

FOURTH SESSION: 28th August 1974

The chairman, Mr. *Keba M'Baye* opened the final session during which the discussion of the first theme on the agenda — *the legal-institutional framework for environmental resources management* — would be continued, and the results of the colloquium appraised.

Professor *Mayda* was again the principal speaker. He summarized the main issues discussed during the first session and helped clarify them.

Mayda: Despite some optimism about recent legislation, he said, there has been a slow progress toward the understanding of the concept of ecomanagement; the development of viable models; and of legislation based on them. He mentioned that actually enacted legislation is still directed to “first generation problems”.

Professor *Mayda* acknowledged that pollution is a dramatic problem, but insisted in his explanation that it is nonetheless relatively simple. He remarked that the more complex problems are those regarding human factors, especially because of the still prevailing lack of *liaison* between science and politics. In my opinion, he continued, the only counterpressure in favor of rational environmental protection and management is to develop and make fully understood a complete model for ecomanagement. This model must be based on empirical and scientific knowledge; it must be translated into the language of politics; and it must offer “decision vectors” for decision makers. He added that conceptual models are also didactic devices. Then he turned to the concept of system and explained that he does not take this concept as something fixed but as a heuristic medium.

Next he considered some alleged dichotomies mentioned during the discussion and made some general remarks on the well known jurisprudential distinction between natural and positive law. He also considered the “opposition” of specific problems and general theory. From this he concluded that problems should not be faced as dichotomies—because this is somewhat artificial— but as moments within a continuum, that is, according to a systemic approach. In this context he stressed the benefits of systematic thinking and the disadvantages of linear thought.

He concluded by stating the lawyers’ future tasks. They are, first, the creation of a new branch of law —the production of effective regulation—

and, second, the establishing of a new science or theoretic framework, which must have an interdisciplinary character.

Schuessler: Law cannot embrace all things; it is not omnipotent. The growth of new branches of law is proof of this fact. It is especially important that the different aspects involved be clearly defined.

In the German Democratic Republic we have found that many rules are required to achieve certain results. We have also concluded that sanctions are not of primary importance, but rather that what is essential is the positive development of the people's living conditions. We consider that the laws which control and improve the human environment are fundamental.

I would like to speak of the problem that "we have good laws, but they are not applied". Many conditions and factors enter into determining whether or not laws are effective. Economic and social structure constitute the fundamental bases for man's effective protection, and this protection is better achieved in socialist countries, where law and politics are closely related. The resources belonging to a nation are also important. The extent to which we can achieve anything depends on all these factors.

I agree with *Mayda* on the need for a global approach to the problem, but I do not go along with his idea that once we have a clear picture of the problems and of the desired policies legislation is an easy matter. When we are establishing a new branch of law, where technical solutions are very relevant, we must not minimize the importance of the legal approach.

The fact is that all nations have contamination that is not caused by illegal acts. Misuse of property is the cause; the law authorized many things which have subsequently proved negative. The legal system must be brought up-to-date.

There are many aspects which we consider as pertaining to the subject: purity of air and water; protection of soil, etc. This type of legislation is indispensable. We have a ministry for the protection of the environment; we also have specialized agencies whose task is to take charge of particularly important areas such as water and soil protection. In order to find adequate solutions it is not sufficient to think merely in terms of centralized government, Decisions must also be taken at the local level.

Constitutional and Administrative law have developed, giving new powers to the local agencies. Consequently, Constitutional and Administrative law must be reformed and greater care must be exercised in the public administration and issuing of sanctions to those who violate the norms of Environmental Law. This implies an evolution of Penal and Civil law. It has been said that sanctions are not to be considered

as fundamental; however, even in socialist systems they are of great importance.

As lawyers we must not ignore the technical aspect; therefore, we must realize the complexity of the problems we face. Experience has proven that we must not despair, but rather, dedicate unflinching effort to the task we must perform.

Zajtay: I believe that the idea of an Environmental Law is an excellent one, because its purpose is to improve mankind's living conditions. Nonetheless, I should like to emphasize an aspect which is not too positive.

Environmental Law can eventually embrace our entire life, all our activities; thought must be given to the possibility that this may signify danger because of its misuse.

M'Baye: I do not have the impression that the situation has been sufficiently clarified. I would like to have the problem broken down into its specific difficulties and, from there, develop it and arrive at conclusions, since we have not spoken of developing countries in particular.

Reinikainen, Jr: We must work for the people and not for the administrations; we must think of the new generations and acquire a global point of view. The problem we face is multidisciplinary; it belongs to unified science, and it requires a common language. We require an alternate technology in order not to confine ourselves to reducing, but to eliminating contamination.

Malmstroem: In some countries it may be possible to gather everything relating to the manner of elaborating laws in one same code, but it is important to preserve certain aspects of the existing norms. A systematic reconstruction is a task for lawyers to accomplish, and this can be done without a legislative revolution.

After a short statement by Mr. *Mshvernieradze* on behalf of UNESCO the discussion was closed. Finally, Mr. *Carpizo*, representing the Mexican Committee, and Mr. *Keba M'Baye*, president of the IALS, brought the colloquium to an end.

Mr. *Carpizo* bade the participants farewell in the name of the Mexican Committee, and praised the quality of the papers presented as well as the depth of the discussions, expressing his hopes for the future of IALS and of the participants' work.

M'Baye: Now that our work has come to an end, I would like to express my pleasure at having been able to attend. We deeply appreciate the

valuable help given by the Institute of Legal Studies. I am conscious of the fact that we did not solve the problems, but we have worked at this intensively. Our goal was to present and discuss the problems, to clarify points, not to reach final conclusions.

Law is a subject that is at the service of the branch politics which is concerned with planning. Environmental Law cannot be ignored because of the imperatives born of progress. We wish to serve a new science and systematize these problems.

I appreciate *Mshvenieradze's* participation as well as that of our Mexican colleagues, and the hospitality they have shown us.

Our purpose was to discuss problems, and even though we did not reach solutions, we have taken the first steps towards this. In that sense, we have been most successful.

I also want to express my gratitude to the UNAM, not only for organizing the colloquium but for its academic contribution.