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April, 1970.

Note by the Chairman of the Committee

Mr. John G. Laylin, who joined the Committee in April 1970, has expressed reservations regarding those parts of this Report (particularly early on in the commentary to Article IV and in the middle of the commentary to Article V) which suggest that exploiters of manganese nodules may not need areas of exclusive rights. He considers that an entrepreneur who has spent maybe millions of dollars in exploration and has found an area where the nodules are richer than elsewhere should not be denied a return on his expenditure in exploration by being denied the opportunity to exploit his find without interference. Problems connected with the exploitation of the mineral resources of the ocean floor, as opposed purely to hydrocarbons, are also referred to in the very useful Annex A prepared by Mr. J. Josephus Jitta. It seems to be agreed by all that this is a question which needs more research both from the technical and also from the legal point of view. D.H.N.J.

1970 - 54th conf

The Hague
WATER RESOURCES LAW

FRIDAY, AUGUST 28TH, 1970 at 2.30 p.m.

4354

Chairman : Professor MANNER

Dr. K. W. CUPERUS (Netherlands) introduced the report at the request of the Chairman. He referred to the second progress report of the Committee and informed the meeting that since the publication of this report the Committee had held another session. In this session much time was devoted to three subjects which are included in the Committee's work programme.

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3. Thirdly, mention was made of the useful discussions which took place in the working group on negotiating on the various points pertaining to this subject which were insufficiently dealt with in the Helsinki Rules. In view of the complexity of these questions no

indication can be given as yet as to when this working group will be ready to present definite conclusions.

4. Finally, reference was made to the work of the group which deals with questions of Administration and Management of International Resources, (Rapporteur: Dr. G. J. Cano). For the next session of the Committee, comprehensive documentation will be prepared and it is expected that at the next meeting of the Committee preliminary conclusions can be presented to it.

Professor JACQUES-YVAN MORIN (Canada): Les travaux du Comité paraissent en bonne voie. Aussi me contenterai-je d'une observation d'ordre général sur la nature même du travail que nous avons entrepris et de quelques brefs commentaires portant sur les travaux du sous-comité qui traite de la pollution.

L'intérêt que présente l'objet du travail accompli depuis deux ou trois ans tient au fait que nous touchons des questions dont ne traite point le droit international "classique". Le progrès technique accéléré dont nous sommes témoins crée de nouveaux problèmes juridiques et nous oeuvrons dans un domaine où les règles, lorsqu'il en existe, demeurent générales. Faut-il alors, dans élaboration de nos conclusions, serrer de près le droit existant et ne poser de jalons que si nous pouvons nous appuyer sur des précédents précis ou convient-il de ne pas craindre l'innovation et, au besoin, de créer des règles de toute pièce? Je n'apprendrai rien à personne en disant que ces deux attitudes, qui sont opposées lorsqu'on les pousse à l'extrême, sous en tendent plusieurs débats au sein du Comité.

Pour ma part, j'estime qu'il y a du vrai dans les deux attitudes, qui sont en fait des méthodes de travail complémentaires. Lorsqu'il existe un principe ou une règle, il convient, avant de s'en éloigner, d'en tirer tout le parti possible. Cela permet aux Etats de se trouver en terrain connu lorsque les règles "nouvelles" leur sont présentées. Dans notre discipline, il est sage de faire du neuf avec du vieux dans toute la mesure du possible. Du point de vue de la méthode à suivre, cela signifie que l'on doit rechercher avec minutie toutes les sources de droit, tous les précédents possibles avant d'élaborer des conclusions.

Par ailleurs, lorsque le droit existant ne fournit pas de réponse ou lorsqu'il paraît contraire aux intérêts de la communauté des Etats, il ne faut pas craindre de se prononcer *de lege ferenda*. Du point de vue de la méthode, cela signifie encore une fois une recherche et une réflexion approfondies sur les intérêts en présence. En outre, on ne doit jamais craindre de dire que les conclusions auxquelles on en est arrivé constituent une innovation. Si les conclusions sont bien fondées, on peut espérer emporter l'adhésion des Etats intéressés même dans le cas de normes *de lege ferenda*. En d'autres termes, il

me semble que les travaux de l'I.L.A. doivent s'inspirer, dans leurs méthodes, des deux fonctions complémentaires décrites dans le Statut de la Commission du Droit International: *codifier* le droit lorsque cela est possible et le *développer* lorsque cela est souhaitable.

Ma seconde observation portera particulièrement sur les problèmes de la pollution, mais elle illustrera ce qui précède. Dans l'Article III du projet d'articles soumis par le sous-comité, on énonce la règle selon laquelle, conformément au principe de l'utilisation équitable des eaux en provenance du continent, un Etat doit prévenir toute forme de pollution des eaux de la mer qui pourrait causer un dommage grave "aux intérêts d'un autre Etat". Le mot "intérêts" me paraît bien vague dans le contrôle des dommages causés par la pollution. Pourquoi s'éloigner à ce point des règles existantes—puisque'il en existe effectivement? Tous conviennent, je pense, que la base de notre raisonnement doit être la règle selon laquelle un Etat ne peut se servir de son propre territoire d'une manière qui cause des dommages sur le territoire d'un autre Etat. Cette règle est bien établie dans la pratique des Etats et elle a été reconnue notamment par la Cour Internationale de Justice dans l'arrêt sur le détroit de Corfou. Les dommages auxquels nous songeons en matière de pollution des eaux de la mer sont ceux qui sont causés au territoire ou aux zones maritimes qui relèvent de la compétence ou de la souveraineté de l'Etat (eaux territoriales, zones de pêche, plateau continental): telle est la solution qui, tout en étant nouvelle, s'appuie sur un principe sûr. Parler de dommages aux *intérêts* des Etats est beaucoup trop vague et pourrait entraîner des débats à n'en plus finir sur la portée exacte du mot. Doit-on faire figurer parmi ces "intérêts" les dommages causés aux pêcheries ou aux navires en haute mer, loin des zones côtières et du territoire des Etats? J'estime que le milieu marin doit être protégé, mais non sur la base d'une règle élaborée à l'égard du territoire, lequel est sujet à un régime juridique bien différent de celui de la haute mer. A mon avis, il faudra distinguer entre les dommages causés aux territoires des Etats (et zones assimilées) et les pollutions dont la haute mer serait le réceptacle.

Dans un premier temps, si l'on veut raisonner correctement, il faudra énoncer la règle selon laquelle un Etat doit interdire sur son territoire toute forme de pollution qui pourrait avoir des conséquences dommageables pour le territoire d'un autre Etat. Dans un second temps, nous pourrions nous tourner vers les dommages causés en haute mer par la pollution d'origine continentale. Nous nous trouverons alors, sans doute, devant la nécessité d'innover radicalement par rapport aux règles traditionnelles dérivées du principe de la liberté des mers, ce qui me paraît être bien plus près du laisser-faire que de la liberté bien comprise.

Peut-être serons-nous entraînés très loin dans l'innovation car, une fois acceptée l'idée que la pollution est nuisible au milieu marin, il nous faudra constater qu'aucun Etat ne peut prétendre défendre ce milieu, qui échappe à sa compétence, contre les autres Etats. La solution qui se présentera alors à nos yeux sera forcément multilatérale et elle passera par la création d'un organisme qui pourra réglementer et policer le milieu marin. La "liberté des mers" méritera alors son nom puisqu'elle sera devenue, comme dans toute société intégrée, disciplinée et organisée. C'est la conclusion inéluctable à laquelle en est venu, dans un domaine qui "jouxte" nos travaux, le Comité sur l'exploitation des grands fonds sous-marins.

Pour en revenir, en conclusion, à mon propos du début, je souhaiterais que nous sachions utiliser toutes les ressources de la méthode positiviste pour élaborer un droit nouveau sur le fondement des règles existantes. Toutefois, lorsque le positivisme nous laisse sans réponse, il ne faut point craindre, après mûre délibération, de proposer des solutions audacieuses aux problèmes pressants qui assaillent la société internationale.

The meeting decided to recommend that the work of the Committee on Water Resources Law be continued. The following Resolution was formally adopted but was not submitted to the Closing Session of the Conference :—

The 54th Conference of the International Law Association, held at The Hague in August, 1970,

Having received, with approval, the second Progress Report of the Committee on International Water Resources Law,

Requests the Committee, in accordance with the terms of reference confirmed at the Buenos Aires Conference, to continue its work with a view to presenting a final report on one or more of the aspects of the work of the Committee at the next Conference of the International Law Association.

COMMITTEE

on

INTERNATIONAL WATER RESOURCES LAW
(Second Progress Report)

1. In accordance with the recommendation of the Helsinki Conference, the Committee on International Water Resources Law was established by the Executive Council at its meeting in November 1966. The Committee presented its first Progress Report at the Buenos Aires Conference. That Report contained mainly a presentation of the working methods adopted by the Committee, including the terms of reference of the six Working Groups established by the Committee. In this connection, a further reference is made to the Buenos Aires Conference Report.

2. The Buenos Aires Conference approved, after discussion, the general approach adopted by the Committee. In view of the complexity of the various subject matters under consideration, in particular the technical information, for example physical interrelationships and the various effects of contamination and inundation, the Committee work on the legal aspects of these problems is not yet sufficiently advanced to permit the preparation of mature proposals on the basis of which discussion at the full Conference could be justified. The Committee is continuing its work in anticipation that at the 1972 Conference firm proposals on one or more topics will be ripe for discussion.

3. Since the Buenos Aires Conference Report the Committee has had three meetings : the first one concurrently with the Buenos Aires Conference, the second in Paris in June 1969 and the third one in Rome in April 1970. The Buenos Aires meeting dealt mainly with procedural matters connected with the future work.

The Paris meeting was held in co-operation with U.N.E.S.C.O. At that meeting the main issues were ground-water problems. The Committee conducted most of its work at this meeting in the form of a special Ground-water Panel under the chairmanship of Dean R. D. Hayton, with eminent experts invited by U.N.E.S.C.O. The Committee received valuable background information on the technical aspects of ground-water and its relationship with surface water. The results of that Panel are to be studied further by the Committee's Working Group on Underground Water. The excellent assistance

and co-operation provided by U.N.E.S.C.O. were very helpful for the Committee. U.N.E.S.C.O. has kindly promised further assistance to the Committee, particularly regarding technical knowledge and documentation. At the Paris meeting there was also a preliminary discussion on flood control on the basis of Prof. F. J. Berber's study.

The meeting in Rome was made possible as a result of a generous invitation from F.A.O. Arrangements were made by the Chief of the Legislation Branch of F.A.O. and member of the Committee, Dr. D. A. Caponera.

At this meeting the Committee concentrated primarily on items concerning general uses of water resources, especially flood control. The discussion was based on Prof. Berber's study, with draft articles and comments. The technical background, including certain special problems, was explained by experts from F.A.O. Furthermore, Mr. P. R. Ahuja, former member of the Committee, attending as an expert by courtesy of U.N.E.S.C.O., submitted a paper devoted to the technical aspects of flood control. The Committee also discussed, on the basis of preliminary draft articles, aspects of pollution and underground waters. It was decided to discuss the revision of the draft articles concerning coastal pollution, to be prepared by Dr. Cuperus, at the next meeting of the Committee. It was also decided that the Committee would take up revised draft articles on flood control at its next meeting.

4. The Committee has followed with great interest the application of the Helsinki Rules in international practice. At the Rome meeting the Committee was informed by its member, Dr. G. J. Cano, that the Government of Argentina had accepted the Helsinki Rules in a formal way. Because of this exceptional and gratifying initiative the Committee agreed upon the following statement:

The COMMITTEE on INTERNATIONAL WATER RESOURCES LAW of the INTERNATIONAL LAW ASSOCIATION:

Considering the importance of intergovernmental co-operation and collaboration for the purpose of development, conservation and use of the waters of international drainage basins, and

Considering the wide favourable reception accorded to the International Law Association's "Helsinki Rules" generally by private experts and some governments informally,

Takes Note of the official position taken by the Government of Argentina, which endorses the Helsinki Rules as the basis for its international water policy and which the Committee hopes will stimulate other States to take similar steps of recognition and application of the Helsinki Rules.

5. The Working Groups established by the Committee and their Chairmen have prepared during the ensuing two years numerous basic documents for the Committee. Thus, the Committee now has the opportunity to elaborate concrete suggestions on the basis of those studies. Some of the studies prepared within the Committee or Working Groups have already been referred to above. Among other documents one may mention studies on navigation prepared by Dr. Fortuin and Dr. Zurbrügg, as well as documentation concerning relationships between water and other natural resources presented by Dr. G. J. Cano.

Rome, April 3rd, 1970

E. J. Manner,
Chairman.
V.-M. Metsälampi,
Acting Secretary.

Membership of the Committee

Dr. E. J. Manner (Finland) (*Chairman*)

1. Navigation (*Rapporteur*: Dr. H. Fortuin)
 2. Underground Waters (*Rapporteur*: Prof. R. H. Hayton)
 3. Pollution of Coastal Areas and Enclosed Seas (*Rapporteur*: Dr. K. W. Cuperus)
 4. Relationship of Waters to other Natural Resources (*Rapporteur*: Dr. G. J. Cano)
 5. General Uses of Waters (*Rapporteur*: Prof. F. J. Berber)
 6. Administration and Management of International Waters (*Rapporteur*: Dr. D. A. Caponera)
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|---|----------------------------------|
| B. M. Abbas (Pakistan) | A. Lester (U.K.) |
| Major L. M. Bloomfield, Q.C. (Canada) | J. Lipper (U.S.A.) |
| Dr. C. Boasson (Israel) | Dr. C. Martin (U.S.A.) |
| <i>Alternate</i> : M. Virshubski | V.-M. Metsälampi (Finland) |
| Prof. C. B. Bourne (Canada) | Dr. A. E. Abdel Meguid (U.A.R.) |
| Dean Maxwell Cohen (Canada) | M. A. Pesh Imam (Pakistan) |
| <i>Alternate</i> : Prof. Y.-J. Morin | T. Nilsson (Sweden) |
| Dr. P. Dimitrijević (Yugoslavia) | Dr. K. Krishna Rao (India) |
| <i>Alternate</i> : Dr. J. Paunović | Dr. I. Ruiz Moreno (Argentina) |
| Prof. H. Eek (Sweden) | N. C. Saksena (India) |
| <i>Alternate</i> : Prof. L. Hjerner | M. A. Samad (Pakistan) |
| Northcutt Ely (U.S.A.) | Dr. H. E. Scheffer (Netherlands) |
| Prof. F. Florio (<i>Alternate</i> : Italy) | Mr. Justice S. M. Sikri (India) |
| Prof. A. H. Garretson (U.S.A.) | Dr. Nagendra Singh (India) |
| G. Herner (Sweden) | Prof. P. S. Stainov (Bulgaria) |
| Dr. T. Ionascu (Romania) | Prof. Hamed Suitan (U.A.R.) |
| Judge Külz (Germany) | Dr. H. Zurbrügg (Switzerland) |

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COMMITTEE

ON

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and co-operation provided by U.N.E.S.C.O. were very helpful for the Committee. U.N.E.S.C.O. has kindly promised further assistance to the Committee, particularly regarding technical knowledge and documentation. At the Paris meeting there was also a preliminary discussion on flood control on the basis of Prof. F. J. Berber's study.

The meeting in Rome was made possible as a result of a generous invitation from F.A.O. Arrangements were made by the Chief of the Legislation Branch of F.A.O. and member of the Committee, Dr. D. A. Caponera.

At this meeting the Committee concentrated primarily on items concerning general uses of water resources, especially flood control. The discussion was based on Prof. Berber's study, with draft articles and comments. The technical background, including certain special problems, was explained by experts from F.A.O. Furthermore, Mr. P. R. Ahuja, former member of the Committee, attending as an expert by courtesy of U.N.E.S.C.O., submitted a paper devoted to the technical aspects of flood control. The Committee also discussed, on the basis of preliminary draft articles, aspects of pollution and underground waters. It was decided to discuss the revision of the draft articles concerning coastal pollution, to be prepared by Dr. Cuperus, at the next meeting of the Committee. It was also decided that the Committee would take up revised draft articles on flood control at its next meeting.

4. The Committee has followed with great interest the application of the Helsinki Rules in international practice. At the Rome meeting the Committee was informed by its member, Dr. G. J. Cano, that the Government of Argentina had accepted the Helsinki Rules in a formal way. Because of this exceptional and gratifying initiative the Committee agreed upon the following statement :

The COMMITTEE on INTERNATIONAL WATER RESOURCES LAW of the INTERNATIONAL LAW ASSOCIATION :

Considering the importance of intergovernmental co-operation and collaboration for the purpose of development, conservation and use of the waters of international drainage basins, and

Considering the wide favourable reception accorded to the International Law Association's "Helsinki Rules" generally by private experts and some governments informally,

Takes Note of the official position taken by the Government of Argentina, which endorses the Helsinki Rules as the basis for its international water policy and which the Committee hopes will stimulate other States to take similar steps of recognition and application of the Helsinki Rules.

5. The Working Groups established by the Committee and their Chairmen have prepared during the ensuing two years numerous basic documents for the Committee. Thus, the Committee now has the opportunity to elaborate concrete suggestions on the basis of those studies. Some of the studies prepared within the Committee or Working Groups have already been referred to above. Among other documents one may mention studies on navigation prepared by Dr. Fortuin and Dr. Zurbrugg, as well as documentation concerning relationships between water and other natural resources presented by Dr. G. J. Cano.

Rome, April 3rd, 1970

E. J. Manner,
Chairman.
V.-M. Metsälampi,
Acting Secretary.

Membership of the Committee

- Dr. E. J. Manner (Finland) (*Chairman*)
1. Navigation (*Rapporteur* : Dr. H. Fortuin)
 2. Underground Waters (*Rapporteur* : Prof. R. H. Hayton)
 3. Pollution of Coastal Areas and Enclosed Seas (*Rapporteur* : Dr. K. W. Cuperus)
 4. Relationship of Waters to other Natural Resources (*Rapporteur* : Dr. G. J. Cano)
 5. General Uses of Waters (*Rapporteur* : Prof. F. J. Berber)
 6. Administration and Management of International Waters (*Rapporteur* : Dr. D. A. Caponera)
- | | |
|---|----------------------------------|
| B. M. Abbas (Pakistan) | A. Lester (U.K.) |
| Major L. M. Bloomfield, Q.C. (Canada) | J. Lipper (U.S.A.) |
| Dr. C. Boasson (Israel) | Dr. C. Martin (U.S.A.) |
| <i>Alternate</i> : M. Virshubski | V.-M. Metsälampi (Finland) |
| Prof. C. B. Bourne (Canada) | Dr. A. E. Abdel Meguid (U.A.R.) |
| Dean Maxwell Cohen (Canada) | M. A. Pesh Imam (Pakistan) |
| <i>Alternate</i> : Prof. Y.-J. Morin | T. Nilsson (Sweden) |
| Dr. P. Dimitrijević (Yugoslavia) | Dr. K. Krishna Rao (India) |
| <i>Alternate</i> : Dr. J. Paunović | Dr. I. Ruiz Moreno (Argentina) |
| Prof. H. Eek (Sweden) | N. C. Saksena (India) |
| <i>Alternate</i> : Prof. L. Hjerner | M. A. Samad (Pakistan) |
| Northcutt Ely (U.S.A.) | Dr. H. E. Scheffer (Netherlands) |
| Prof. F. Florio (<i>Alternate</i> : Italy) | Mr. Justice S. M. Sikri (India) |
| Prof. A. H. Garretson (U.S.A.) | Dr. Nagendra Singh (India) |
| G. Herner (Sweden) | Prof. P. S. Stainov (Bulgaria) |
| Dr. T. Ionascu (Romania) | Prof. Hamed Suitoan (U.A.R.) |
| Judge Külz (Germany) | Dr. H. Zurbrugg (Switzerland) |