

Il Trattamento Della Nazione Più Favorita [Most Favored Nation Treatment], by Ennio Triggiani

Patrizio Merciai

Follow this and additional works at: <http://digitalcommons.law.umaryland.edu/mjil>



Part of the [International Law Commons](#)

Recommended Citation

Patrizio Merciai, *Il Trattamento Della Nazione Più Favorita [Most Favored Nation Treatment]*, by Ennio Triggiani, 9 Md. J. Int'l L. 313 (1985).

Available at: <http://digitalcommons.law.umaryland.edu/mjil/vol9/iss2/27>

This Article is brought to you for free and open access by DigitalCommons@UM Carey Law. It has been accepted for inclusion in Maryland Journal of International Law by an authorized administrator of DigitalCommons@UM Carey Law. For more information, please contact smccarty@law.umaryland.edu.

IL TRATTAMENTO DELLA NAZIONE PIÙ FAVORITA (MOST FAVORED NATION TREATMENT). By Ennio Triggiani. Naples, Italy: Jovene, 1984, 267 pp.

The most favored nation (MFN) status has been instrumental in liberalizing world trade and in removing discrimination from such matters as diplomatic and consular relations, jurisdiction with respect to aliens, and so on. The origin of the MFN clause in international agreements can be traced as far back as the Middle Ages, and it has been used extensively during the last two centuries. More recently, the clause has become a cornerstone of the world trading system under the General Agreement on Tariffs and Trade¹ (GATT). Linked to provisions on reciprocity, the clause in Article I of GATT is largely the result of the United States' insistence on multilateral machinery for liberalizing international trade, and it served its purpose in the fifties and sixties. But the very concept of equality of treatment as implemented by the MFN clause has been challenged in the present system, through the emergence of regional integration schemes and the granting of trade preferences to developing countries.

In *Il Trattamento Della Nazione Più Favorita*, Ennio Triggiani, from the University of Bari, Italy, has written a thorough review of the MFN treatment. The book is divided into two main parts. The first analyzes the features of the MFN clause as found in international treaties; the second deals with possible exceptions to the clause, that is, certain circumstances under which the treatment granted to a certain category of states may not be extended to others. Four such circumstances are described: special geographical features that characterise neighboring states and land-locked states, regional integration, development disparities, and structural disparities of East-West relations.

The first part, in addition to describing the history of the MFN concept, provides a detailed analysis of the use and features of the clause in treaties and other international instruments. Practice with respect to several subject matters is reviewed, as well as the differences and similarities between MFN, national, non-discriminatory and reciprocal treatments. Special attention is given to the so-called conditional clause, to which the United States has resorted extensively since the nineteenth century. Under that provision, only those advantages which had been given freely to third parties are to be granted automatically to MFN beneficiaries; other concessions must be negotiated. Thus, the conditional MFN clause is substantially

1. General Agreement on Tariffs and Trade, *opened for signature* Oct. 30, 1947, 61 Stat. A3, T.I.A.S. No. 1700, 55 U.N.T.S. 194.

different from the unconditional provision which has prevailed in Europe and throughout the whole world. One of the conclusions of the author is that the recent multiplication of exceptions is currently transforming the formerly unconditional system as embodied in the GATT into a conditional scheme, depriving it of its unifying effect and encouraging the recognition of a whole range of country categories based on the level of development, participation in a regional economic organization, and so on.

The discussion of those exceptions, which takes up the whole second part of the book, is therefore of utmost interest. The case of free-trade zones, custom unions and regional integration schemes is examined thoroughly. However, a more detailed discussion of the evolution of the relationship between the GATT and the EEC — the latter having never been granted a formal waiver of MFN obligations — and of the complex legal situation arising thereof would have aided the analysis.

This shortcoming has been avoided in the next chapter on developing countries, in which the legal significance of *sui generis* instruments like the enabling clause for preferential schemes, adopted during the Tokyo Round, is discussed within the context of evolving international relations. The author also reviews the graduation issue, as advocated notably by the United States, which calls for a differentiation among Third World countries according to the level of economic development reached.

East-West problems are also discussed, including the efforts of market economies to design supplementary provisions that would force state trading monopolies to grant real concessions, as well as the U.S. foreign policy linkage between the granting of MFN treatment and human rights issues in Eastern Europe, as authorized by the Trade Act of 1974.² American readers may regret the conciseness of this particular subsection of the book, which, nevertheless, is correct and well-documented.

The study draws extensively on the relevant codification and progressive development work by the UN International Law Commission, completed in 1978;³ on the jurisprudence of the International Court of Justice and of the Court of Justice of the European Communities; on the earlier codification efforts by the League of Nations and the International Law Institute. Doctrinal sources in four languages are also cited. However, there was much more to draw upon in the work of the International Law Commission, in which learned international lawyers have heatedly debated the scope of exceptions to be granted to the EEC, developing countries and

2. Trade Act of 1974, 19 U.S.C. §§ 2101-2487 (1982).

3. This work is as yet unapproved by member states as a consequence of EEC and United States dissatisfaction with the solutions proposed to the regional integration and graduation issues, respectively. 33 U.N. GAOR Supp. (No. 10) at 30, (1978).

Socialist states.

In spite of the shortcomings mentioned, Ennio Triggiani's monograph is reasonably complete, balanced and detailed, providing scholarly analyses as well as a most interesting review of current issues. It is a book which, although requiring some proficiency in Italian, may be consulted usefully by other readers because of its extensive footnotes, bibliography and indexes, and its clear and concise language.

*Patrizio Merciai**

* Lecturer, Graduate Institute of European Studies, University of Geneva.

