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Chairman: Mr. Paul Bamela ENGO (Cameroon).

AGENDA ITEM 91

Progressive development and codification of the rules of international law relating to international watercourses (A/7991)

1. Mr. MANNER (Finland) said that, by its proposal to include in the agenda of the twenty-fifth session of the General Assembly an item entitled "Progressive development and codification of the rules of international law relating to international watercourses", Finland was in no way seeking to promote its national interests—all questions relating to the use and maintenance of Finland's border watercourses were regulated in a satisfactory way by treaties with the States concerned—but merely raising a question that appeared to be of paramount importance for the international community as a whole.

2. Because of the extremely rapid increase in the world population, it was vital that States should spare no efforts to ensure the most effective use of all the natural resources of the world, particularly water resources, which were indispensable for man's daily needs and on which agriculture, industry and many other forms of economic activities depended. A large number of countries, including many of the developing countries, were today suffering from a shortage of water which might have tragic consequences for their economic development if prompt measures were not taken with regard to the strict planning of water resources and the execution of extensive hydro-electric projects. Despite all the technical and economic progress of recent years, the problems of water supply could not be solved solely by the preservation and reasonable utilization of the world's fresh-water resources. At the international level, those objectives could be achieved, in many cases, only through co-operation among the States concerned.

3. The possibility that disputes might arise between neighbouring States had become greater than before not only because of the increasing activity in all spheres of human life but also because there were now a greater number of States and, consequently, a greater number of frontiers between them than there had been a few decades earlier. Many problems connected with the use of waters were therefore of an international nature. Since ancient times, States had settled questions and disputes concerning border rivers and other watercourses of common interest by concluding bilateral treaties or by making regional regulations. However, there was no general international convention on the law of international watercourses—with the exception of the Convention on the Régime of Navigable Waterways of International Concern, signed at Barcelona in 1921,[1] and the Convention relating to the Development of Hydraulic Power affecting more than one State, signed at Geneva in 1923[2]—which corresponded to the Conventions on the Law of the Sea, concluded at Geneva in 1958.[3] Essentially, the use of international rivers and lakes was at present regulated by unwritten rules of customary law. For the most part, however, those rules were still vague and did not cover every practical problem that might arise between riparian States concerning watercourses of common interest. Moreover, those rules suffered from lacunae which seemed particularly serious today, when problems such as that of water pollution were assuming increasing importance and when it was vital for future generations to formulate rules that would keep such problems in check.

4. There had been a number of attempts to codify the customary and conventional rules of international law governing international watercourses. In recent years, the problem had been taken up by numerous international organizations such as the Food and Agriculture Organization of the United Nations, the World Health Organization, the International Atomic Energy Agency, the Council of Europe, the International Conference of American States and the Asian-African Legal Consultative Committee. Many drafts, recommendations and declarations on the subject had been prepared by various non-governmental international organizations, particularly the Institute of International Law and the International Law Association. In the view of his Government, it would now be appropriate for the United Nations to concern itself with the development of the law relating to international watercourses. In 1959, the General Assembly had adopted resolution 1401 (XIV) on the subject, as a result of which useful information had been collected, but no further action had been taken by the United Nations. All the existing legal documents, particularly the so-called Helsinki Rules,[4] which had been adopted by the International Law Association at its 52nd Conference at Helsinki in 1966, could be used as a basis for the codification of the law of international watercourses. The Helsinki Rules had been favourably received by legal experts, by some Governments and by various international bodies. References to them were not uncommon in State practice, and the application of the Rules had been recommended on several occasions. His delegation believed that in view of the fact that they had been adopted

1 League of Nations, *Treaty Series*, vol. VII (1921–1922), No. 172.

2 League of Nations, *Treaty Series*, vol. XXXVI (1925), No. 905.

3 See United Nations Conference on the Law of the Sea, *Official Records* (United Nations publication, Sales No.: 58.V.4, vol. II), pp. 132–143.

4 International Law Association, *Helsinki Rules on the Uses of the Waters of International Rivers* (London, 1967).

recently, that their scope was fairly broad and that, when they were being drawn up, various earlier texts prepared and adopted by other international organizations had been taken into account, the Rules could be regarded as the most up-to-date code now available on the law of international watercourses.

5. Although it did not consider it necessary to discuss the Helsinki Rules in detail at the present session, his delegation nevertheless wished to mention that the provisions relating to the equitable use of waters of international drainage basins rested on the coherence principle, formulated by the Austrian lawyer, Mr. Hartig, under which an international drainage basin, whether it belonged to two or several States, was considered to be an integrated whole, the use of which should be shared equitably by the riparian States.

6. The Helsinki Rules should be regarded as the definitive result of the codification of the law relating to international watercourses undertaken by the International Law Association. Apart from the provisions relating to the equitable use of the waters of international drainage basins, those which dealt with the abatement of pollution, navigation and timber floating, as well as the recommendations concerning the settlement of disputes, should be treated as the basis of all codification work on the law relating to international watercourses. His delegation believed, however, that the provisions relating to navigation, which were not considered satisfactory by all the States concerned, might be excluded. On the other hand, the work done by the various private organizations which had taken up the question might well be taken into account.

7. His delegation believed that the study and codification of the law of international watercourses could be entrusted either to an *ad hoc* committee which would be set up for that purpose or to a competent organ of the United Nations. It considered that the International Law Commission was the most suitable body to carry out that task; since many of the items on the Commission's agenda were not yet ready for codification, it might be requested to give priority to the problem of the regulation of international watercourses when it reviewed its work programme and to take any appropriate preliminary action at its next session.

8. The Government of Finland considered that, without affecting the final outcome of the United Nations work on the progressive development and codification of the rules of international law relating to international watercourses, the General 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.

9. Mrs. KRISPI-NIKOLETOPOULOU (Greece) commended the clarity and conciseness of the Finnish delegation's explanatory memorandum (see A/7991), her delegation agreed that the rules of international law relating to international watercourses and, in particular, the rules of customary law were at present too vague in scope and on occasion were of dubious content; those shortcomings had been clearly revealed as a result of the preparatory work relating to drafts prepared by the International Law Association and the Institute of International Law. Moreover, it was difficult to determine whether or not certain of those customary rules constituted obligations. As for the existing international conventions, they were purely regional in character, with the exception of the Barcelona Convention, but it had been concluded in 1921. The time had therefore come to codify the rules of international law relating to international watercourses, both for theoretical and for practical reasons.

10. The growing use of waterways for navigation as well as the utilization of the water resources to produce energy, for example, had increased conflicts of interest between States. The appearance on the international scene of an increasing number of States had merely exacerbated the problem and at the present time it was undeniable that an optimal utilization of world water resources could be achieved only through co-operation between all interested States.

11. Her delegation supported the Finnish proposal that the United Nations should concern itself with the progressive development and codification of international law relating to international watercourses. More particularly, it agreed that the General Assembly should request the Commission to prepare a draft text on the subject. However, it could not concur with all the ideas contained in paragraphs 6–8 of the explanatory memorandum; for example, it did not consider it necessary for the General Assembly to request the Commission to give priority to the question. It did not appear sufficiently urgent to her delegation to justify such an action, and, moreover, the Commission must be left free to determine for itself the relative importance of the questions submitted to it.

12. Furthermore, her delegation was unable to attribute the same importance as the Finnish delegation to the Helsinki Rules. While it recognized the value of the work carried out by the International Law Association, it wished to draw attention to the fact that the special committee which had prepared those rules could not be equated with a body such as the International Law Commission, whose members were elected by the General Assembly and whose work, which came before the Assembly each year, was within the purview of the purposes and principles of the Charter of the United Nations. Moreover, the Commission was not only concerned with codification, but also with the progressive development of international law and therefore to some extent played a legislative role. Accordingly, her delegation held the view that, in the resolution by which the General Assembly would request the Commission to review the question of the rules of international law relating to international waterways, no mention should be made of the Helsinki Rules or alternatively, if it was decided to mention them, account should also be taken of the texts prepared by other competent institutions such as the Institute of International Law, the Inter-American Juridical Committee and the Asian-African Legal Consultative Committee as well as the work carried out by the Vancouver Seminar held under the auspices of the United Nations, the research work carried out by New York University and the Montevideo Declaration of 1933.[5]

13. The Committee must retain all necessary latitude regarding the way in which it would take up the question.

[5] See *The International Conference of American States, First Supplement*, 1933–1940 (Washington, Carnegie Endowment for International Peace, 1940), p. 88, "Industrial and Agricultural Use of International Rivers".

A comparison of some articles of the Helsinki Rules with the draft articles drawn up by the Institute of International Law at its meeting in Salzburg[6] clearly indicated the difficulties which any attempt at codification would encounter; in the case of such questions as water pollution or acquired rights, the difficulties were even more obvious.

14. The proposal in paragraph 8 of the explanatory memorandum to the effect that the General 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, was not acceptable to her delegation since the Helsinki Rules would have to have been considered in detail either directly by the Assembly—in other words, by the Sixth Committee—or by one of its subsidiary bodies, for the General Assembly to be able to formulate such a recommendation. The first alternative hardly seemed feasible, since the procedure in question was applied only in an extreme emergency, which was not the case; likewise, the second alternative, which would mean asking the Commission to examine the Helsinki Rules, did not seem feasible from a practical point of view, since that body would be entrusted with codifying the rules relating to watercourses and, at the same time, with making a study of the Helsinki Rules which would lead to the formulation of a recommendation to the General Assembly.

15. However, it was her delegation's hope that the Sixth Committee, first, and then the General Assembly, would decide in favour of the main proposal submitted by the Finnish delegation.

16. Mr. SUY (Belgium) observed that the law of international rivers was concerned chiefly with navigation because that had long been the main use made of rivers. However, modern technology had opened up new ways of utilizing those waters, such as the construction of dams for hydro-electric power, the diverting and storing of water for irrigation and the cooling of nuclear installations. Those forms of utilization, together with a new phenomenom which had recently assumed alarming proportions, namely pollution, had in their turn given rise to new and special problems for each river and each basin. Thus, the construction of a dam entailed an increase in the water level up-stream, and in some cases floods. The diverting and storing of water could cause a reduction in the flow down-stream from the point of diversion. The cooling of nuclear reactors caused the water up-stream from the storage point to become warmer, possibly with disastrous consequences for living resources, while a break in the reactor could contaminate the river water. The consequences of pollution were well known. Finally, the industrial utilization of waters sometimes had serious repercussions on navigation by affecting the navigability of the watercourse.

17. The emergence of those new problems necessitated a further effort to codify international law on that subject. In most States special laws were being drawn up where they did not already exist. At the international level, the very number of treaties concluded on the subject showed how complex the matter was; a different solution was required for each watercourse, according to the circumstances.

18. There were two legal problems of particular importance in regard to the international law relating to international watercourses: the definition of the concepts of an international river and of international law in relation to neighbour States.

19. So long as international law had been exclusively concerned with the problem of navigation, the meaning of the term "international river" was relatively restricted, and had signified essentially the navigable part of a watercourse emptying into the sea, where that part of the watercourse constituted the border between two States or flowed through several States. However, that definition no longer sufficed when the question was the industrial use of a river, and it had to be amplified, taking into account first of all the length of the river from the source to the mouth, secondly its breadth, including all its tributaries, and finally its depth, since a watercourse could be fed by underground springs. That threefold broadening of the concept of an international river had given rise to a new concept, that of the drainage basin. The concept had been introduced into international law by way of jurisprudence and had been sanctioned by legal writers and especially by the work of the Institute of International Law and the Helsinki Rules of 1966. Nevertheless, it would be as well not to draw hasty conclusions from the notion of the unity of a drainage basin. There was no legal sanction for that except in so far as it reflected the facts of life.

20. As for international law in relation to neighbour States, all municipal law systems recognized the principle that a right could not be exercised to the detriment of another individual. That principle was not operative in municipal law only; it was equally valid in international law and applied, *inter alia*, to the various uses of water, a subject on which three theories had been advanced.

21. The first was based on the principle of territoriality. According to that theory, every State had absolute sovereignty over its own territory and could exploit it as it pleased without having to take into account the wishes of a neighbouring State. That theory had not found acceptance among States, for by proclaiming the unlimited sovereignty of one State and thereby rejecting the sovereignty of all other States, it actually negated sovereignty as a principle of international law.

22. The second theory, which was the antithesis of the first, was the so-called integration theory. It postulated that since the drainage basin was a unified whole, there should be a strict prohibition on the use of river waters if such use was calculated to cause a nuisance in a neighbouring territory. That theory, which was often cited in international disputes, could have a paralysing effect on industrial development and was apt, sooner or later, to rebound against a State invoking it.

23. The solution most in keeping with present-day international relations was that provided by the third theory, the theory of solidarity. It too was based on the principle that a State excercised sovereignty over its own territory

6 See *Annuaire de l'Institut de Droit International, 1961* (Basel, Editions juridiques et sociologiques S.A. vol. 49, tome II, p. 381, resolution entitled "Utilization of Non-Maritime International Waters (except for navigation)".

and recognized the right of a State to use its river waters, subject to the right of other States having territorial claims to the same river or the same drainage basin also to use the water thereof. According to that theory, when the use of a river appeared likely to affect the interests of neighbouring States, the States concerned had to make an attempt to negotiate an agreement regulating such use on the basis of equity. However, there was nothing in international practice to indicate that recourse to such agreements was obligatory, as was demonstrated by the failure of the Geneva Convention of 1923 on the development of water power, which had made it obligatory for States to negotiate prior agreements. It should also be pointed out that under the theory of solidarity, a State whose potential use of a watercourse was affected by a neighbouring State's use of the same watercourse was entitled to compensation for loss and damage sustained.

24. His delegation wished to stress the importance of one aspect of the theory of solidarity, namely collaboration among States. Such collaboration could take a wide variety of forms, whether the States concerned established international commissions or concluded *ad hoc* agreements on action undertaken jointly. Both approaches had already produced substantial results.

25. He stressed the difficulties raised by the codification of the law of international rivers. The problems resulting from the industrial and economic use of a river or drainage-basin waters differed according to the river or basin concerned and brought conflicting interests into play. His delegation therefore felt that if it was not impossible to codify the law of international rivers, it was certainly too early to do so. On the other hand, the struggle against pollution was one area where the interests of all States coincided. A European Water Charter had already been drawn up by the Council of Europe in 1968, and in 1963 a convention had been concluded by a number of European States which had agreed to work together to prevent pollution of the Rhine. Such efforts deserved support, especially where the problem was couched not in terms of international responsibility for illicit acts but in administrative terms, thereby avoiding a judgement on up-stream States. Furthermore, pollution did not stop within the boundaries of a State or group of States. The need to protect the human environment made it feasible to strive towards much broader regional interdependence. First of all, it was necessary to study the technical aspects of the problem, the rules of conduct being derived from such a study. Perhaps the United Nations regional economic commissions could make an appropriate contribution to ensure the success of such an undertaking.

26. His delegation reserved the right to speak again after a draft resolution had been submitted on the matter.

27. Mr. DABROWA (Poland) said he was glad that the Finnish delegation had raised the question of progressive development and the codification of the rules of international law relating to international watercourses. The initiative would make it possible to fill a gap in international law. There were, of course, instruments such as the Barcelona Convention of 1921 and the Geneva Convention of 1923; however, both had been adopted nearly a half century previously and did not necessarily reflect the present situation with regard to international law in that field. Furthermore, judging by the number of States parties to those Conventions, there appeared to be very little likelihood that they could be gradually transformed into acceptable international agreements. Thus, the use of international rivers and lakes was based mainly on customary international law, with the possibility of dispute among riparian States that that implied.

28. That situation was particularly regrettable, since the use of international drainage basins should not be a cause of disputes between States but should, on the contrary, encourage fruitful co-operation among all concerned. In such a spirit of co-operation, Poland had concluded a series of bilateral treaties on that subject with the German Democratic Republic: it had also concluded conventions with the USSR and Czechoslovakia. His delegation therefore supported the proposal that the Commission should be entrusted with the task of developing and codifying the law of international watercourses. The Commission's task would be facilitated by the fact that the International Law Association had already adopted, at its 52nd conference, held in 1966, a set of 37 articles on the question, known as the Helsinki Rules. The articles could be used by the Commission, together with all other relevant multilateral and bilateral international instruments, as a basis for its codification work.

29. His Government had not yet completed its consideration of the Helsinki Rules, and would make its final position known at a later stage.

AGENDA ITEM 99

Aerial hijacking or interference with civil air travel *(continued)** (A/8091, A/C.6/403, A/C.6/L.803-805, A/C.6/L.807)

30. Mrs. SLAMOVA (Czechoslovakia) recalled that her delegation (1222nd meeting) had been anxious that the text to be adopted by the Sixth Committee should mention that the Hague diplomatic conference was to be open to all States. Since draft resolution A/C.6/L.803 had not been amended along those lines, her delegation, on its own behalf and on behalf of the Ukrainian delegation, was officially submitting an amendment (A/C.6/L.807) which would change the beginning of paragraph 10 of that draft resolution to read as follows:

> "10. *Calls upon* all States to make every possible effort to achieve on a universal basis a successful result . . .".

The proposed text was designed to stress the fundamental role which the principle of universality should play in international relations, especially in the case of a humanitarian question like aerial hijacking.

31. Mr. KOLESNIK (Union of Soviet Socialist Republics) said that consultations were continuing with a view to producing a draft resolution likely to be acceptable to all delegations or at least to a large majority of them. That being so, it did not seem desirable that the various

* Resumed from the 1223rd meeting.

proposals before the Committee should be put to the vote over-hastily.

32. The CHAIRMAN said that the officers of the Committee had made every effort to give delegations enough time to hold consultations. He appealed to the spirit of co-operation of the members of the Committee to try not to delay the Committee's work unduly.

33. Mr. CHAMMAS (Lebanon) said that the present state of the negotiations indicated that there was little chance that the Committee would reach full agreement, although it should not ignore any possibility it found of doing so. His delegation, which had had occasion, at the 1223rd meeting, to comment on draft resolution A/C.6/L.803, wished formally to submit amendments[7] to that draft based directly on the arguments it had put forward. The first amendment, referring to paragraph 2 of the draft resolution, was designed to restore the legal character of the draft and to ensure that it did not give rise to political interpretations. The second amendment made the reference to hostages in paragraph 3 more general. The third amendment, to paragraph 8, would add the words "in accordance with the Charter of the United Nations" after the words "joint and separate action". The idea of co-operation with the United Nations and the International Civil Aviation Organization, which he had felt should be deleted on the grounds that it was understood in the expression "in accordance with the Charter of the United Nations", had been retained in order to make the text more explicit.

34. His delegation would give careful consideration to the amendment just submitted by Czechoslovakia and the Ukrainian SSR.

35. The CHAIRMAN noted that the negotiations did not yet seem to have been completed and said that, if there was no objection, he would suspend the debate on the question under consideration.

It was so decided.

AGENDA ITEM 96

Review of the role of the International Court of Justice *(continued)* (A/8042 and Add.1 and 2, A/C.6/L.800-802, A/C.6/L.806, A/C.6/L.808)

36. The CHAIRMAN said that a number of amendments had been submitted to draft resolution A/C.6/L.800, proposed by the delegations of Guyana, Kenya, Uganda and Zambia (A/C.6/L.808).

37. Mr. NJENGA (Kenya) said that since the negotiations had not yet made it possible to arrive at an agreed text, the delegations of Guyana, Kenya, Uganda and Zambia had felt it necessary to submit their amendments. They contained nothing new as to substance, and were basically similar to the provisions in the draft resolution submitted by France (A/C.6/L.801). The debates in the Committee indicated that all States wanted action with a view to enhancing the effectiveness of the International Court of Justice. However, the sponsors of the proposed amendments believed that an *ad hoc* committee would be premature until States had had an opportunity to express their views on the subject. That did not at all exclude the possibility of establishing such a body at a later time, if Governments so wished.

38. The first of the proposed amendments referred to a questionnaire to be prepared by the Secretary-General. Some delegations had been sceptical as to the advisability of such a procedure. The sponsors of the amendments did not contemplate sending a detailed questionnaire calling for "yes" or "no" answers, but they hoped that the Secretariat would prepare, on the basis of the debates in the Sixth Committee, a document setting forth points on which States would be invited to state their position. Such a document should include a question relating to the advisability of establishing an *ad hoc* committee.

39. Mr. DELEAU (France) said that the procedure proposed in document A/C.6/L.808 corresponded fully to that provided for in the draft resolution which his delegation had submitted. It did not insist that the Sixth Committee take a decision on its draft resolution. It fully supported the proposed amendments and requested that France be included among the sponsors of the document containing them.

40. Mr. STAVROPOULOS (Legal Counsel) thanked the representative of Kenya for the explanations he had given with regard to the questionnaire referred to in the amendments in document A/C.6/L.808. The comprehensive report to be prepared by the Secretariat under those amendments could only collate the replies received and arrange them methodically. The report could in no circumstances contain the comments or views of the Secretariat. He asked whether that explanation was in keeping with the views of the sponsors of the proposed amendments.

41. Mr. NJENGA (Kenya) said that the views expressed by the Legal Counsel were fully in keeping with those of the sponsors of the proposed amendments.

The meeting rose at 12.55 p.m.

7 Subsequently issued as document A/C.6/L.809.