THIRD SESSION: 27th August 1974

The session was presided over by Mr. *Keba M'Baye*, President of the IALS.

The third point on the agenda was the theme of this session: Legal means to control and avoid transfrontiers pollution. The speaker was Mr. *Sand*.

Sand: Trans-frontier pollution was considered an urgent matter in the Stockholm Conference, and it will receive equal treatment during the conference on trade operations between East and West scheduled to take place in Vienna.

Public International Law is the most feasible medium in this context, even though it might not be the most effective, especially since problems generally do not arise between two states, but are provoked by corporations. The most effective thing would be to deal with these problems at a national level. My paper contains a proposal for an intermediate solution and for less spectacular media.

I believe that even if substantive law differs from country to country, an agreement on a uniform procedural law can be reached. However, I am well aware of the difficulties that *Blanc-Jouvan* and *Zajtay* have pointed out.

There is, in fact, a new branch of Comparative Law which relates to procedural law in general. Wherever possible, substantive law should be unified, but it is even more important that procedural laws in different countries be brought into line with each other. I believe it can be shown that, in this context, differences among national laws are of secondary importance.

Conflict of laws is not crucial, provided that the principle of due process of law prevails. It is possible to reach an agreement concerning a uniform procedural legislation without recoursing to Comparative Law, through international agreements. If we do this, there is no need for complicated statements of principle.

For instance, the Scandinavian Convention did not define rights, but it did establish definite procedural rules to be observed among the States

which took part. So, a new branch of law is being born: International Procedural Law.

My paper does not have encyclopedic reaches; my purpose has been merely to present an example of what is possible to do.

Rotman: This theme is connected with yesterday's and, once more, presupposes the relationship between developed and underveloped countries. I would like to refer to those problems afflicting nations in the process of development.

The question to be considered is: What type of regulation should be applied to countries which are going through the process of development? This depends on their economic policy regarding environment, and not on the usual economic considerations. It also depends on the individual capacity of each nation to absorb contamination.

Consequently, Environmental Law springs from Economic Law and embraces many other branches, such as Administrative and Civil Law. The latter is most important for underdeveloped countries because it furnishes a strong legal basis for environmental protection for present and future generations. Penal Law will also have to be employed.

Since the problem is one which is appreciated by all countries, I believe that the more developed ones should use their political influence to support the underdeveloped ones.

Zajtay: We are dealing with a field that is new to us, but that is connected with other subjects. For example, we can draw from certain doctrines which form the basis of other branches of law, but certain modalities must be borne in mind.

Eminescu: It might be thought that industrial property plays an important role in Environmental Law. The problem of environment can only be broached globally. The results of our colloquium have led us to consider an issue from a new point of view: it is impossible to contemplate environment without mentioning the degree of development.

Environmental problems should not only be considered from a legal point of view but also from an economic and social standpoint. Comparative studies in the field of legislation can also be of help. It is my belief that the law covering the industrial right of property can be used to clarify economic and social problems in this field, as was pointed out in Stockholm. A preferential protection for those inventions that directly or indirectly tend to protect the environment can be established at a national level. In a similar way, the transference of technology has not always been complemented with the necessary "know-how". So, I believe that it would

be ideal if an international convention on transference of technology could be assembled, to benefit developing countries.

Sand: I believe there are a number of analogies that can be used and that experiences can be derived from all of them. Concerning the pessimism expressed in the matter of a general theory, I think that we cannot share his point of view entirely, though I admit that we should concentrate on more concrete problems. Apart from the theories pertaining to transnational law, we have a great arsenal of problem solutions that we can resort to; for instance, comparative law studies may clarify the general theory.

M'Baye: Regarding African countries, there is one point I would like to point out. We do not believe that the export of contamination is a fundamental problem; this is logical, since we are beset with more urgent problems. The proportion between those who die of hunger and those who die from contamination favors those who die of hunger.

For underdeveloped countries, the transference of contaminating industries implies a decentralization of industry, but the pragmatic approach of importing industries must be improved; there must be an equal redistribution of industry the world over.

In April, 1974, Senegal passed a law creating an industrial zone. Both economic and financial incentives were given to industries functioning within it. The only condition imposed by the law is that local labor be used. The foregoing shows how the conditions for the acceptance of an industry depend on the circumstances. One of the problems is, of course, that of contamination, and we do not accept highly contaminating industries in Senegal. I believe that we will have to reach the point where international agreement as to what industries may be established in the developing countries will be possible.

Magariños: The oposition between general theory and concrete measures is a false one. A concrete measure implies a theory and the application of a principle. Hence, in the matters of Environmental Law we need general measures, statements of principles, etc. Substantive law must be both repressive and preventive; procedural law cannot substitute substantive law.

The environment is not a legal concept, in the same manner that life cannot be considered such, but it must submit to legal principles.

Mayda: The West imposes its own models on developing countries.

Ancel: I believe it is very important to relate politics to law and that the former improve the latter. At the legislative level we must establish new goals which take humanistic concepts into consideration.
Valladao: The law of politics is the strongest of laws. If science is to be conducted in a humanistic manner, through social justice, it must be regulated by the law. Mankind must be protected against the excesses of development.

Malmstroem: All nations must take these problems into account, but not all will necessarily have to incorporate the solutions into their legislation. Thus, for example, Scandinavia is reluctant about doing this. Nevertheless, since nature is a human heritage, we do insist on compensation rules, which are also preventative. In weighing up these ideas we must realize that industry subject to environmental controls is often less competitive than industry functioning without restriction. When we are setting up industry we must consider the imposition of environmental control right from the beginning.

We must compare experience at an international and regional level (for instance, Scandinavia) but also at a national level (the experience of southern Itally, for example).

Finally, I would like to insist that the problems that concern us are not purely technical ones.

Cabrera: If environmental law is to be in truth a law, general principles do not suffice; it is necessary to have remedies. This is why I agree with *Sand*: Procedural law in this aspect is most important. The mere definition of principles does not assure their application. I am also in accordance with *Malmstroem* in stating that the rules for compensation are also of a preventive nature.

Sand: I will try to summarize what we have learned in the light of these discussions. We have seen the importance of adopting preventive measures. While we must not ignore the necessity to compensate, it is more important to take preventive rather than repressive measures, and this is why we insist on the importance of international law.

One of the functions of International Law might be the obligation to notify in advance the dangers involved in the production of certain goods. It is easier to achieve concrete agreements than it is to establish general principles.

The picture is similar at a national level. Prior notification must also be required, as well as communication of data on projects that could have harmful consequences for the environment. This type of information will

make it possible to prevent damages, discuss the effects, and alert the potential victims.

Magariños: There is no conflict of interest between prevention and compensation.

M'Baye: I would like to express my appreciation to all the participants, especially to Mr. Sand for his splendid summary.