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PROGRESSIVE DEVELOPMENT AND CODIFICATION OF
THE RULES OF INTERNATIONAL LAW RELATING TO
INTERNATIONAL WATERCOURSES

Report of the Sixth Committee

Rapporteur: Mr. Hisashi OWADA (Japan)

I. INTRODUCTION

1. By a note verbale dated 24 April 1970 (A/7991), Finland requested the inclusion in the agenda of the twenty-fifth session of the General Assembly of an item entitled "Progressive development and codification of the rules of international law relating to international watercourses". At its 1843rd plenary meeting, on 18 September 1970, the General Assembly, on the recommendation of the General Committee, decided to place the item on the agenda and allocated it to the Sixth Committee.
2. An explanatory memorandum was attached, in accordance with rule 20 of the rules of procedure of the General Assembly, to the note verbale proposing the inclusion of the item in the agenda. After indicating that the Government of Finland was convinced that the United Nations should further the progressive development and codification of the rules of international law relating to international watercourses, including international drainage basins, and considered that the time had come for the General Assembly to take the preliminary action necessary for the attainment of that goal, the explanatory memorandum suggested that: (a) the General Assembly might consider adopting a resolution according to which a competent organ of the United Nations should be entrusted with the task of preparing a draft

developing progressively and codifying the rules of international law relating to international watercourses, including international drainage basins; (b) at a later state the work might lead to the adoption of a convention on the matter; (c) the International Law Commission being the most appropriate body for carrying out the preparatory work, that work should be assigned to the Commission, with a request that it be given priority; (d) existing relevant legal texts and materials, especially the "Helsinki rules" adopted by the International Law Association in 1966, could be used as a basis for the codification of the topic by the United Nations; (e) without affecting the final outcome of the United Nations work on the topic, the Assembly might adopt a recommendation according to which Member States should take into account or resort to the "Helsinki rules" in cases where there were no other rules or provisions binding on the parties.

3. The Sixth Committee considered the item at its 1225th, 1228th and 1230th to 1236th meetings, held between 13 and 25 November 1970.

II. PROPOSALS AND AMENDMENTS

4. A draft resolution was submitted by Finland, Haiti, the Netherlands, Norway and Sweden (A/C.6/L.310), later joined by Argentina and Yugoslavia. The seven-Power draft resolution read as follows:

"The General Assembly,

"Recalling its resolution 1401 (XIV) of 21 November 1959 by which it considered that it was desirable to initiate preliminary studies on the legal problems relating to the utilization and use of international rivers, and as a result of which useful legal material was collected in the report prepared by the Secretary-General,

"Considering that water, owing to the growth of population and the increasing and multiplying needs and demands of mankind, is of growing concern to humanity, that the available fresh water resources of the world are limited and that the preservation and protection of those resources are of great importance to all nations,

"Conscious of the importance of legal problems relating to the use of international watercourses, inter alia, with regard to international water resources development,

"Recalling that despite the great number of bilateral treaties and other regional regulations, as well as the Barcelona Convention of 1921 on the Régime

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of Navigable Waterways of International Concern and the Convention relating to the Development of Hydraulic Power affecting more than one State, signed at Geneva in 1923, the use of international rivers and lakes is still based in part on general principles and rules of customary law,

"Noting that measures have been taken and valuable work carried out by several international organs, both governmental and non-governmental, in order to further the development and codification of the law of international watercourses,

"Noting further the Helsinki Rules on the Uses of the Waters of International Rivers adopted by the International Law Association at its fifty-second Conference at Helsinki in 1966,

"Being convinced of the necessity to promote, in accordance with Article 13 of the United Nations Charter, the work on the progressive development and codification of the law of international watercourses and to concentrate this work within the framework of the United Nations for the purpose of preparing a draft convention on the subject,

"1. Recommends that the International Law Commission should in the first instance take up the study of the law of the non-navigational uses of international watercourses, with a view to its progressive development and codification, and in the light of its scheduled programme of work, should consider the practicability of taking the necessary action as soon as the Commission deems it appropriate;

"2. Requests the Secretary-General

"(a) To continue the study initiated by General Assembly resolution 1401 (XIV) in order to prepare a supplementary report on the legal problems relating to the utilization and use of international watercourses, taking into account the recent application in State practice and international adjudication of the law of international watercourses;

"(b) To forward to the International Law Commission the records of the discussion on the item at the twenty-fifth session of the General Assembly, the report prepared by the Secretary-General pursuant to General Assembly resolution 1401 (XIV), as well as this resolution and all other documentation necessary for its work."

5. At its 1233rd meeting, on 23 November 1970, the representative of Finland, on behalf of the sponsors of the seven-Power draft resolution, introduced a revised text (A/C.6/L.810/Rev.1). That revised version was identical to the original text, except that:

(a) In paragraph 1, the words "in the first instance" were replaced by the words "as a first step";

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(b) In sub-paragraph 2 (a), the words ", including intergovernmental and non-governmental studies of this matter;" were added at the end of the sub-paragraph.

6. A second revision (A/C.6/L.810/Rev.2) was submitted by the sponsors of the seven-Power draft resolution at the 1234th meeting, on 24 November. The second revised version of the draft resolution modified the text of the first revision as follows:

(a) In the last preambular paragraph the words "for the purpose of preparing a draft convention on the subject" were deleted;

(b) In sub-paragraph 2 (a) the word ", including" was replaced by the words "and also".

7. At the same meeting, the representative of Belgium introduced an amendment on behalf of Belgium and Greece (A/C.6/L.815), to the second revision of the seven-Power draft resolution (A/C.6/L.810/Rev.2), whereby the sixth preambular paragraph, reading "Noting further the Helsinki rules on the uses of the waters of international rivers adopted by the International Law Association at its fifty-second Conference at Helsinki in 1966," would be deleted.

8. Also at the same meeting, India submitted a draft resolution (A/C.6/L.814) which read as follows:

"The General Assembly,

"Having discussed the item entitled "Progressive Development and Codification of the Rules of International Law Relating to International Watercourses", inscribed in the agenda at the initiative of the Government of Finland, to whom it expresses its appreciation,

"1. Invites the Member States to express their views and suggestions by 31 July 1971, as to the manner in which progressive development and codification of the rules of international law relating to international watercourses may be proceeded with in the United Nations, namely,

"(a) whether by convening a conference of plenipotentiaries to adopt a convention on the subject, with Helsinki Rules as the basic proposal,

"(b) or by referring the subject to an ad hoc committee for preparing the draft of a convention on the subject,

"(c) or by referring the subject to the International Law Commission for preparing the draft of a convention on the subject,

"(d) or by leaving the matter to be regulated on a bilateral or regional basis in accordance with the special requirements of the watercourse concerned,

"(e) or by following some other suggested or widely accepted procedure;

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"2. Requests the Secretary-General to prepare a report on the subject in the light of the replies received from Member States pursuant to paragraph 1, and submit it to the General Assembly before the commencement of the twenty-sixth session;

"3. Decides to inscribe the item entitled "Progressive Development and Codification of the Rules of International Law Relating to International Watercourses" in the provisional agenda of the twenty-sixth session of the General Assembly."

9. At the 1235th meeting, on 24 November, the representative of the Netherlands proposed orally, on behalf of the sponsors of the seven-Power revised draft resolution (A/C.6/L.810/Rev.2) except Argentina, to delete the sixth preambular paragraph from the draft resolution if the Sixth Committee would agree to include in its report to the General Assembly on the item the following passage:

"It was agreed in the Sixth Committee that all governmental and non-governmental studies on this subject, especially those which are of a recent date, such as the Salzburg resolution of 1961 and the Helsinki rules of 1966, should be taken into account by the International Law Commission in its consideration of the topic."

10. At the same meeting, the representative of Kenya introduced an oral amendment to the proposal mentioned in the preceding paragraph, whereby the words "such as the Salzburg resolution of 1961 and the Helsinki rules of 1966," would be deleted from the passage to be included in the Sixth Committee's report, and the representative of Guyana proposed a separate vote on the part of the proposal relating to the draft resolution and on the part concerning the passage to be included in the Sixth Committee's report to the General Assembly.

11. At the 1236th meeting, on 25 November, the representative of Finland introduced a proposal (A/C.6/L.816) sponsored by all countries which had submitted the seven-Power draft resolution and its revisions except Argentina, namely, Finland, Haiti, the Netherlands, Norway, Sweden and Yugoslavia. The six-Power proposal read as follows:

"Draft resolution

"The General Assembly,

"Recalling its resolution 1401 (XIV) of 21 November 1959 by which it considered that it was desirable to initiate preliminary studies on the legal problems relating to the utilization and use of international rivers, and as a result of which useful legal material was collected in the report prepared by the Secretary-General,

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"Considering that water, owing to the growth of population and the increasing and multiplying needs and demands of mankind, is of growing concern to humanity, that the available fresh water resources of the world are limited and that the preservation and protection of those resources are of great importance to all nations,

"Conscious of the importance of legal problems relating to the use of international watercourses, inter alia, with regard to international water resources development,

"Recalling that despite the great number of bilateral treaties and other regional regulations, as well as the Barcelona Convention of 1921 on the Régime of Navigable Waterways of International Concern and the Convention relating to the Development of Hydraulic Power affecting more than one State, signed at Geneva in 1923, the use of international rivers and lakes is still based in part on general principles and rules of customary law,

"Noting that measures have been taken and valuable work carried out by several international organs, both governmental and non-governmental, in order to further the development and codification of the law of international watercourses,

"Being convinced of the necessity to promote, in accordance with Article 13 of the United Nations Charter, the work on the progressive development and codification of the law of international watercourses and to concentrate this work within the framework of the United Nations,

"1. Recommends that the International Law Commission should as a first step take up the study of the law of the non-navigational uses of international watercourses, with a view to its progressive development and codification, and, in the light of its scheduled programme of work, should consider the practicability of taking the necessary action as soon as the Commission deems it appropriate;

"2. Requests the Secretary-General:

"(a) To continue the study initiated by General Assembly resolution 1401 (XIV) in order to prepare a supplementary report on the legal problems relating to the utilization and use of international watercourses, taking into account the recent application in State practice and international adjudication of the law of international watercourses and also intergovernmental and non-governmental studies of this matter;

"(b) To forward to the International Law Commission the records of the discussion on the item at the twenty-fifth session of the General Assembly, the report prepared by the Secretary-General pursuant to General Assembly resolution 1401 (XIV), as well as this resolution and all other documentation necessary for its work.

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"Paragraph to be inserted in the Sixth Committee report to the General Assembly

"It was agreed in the Sixth Committee that intergovernmental and non-governmental studies on the subject, especially those which are of a recent date, such as the 'Helsinki Rules' of 1966, should be taken into account by the International Law Commission in its consideration of the topic."

12. At the same meeting, the Committee also considered the following motions and amendment made in connexion with the six-Power proposal (A/C.6/L.816):

(a) A motion by the representative of Greece requesting a separate vote on the part of the proposal concerning the paragraph to be inserted in the Sixth Committee's report;

(b) A motion by the representative of Nigeria requesting a separate vote on the part of the proposal concerning the draft resolution;

(c) An oral amendment introduced by the representative of Ivory Coast, whereby the words "such as the 'Helsinki rules' of 1966" would be deleted from the part of the proposal concerning the paragraph to be inserted in the Sixth Committee's report;

(d) A motion by the representative of Lebanon requesting a separate vote on the words "such as the 'Helsinki rules' of 1966," appearing in the paragraph of the proposal to be inserted in the Sixth Committee's report.

13. The attention of the Committee was drawn to a statement by the Secretariat (A/C.6/L.812) on the administrative and financial implications of the first revision of the draft resolution (A/C.6/L.810/Rev.1). At the 1234th and 1236th meetings, it was announced that that statement applied equally to the second revision of that draft resolution (A/C.6/L.810/Rev.2) and to the draft resolution embodied in the six-Power proposal (A/C.6/L.816). At the 1234th meeting, the Deputy-Secretary of the Committee read out a statement from the Secretariat regarding the administrative and financial implications of the draft resolution submitted by India (A/C.6/L.814).

III. VOTING

14. At its 1236th meeting, on 25 November, the Sixth Committee proceeded to the vote. The representative of Kenya announced that he would not press to a vote his oral amendment (see paragraph 10 above). The Committee agreed to vote first on the

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procedural motion for division of the six-Power proposal (A/C.6/L.816) arising from the separate vote requested by the representative of Greece (see paragraph 12 above); secondly, if that motion for division was adopted, on the draft resolution submitted by India (A/C.6/L.814); and thirdly, if the draft resolution submitted by India was rejected, on the six-Power proposal (A/C.6/L.816), taking into account the requests for separate votes made by Greece and Lebanon (see paragraph 12 above).

15. The result of the voting was as follows:

(a) By 49 votes to 23, with 22 abstentions, the Committee adopted the procedural motion for division of the six-Power proposal (A/C.6/L.816) into two parts, namely, the draft resolution and the paragraph to be inserted in the Sixth Committee's report.

(b) By a roll-call vote of 34 votes to 2, with 62 abstentions, the Committee rejected the draft resolution submitted by India (A/C.6/L.814). The voting was as follows:

In favour: India, Turkey.

Against: Austria, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Central African Republic, China, Czechoslovakia, Dahomey, Denmark, Ecuador, El Salvador, Ethiopia, Finland, Gabon, Greece, Haiti, Hungary, Iceland, Iraq, Ireland, Israel, Italy, Mali, Mongolia, Norway, Pakistan, Poland, Portugal, Romania, South Africa, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay.

Abstaining: Afghanistan, Algeria, Argentina, Australia, Belgium, Bolivia, Burma, Cambodia, Canada, Chad, Chile, Colombia, Congo (Democratic Republic of), Costa Rica, Cuba, Cyprus, France, Ghana, Guatemala, Guinea, Iran, Ivory Coast, Jamaica, Japan, Kenya, Kuwait, Lebanon, Liberia, Libya, Madagascar, Malaysia, Mexico, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Paraguay, Peru, Philippines, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Singapore, Southern Yemen, Spain, Sudan, Syria, Thailand, Togo, Trinidad and Tobago, Tunisia, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Venezuela, Yemen, Yugoslavia, Zambia.

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(c) By a roll-call vote of 41 votes to 25, with 32 abstentions, the Committee rejected the retention of the words "such as the 'Helsinki rules' of 1966," appearing in the paragraph of the six-Power proposal (A/C.6/L.816) to be inserted in the Sixth Committee's report. A separate vote was requested by the representative of Lebanon (see paragraph 12 above). The voting was as follows:

In favour: Argentina, Australia, Austria, Canada, Dahomey, Denmark, Finland, Haiti, Iceland, India, Ireland, Italy, Liberia, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Paraguay, South Africa, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia.

Against: Algeria, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Central African Republic, Chad, Chile, Congo (Democratic Republic of), Cuba, Czechoslovakia, Ethiopia, France, Gabon, Ghana, Greece, Hungary, Iraq, Ivory Coast, Kenya, Kuwait, Lebanon, Libya, Mali, Mongolia, Morocco, Nepal, Niger, Portugal, Romania, Saudi Arabia, Senegal, Sierra Leone, Southern Yemen, Sudan, Syria, Togo, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yemen.

Abstaining: Afghanistan, Bolivia, Burma, Cambodia, China, Colombia, Costa Rica, Cyprus, Ecuador, El Salvador, Guatemala, Guinea, Iran, Israel, Jamaica, Japan, Madagascar, Malaysia, Nigeria, Peru, Philippines, Poland, Rwanda, Singapore, Spain, Thailand, Trinidad and Tobago, Turkey, United Republic of Tanzania, Uruguay, Venezuela, Zambia.

(d) By 55 votes to none, with 39 abstentions, the Committee adopted, as amended, the paragraph of the six-Power proposal (A/C.6/L.816) to be inserted in the Sixth Committee's report (see paragraph 17 below). A separate vote was requested by Greece (see paragraph 12 above).

(e) Lastly, by 87 votes to none, with 8 abstentions, the Committee adopted the draft resolution contained in the six-Power proposal (A/C.6/L.816) as a whole, as amended.

16. Statements in explanation of votes were made by the representatives of Afghanistan, Bolivia, Cambodia, Gabon, Ghana, Guatemala, Haiti, Kenya, Liberia, Mexico, Paraguay, Romania, Sudan, Turkey, the United Kingdom of Great Britain and Northern Ireland, the United Republic of Tanzania, the United States of America and Zambia.

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IV. DECISION OF THE SIXTH COMMITTEE

17. The Sixth Committee decided to include the following paragraph in the present report:

"It was agreed in the Sixth Committee that intergovernmental and non-governmental studies on the subject, especially those which are of a recent date, should be taken into account by the International Law Commission in its consideration of the topic."

V. RECOMMENDATION OF THE SIXTH COMMITTEE

18. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

Progressive development and codification of the rules of international law relating to international watercourses

The General Assembly,

Recalling its resolution 1401 (XIV) of 21 November 1959 by which it considered that it was desirable to initiate preliminary studies on the legal problems relating to the utilization and use of international rivers, and as a result of which useful legal material was collected in the report prepared by the Secretary-General,^{3/}

Considering that water, owing to the growth of population and the increasing and multiplying needs and demands of mankind, is of growing concern to humanity, that the available fresh water resources of the world are limited and that the preservation and protection of those resources are of great importance to all nations,

Conscious of the importance of legal problems relating to the use of international watercourses, inter alia, with regard to international water resources development,

Recalling that despite the great number of bilateral treaties and other regional regulations, as well as the Barcelona Convention of 1921 on the Régime of Navigable Waterways of International Concern and the Convention relating to the Development of Hydraulic Power affecting more than one State, signed at Geneva in 1923, the use of international rivers and lakes is still based in part on general principles and rules of customary law,

^{3/} A/5409 (15 April 1963).

Noting that measures have been taken and valuable work carried out by several international organs, both governmental and non-governmental, in order to further the development and codification of the law of international watercourses,

Being convinced of the necessity to promote, in accordance with Article 13 of the Charter of the United Nations, the work on the progressive development and codification of the law of international watercourses and to concentrate this work within the framework of the United Nations,

1. Recommends that the International Law Commission should, as a first step, take up the study of the law of the non-navigational uses of international watercourses, with a view to its progressive development and codification, and, in the light of its scheduled programme of work, should consider the practicability of taking the necessary action as soon as the Commission deems it appropriate;

2. Requests the Secretary-General:

(a) To continue the study initiated by the General Assembly in resolution 1401 (XIV) in order to prepare a supplementary report on the legal problems relating to the utilization and use of international watercourses, taking into account the recent application in State practice and international adjudication of the law of international watercourses and also intergovernmental and non-governmental studies of this matter;

(b) To forward to the International Law Commission the records of the discussion on the item at the twenty-fifth session of the General Assembly, the report prepared by the Secretary-General pursuant to General Assembly resolution 1401 (XIV), as well as the text of the present resolution and all other documentation necessary for the Commission's work.
