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REQUEST FOR THE INCLUSION OF AN ITEM IN THE PROVISIONAL AGENDA
OF THE TWENTY-FIFTH SESSION

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

Note verbale dated 24 April 1970 from the Permanent Mission of Finland
to the United Nations addressed to the Secretary-General

The Permanent Mission of Finland to the United Nations presents its compliments to the Secretary-General of the United Nations and has the honour to propose under the rules of procedure of the General Assembly the inclusion of the following item in the agenda of the twenty-fifth session of the General Assembly:

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

An explanatory memorandum is attached in accordance with rule 20 of the rules of procedure.

EXPLANATORY MEMORANDUM

1. From ancient times States have settled questions and disputes concerning their border rivers and other watercourses of common interest by bilateral treaties or other regional regulations. Hundreds of such treaties have been concluded from the Middle Ages to the present day in different parts of the world. In spite of this multitude of regional solutions there is - with the exception of the Barcelona Convention of 1921 on the Régime of Navigable Waterways of International Concern^{1/} and the Convention relating to the Development of Hydraulic Power affecting more than one State,^{2/} signed at Geneva in 1923 - no general international convention on the law of international waters corresponding to the Conventions on the Law of the Sea concluded at Geneva in 1958. And there is, especially in Africa, Asia and South America, a large number of international rivers not covered by international agreements. For the most part the use of international rivers and lakes is still based upon rules of unwritten customary law. To a great measure these rules are, however, too vague and do not cover every practical problem which may arise between riparian States concerning watercourses of their common interest. The possibility of controversies and disputes between neighbouring States is now much larger than it was earlier. This is not only because of the increasing activity in all the fields of human life, but also because there is today a greater number of States, and between those States more borderlines, than only a few decades earlier. Many national problems connected with the use of waters have received an international character. At the same time the concern of Governments has in recent years extended from river navigation, water supply and the construction of hydraulic works to the multi-purpose development of entire river basins.

2. Several attempts have been made to codify the customary and conventional rules of international law relating to international watercourses. In this connexion the work carried out by the International Law Association (ILA) is of particular interest. After more than twelve years of careful preparations by a special committee composed of experts representing nearly all parts of the world,

^{1/} League of Nations, Treaty Series, vol. VII (1921-1922), No. 172.

^{2/} League of Nations, Treaty Series, vol. XXXVI (1925), No. 905.

the Association adopted at its 52nd Conference, held in Helsinki in 1966, thirty-seven articles on the law of international drainage basins. These articles, known as the Helsinki Rules,^{3/} contain provisions on the equitable utilization of the waters of an international drainage basin, on the abatement of pollution, on navigation and timber floating, and finally, recommendations concerning the settlement of disputes. The articles are intended to be applicable to the use of the waters of an international drainage basin except in cases where a convention, an agreement or a binding custom among the basin States provide otherwise. The rules have been printed and published by ILA (together with comments which, however, have not been adopted by the Association and therefore are not part of the rules).

3. Although the Helsinki Rules have so far not been adopted by any official body, their importance has been recognized in the writings of many experts in the field. Furthermore, the main principles of the rules have in a number of cases been applied in practice. The Helsinki Rules may, of course, have a particular value in cases concerning the exploitation and development of water resources in different parts of the world.

4. For geographic and economic reasons the Government of Finland has attached a great importance to the development of the law of international watercourses. In the view of the Finnish Government it would be useful to engage the United Nations in this matter. In 1959 the General Assembly adopted resolution 1401 (XIV) concerning this item, but in spite of the fact that this resulted in the collection of useful information on the subject, no other steps have been taken by the United Nations for the purpose of codifying the rules of international law relating to international watercourses.

5. The Government of Finland is 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 considers that the time has come for the General Assembly to take the

^{3/} International Law Association, Helsinki Rules on the Uses of the Waters of International Rivers (London, 1967).

preliminary action necessary for the attainment of that goal. New developments at the regional level^{4/} underline the permanent interest and practical importance of the matter as well as the need for its study to be undertaken by the United Nations on a world-wide basis. Consequently, the Government of Finland has proposed the inclusion in the agenda of the twenty-fifth session of the General Assembly of the item referred to in the note verbale to which the present explanatory memorandum is attached.

6. Under the proposed item, 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. At a later stage the work might lead to the adoption of a convention on the matter. The International Law Commission is, of course, the most appropriate body for carrying out the preparatory work, and it might indeed be appropriate to assign this new task to it, with a request that it be given priority, at a time when the Commission is reviewing both its own work programme and the whole field of international law in order to propose further topics for progressive development and codification.

7. The Government of Finland believes that existing relevant legal texts and materials, especially the Helsinki Rules, could be used as a basis for the codification of the topic by the United Nations. In this connexion, it should be recalled that the Helsinki Rules have been adopted recently (1966), that their scope is fairly comprehensive and that in their elaboration due account was taken of texts formerly adopted (e.g. the general international conventions mentioned at

^{4/} The Inter-American Juridical Committee adopted in 1967 a "draft convention concerning the industrial and agricultural use of international rivers and lakes", and the Afro-Asian Legal Consultative Committee has adopted in 1969 a resolution establishing an intersessional sub-committee for a detailed consideration of the "law of international rivers".

the beginning of this memorandum, the Montevideo Declaration of 1933,^{5/} the resolution adopted in 1961 by the Institute of International Law,^{6/} etc.).

8. Finally, the Government of Finland considers 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, including international drainage basins, 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 are no other rules or provisions binding on the parties.

^{5/} See The International Conferences of American States, First Supplement, 1933-1940 (Washington, Carnegie Endowment for International Peace, 1940), p. 88, "Industrial and Agricultural Use of International Rivers".

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