

SECOND SESSION: 26th August 1974

The session was held under the chairmanship of Mr. *Simmonds*. Under discussion was the second theme on the agenda: *the effects of national regulation of the environment on international trade and foreign investments*.

The main speaker, Mr. *Despax*, began his report by indicating that we must fully realize the practical and legal importance of the problem.

He said that developed countries are so heavily industrialized that they cannot absorb any more pollution, and that they are off-loading some of their problems onto developing countries which still have the capacity to absorb the contaminating effects of heavy industry. So, he said, national legislation must regulate the installation of industries. There are industries that are very important for a country and for its economy, but the installation of which results in serious contamination. The industrialization of underdeveloped countries faces precisely such a problem; it is necessary to consider both the benefits and the harm derived from them.

Mr. *Despax* went on to say that some of the most strict environmental controls are to be found in industrialized countries; they began to introduce them of necessity. Developing countries are becoming subject to these controls, especially in the production of internationally used goods. The imposition of environmental controls was acting as yet another economic burden on developing countries—but business cannot wait until underdeveloped countries have solved their problems.

Developing countries are also subject to the slow awakening in industrialized countries of the need to bear in mind ethical considerations in industrial management. But these countries are not rich enough to take into account such plausible but expensive considerations. Should industrialized countries hold back their growth towards more strict environmental control because of this? Mr. *Despax* said that this is indeed a serious question.

Once the speaker had brought his address to an end, the discussion period was opened by the chairman.

Simmonds: *Despax* has presented us with a clear and concise summary of the acute pressures bearing upon these countries. They are, in truth,

survival problems in the midst of precarious resources. Information media must be provided and a responsible attitude adopted. Almost all activities leading to further development must be promoted, provided they do not infringe upon the environmental rights or simply on the environmental possibilities. It is a question of determining obligations among participant states and of seeing if measures of control will be adopted.

Thiem: I would like to point out two problems: 1. The exportation of contamination; 2. The difficulties encountered by some nations in attaining the high standards of other countries.

In relation to the first problem, I do not agree with *Desparx* when he says that countries in the process of development have a greater capacity to absorb contamination. We must ponder on the fact that, on a worldwide scale, it is possible to redistribute resources, but only to a certain extent. It becomes extremely difficult to determine just to what point it is possible to measure environmental damage.

The important issue is whether or not industrialized nations can determine alternatives that will prevent contamination from extending to developing countries. The negative effects are considerable, and the industrialized countries must accept responsibility for them. As awareness of the danger increases, so will awareness of the responsibility of developed countries. Whenever we adopt any form of environmental control, the problems caused by the transference of industry must be among the first subjects on the agenda, and will have to be considered both in relation to international and to local requirements. Thus, for instance, setting up of contaminating industries could be penalized by withdrawing economic privileges.

As for the second problem, the interchange of information and harmonization on a world scale are of fundamental importance but far from sufficient. The solution lies in providing general, technical, economic, and scientific assistance in order to introduce better means for these countries.

Simmonds: I consider that the application of sanctions is not very practicable. I recall that no sanctions were adopted by the United Nations Conference on matters pertaining to ocean floors.

Sand: There are countries which accept no responsibility for conditions prevalent in countries from which they import goods. Sometimes the motives behind the introduction of restrictions are correct, but the environmental lobby also sometimes adopts meaningless slogans, such as "cheap environment", which have little bearing on reality and are not properly thought out.

Exporting countries are morally obliged not to export goods which they would hesitate to use within their own territory because of the contamination which they produce. In Stockholm, mention was made of products that are beneficial for the environment.

As far as standards are concerned, countries in the process of development may object to them. For this reason, general standards cannot be established. An intermediate position must be assumed; nations having different standards should exchange information as part of their moral obligation. If the products in question are apt to be harmful, the exporting country must give warning of the danger involved.

To impose standards on underdeveloped countries is to force them to do what they are unable or unwilling to do. The manner in which controls can be effectively improved must be considered. In accordance with the *United Nations' Environmental Policy Act*, all state programs must include comments on the dangers implied, but whether or not national controls can be used is still under discussion.

Cabrera: The topics taken up by the speaker are of a political-legal nature; the legal aspect has not been well defined. Environmental Law must be preventive. Importation of products must occur with full consciousness of the dangers involved. If prevention is insufficient, if damage has already occurred, compensation must be granted. It will be necessary to determine the responsibility of the exporting company or state, and the compensation to be rendered. This can be done by arbitration and through interstate and international contract.

Magariños: Everything that has been said confirms my proposition concerning the manner in which we can reach our goal. We do not act as government representatives, but as legal theorists. We must endeavour to discover a legislation which accounts for to the facts. We are interested not in what our administrators may or may not do, but in defining a specific philosophy, and then, in establishing appropriate rules. What we must do is define the environmental norms relating to human survival, and so proceed to protect this right through legal channels.

There is an aspect that we must take into account as a contamination factor: this is the complicity and the venality of some of those who are responsible for admission of the products being imported.

We must establish guarantees at an international level that will reinforce the existing national guarantees.

Hazard: At this point, I should like to mention the case of the Egyptian dam which the United States refused to finance because the Egyptians

would not comply with certain security controls, and for which the United States were subsequently accused of being paternalistic.

Reinikainen: The paternalistic attitude is negative. The solution is to be found in international agreements.

Zajtay: Mr. *Magariños* has informed us that the provisions enacted in Uruguay are laws in name only. My question is whether the international community should assume the responsibility of applying environmental control.

Magariños: I believe that I did not make myself clear; however, I do believe that all nations should make an effort to participate and to work towards an agreement in these matters.

Zajtay: I do not know, then, who should be in charge of applying these laws.

Goddard: We, in the United Kingdom, are aware of the need to protect the environment. There is the case of oil contaminating ocean waters; measures related to these projects are in the process of being approved. I believe that this represents a contribution for countries having a lesser degree of development, since it represents a solution to concrete matters.

We must have a general objective, but we must proceed gradually, step by step.

Magariños: In Uruguay we have a very clearly defined concept of justice, but we must know what the international objective is.