobbs-Merrill Indianapolis 1969).

P Pescatore 'La clause de la nation la plus favorisée dans les conventions multilatérales' (1969) 53(1) AnnIDI 1–292.

D Vignes ‘La clause de la nation la plus favorisée et sa pratique contemporaine: Problèmes posés par la Communauté économique européenne’ (1970) 130 RdC 207–349.

G de Lacharrière ‘L’influence de l’inégalité de développement des états sur le droit international’ (1973) 139 RdC 227–67.

M Flory *Droit international du développement* (Presses Universitaires de France Paris 1977).

M Bennouna *Droit international du développement: Tiers monde et interpellation du droit international* (Berger-Levrault Paris 1983).

M Virally ‘Panorama du droit international contemporain. Cours géneral de droit international public’ (1983) 183 RdC 9–382.

A Pellet *Droit international du développement* (2nd edn Presses Universitaires de France Paris 1987).

S Rubin ‘Most-Favored-Nation Treatment and the Multilateral Trade Negotiations: A Quiet Revolution’ (1980–81) 6 IntlTLJ 221–41.

G Feuer ‘International Development Law: The Establishment of a Francophone School of Thought’ (1991) 3(2) European Journal of Development Research 70–77.

C Tietje ‘Die Meistbegünstigungsverpflichtung im Gemeinschaftsrecht’ (1995) 30 EuR 398–415.

WF Schwartz and AO Sykes ‘Toward a Positive Theory of the Most Favored Nation Obligation and Its Exceptions in the WTO/GATT System’ (1996) 16 International Review of Law and Economics 27–51.

Y Wang ‘Most-Favoured-Nation Treatment under the General Agreement on Trade in Services and Its Application in Financial Services’ (1996) 30(1) JWT 91–124.

F Stockmann ‘Völkerrechtliche Meistbegünstigungsklausel und Internationales Steuerrecht’ (1999) 8 Internationales Steuerrecht 129–37.

WJ Davey and J Pauwelyn ‘MFN-Unconditionality: A Legal Analysis of the Concept in View of Its Evolution in the GATT/WTO Jurisprudence with Particular Reference to the Issue of “Like Product”’ in T Cottier and PC Mavroidis (eds) *Regulatory Barriers and the Principle of Non-Discrimination in World Trade Law* (University of Michigan Press Ann Arbor 2000) 13–50.

L Ehring ‘De Facto Discrimination in World Trade Law: National and Most-Favoured-Nation Treatment—or Equal Treatment?’ (2002) 36 JWT 921–77.

S Schmahl ‘“Enabling Clause” versus Meistbegünstigungsprinzip: Die EG-Zollpräferenzen auf dem Prüfstand des Dispute Settlement Body der WTO’ (2004) 42 Archiv des Völkerrechts 389–410.

SM Cone ‘The Promotion of Free-Trade Areas Viewed in Terms of Most-Favored-Nation Treatment and “Imperial Preference”’ (2005) 26 MichJIntlL 563–85.

R Dolzer ‘Meistbegünstigungsklauseln in Investitionsschutzverträgen’ in J Bröhmer (ed) *Internationale Gemeinschaft und Menschenrechte: Festschrift für Georg Ress zum 70. Geburtstag am 21. Januar 2005* (Heymann Köln 2005) 47–54.

DH Freyer and D Herlihy ‘Most-Favored-Nation Treatment and Dispute Settlement in Investment Arbitration: Just How “Favored” Is “Most-Favored”?’ (2005) 20 ICSID Rev/FILJ 58–83.

I Hofbauer ‘Most-Favoured-Nation Clauses in Double Taxation Conventions: A Worldwide Overview’ (2005) 33 Intertax 445–53.

R Wolfrum (ed) *Max Planck Commentaries on World Trade Law* 7 vols (Nijhoff Leiden 2006–2009).

S Vesel ‘Clearing a Path through a Tangled Jurisprudence: Most-Favored-Nation Clauses and Dispute Settlement Provisions in Bilateral Investment Treaties’ (2007) 32 YaleJIntlL 125–89.

R Dolzer and C Schreuer *Principles of International Investment Law* (OUP Oxford 2008).

RP Alford ‘The Convergence of International Trade and Investment Arbitration’ (2013) 12 Santa Clara Journal of International Law 35.

M Trebilcock R Howse and A Eliason *The Regulation of International Trade* (4th edn Routledge London 2013).

E De Brabandere ‘Importing Consent to ICSID Arbitration? A Critical Appraisal of *Garanti Koza v. Turkmenistan*’ (2014) 5(2) Investment Treaty News 12–15.

P Clavin and M Dungy ‘Trade, Law, and the Global Order of 1919’ (2020) 44 Diplomatic History 554–79.

Select Documents

Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (signed 15 April 1994, entered into force 1 January 1995) 1869 UNTS 299.

Ambatielos Arbitration (Greece v United Kingdom) (1956) 12 RIAA 83.

Anglo–Iranian Oil Co Case (United Kingdom v Iran) (Preliminary Objection) [1952] ICJ Rep 93.

Bayindir v Pakistan (Decision on Jurisdiction of 14 November 2005) ICSID Case No ARB/03/29.

CME v Czech Republic (Final Award of 14 March 2003) (2006) 9 ICSID Rep 164.

GATT Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (‘Enabling Clause’) in GATT *The Texts of Tokyo Round Agreements* (GATT Geneva 1994) 191.

General Agreement on Tariffs and Trade (adopted 30 October 1947, entered into force 1 January 1948) 55 UNTS 187.

General Agreement on Tariffs and Trade 1994 (adopted 15 April 1994, entered into force 1 January 1995) 1867 UNTS 190.

General Agreement on Trade in Services (adopted 15 April 1994, entered into force 1 January 1995) 1869 UNTS 183.

Generalized System of Preferences (25 June 1971) BISD 18S/24.

Institut de Droit International 'La clause de la nation la plus favorisée dans les conventions multilaterals' (10 September 1969) (1969) 53(2) AnnIDI 361–62.

Institut de Droit International 'Les effets de la clause de la nation la plus favorisée en matière de commerce et de navigation' (23 April 1936) (1936) 39(2) AnnIDI 289–92.

League of Nations Committee of Experts for the Progressive Codification of International Law 'The Most-Favoured-Nation Clause' (March–April 1927) League of Nations Document C.205.M.79.1927.V.

League of Nations Economic Committee 'Equality of Treatment in the Present State of International Commercial Relations: The Most-Favoured-Nation Clause' (1936) League of Nations Document C. 379.M.250.1936.II.B.

League of Nations 'Recommendations of the Economic Committee relating to Tariff Policy and the Most-Favoured-Nation Clause' (1933) League of Nations Document E. 805.1933.II.B.1.

Maffezini v Kingdom of Spain (Decision of the Tribunal on Objections to Jurisdiction of 25 January 2000) ICSID Case No ARB/97/7 (2002) 5 ICSID Rep 396.

MTD v Chile (Award of 25 May 2004) ICSID Case No ARB/01/7 (2007) 12 ICSID Rep 6.

Plama Consortium Limited v Republic of Bulgaria (Decision on Jurisdiction of 8 February 2005) ICSID Case No ARB/03/24 (2005) 20 ICSID Rev/FILJ 262.

Rights of Nationals of the United States of America in Morocco (France v United States of America) [1952] ICJ Rep 176.

Salini Costruttori SpA and Italstrade SpA v Hashemite Kingdom of Jordan (Decision of the Tribunal on Jurisdiction of 29 November 2004) ICSID Case No ARB/02/13 (2005) 20 ICSID Rev/FILJ 148.

Técnicas Medioambientales Tecmed SA v United Mexican States (Award of 29 May 2003) ICSID Case No ARB(AF)/00/2 (2004) 19 ICSID Rev/FILJ 158.

UN ILC 'Final Report of the Study Group: Most-Favoured-Nation Clause' (14 August 2015) UN Doc A/70/10, Annex.

UN ILC 'Report of the International Law Commission on the Work of its Thirtieth Session' (8 May–28 July 1978) GAOR 33rd Session Supp 10.

UN ILC ‘Report of the Working Group: Most-Favoured-Nation Clause’ (20 July 2007) UN Doc A/CN.4/L.719.

UN ILC Special Rapporteur E Ustor ‘The Most-Favoured-Nation Clause in the Law of Treaties’ (19 June 1968) UN Doc A/CN.4/L.127.

UNCTAD ‘Most-Favoured-Nation Treatment’ (December 1998) UN Doc UNCTAD/ITE/IIT/10 (vol III).

UNGA ‘Consideration of the Draft Articles on Most-Favoured-Nation Clauses: Analytical Compilation of Comments and Observations from Governments, Organs of the United Nations Which Have Competence in the Subject-Matter and Interested Intergovernmental Organizations: Report of the Secretary-General’ (18 September 1980) UN Doc A/35/443.

WTO *Canada – Certain Measures Affecting the Automotive Industry—Report of the Appellate Body* (31 May 2000) WT/DS139/AB/R and WT/DS142/AB/R.

WTO ‘Differential and More Favourable Treatment: Reciprocity and Fuller Participation of Developing Countries’ (28 November 1979) L/4903.

WTO *EC – Conditions for the Granting of Tariff Preferences to Developing Countries—Report of the Appellate Body* (7 April 2004) WT/DS246/AB/R.

WTO *EC – Conditions for the Granting of Tariff Preferences to Developing Countries—Report of the Panel* (1 December 2003) WT/DS246/R.

WTO ‘The Fundamental WTO Principles of National Treatment, Most-Favoured-Nation Treatment and Transparency’ (14 April 1999) WT/WGTCP/W/114.