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**Publication of the Documents of the International Law Commission. Draft resolution
submitted by Mr. S. Krylov - incorporated in A/2934, para. 35**

Topic:
Other topics

Extract from the Yearbook of the International Law Commission:-
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pirates all those nations that had exercised belligerent rights during the past few centuries.

11. In the autumn of 1954, Poland had brought the same issue in similar fashion before the General Assembly, where, as was to have been expected, the case had failed. He had no doubt that the Polish Government would also fail in the attempt now being made in the Commission. But he felt that he must express his regret, as Mr. Edmonds had done at an earlier meeting,¹ that Poland should have seen fit to endeavour to make ill-considered use of United Nations organs, political or technical.

12. That said, it remained true that all proposals could be treated on their merits, no matter how unworthy the purposes for which they might have been made. He therefore reserved his right to speak again should the Commission decide to deal with the Polish proposal.

13. Mr. ZOUREK pointed out that Mr. Hsu had not even attempted to justify the criminal acts committed in the China Seas against merchant vessels on the high seas and was astonished how anyone could think of suggesting that it was for the governments of the victims of piratical attacks to prove that their vessels had been boarded and looted. Such a procedure would be tantamount to transferring the burden of proof from the criminal to his victim, which was absolutely inadmissible. The acts of piracy committed in the China Seas were well-known and had been recounted in detail in the documents which had been transmitted to the Commission in accordance with General Assembly resolution 821 (IX) of 17 December 1954, and circulated to each member. The facts about the violation of the principle of freedom of navigation by Chiang Kai Shek's ships had been summarized in the Polish Government's memorandum transmitted to the Commission by Mr. Jan Balicki, official observer for the Polish Government. It was common knowledge that the vessels had been attacked or stopped on the high seas, forcibly taken to Taiwan, the cargoes looted and the crews forcibly detained or subjected to ill-treatment or threats. He emphasized that such piratical attacks had not been made against Polish vessels only but also against vessels of other nations including those of Denmark, Italy, Japan, the Netherlands, Panama, the Soviet Union and the United Kingdom.

14. The Government of Poland had acted entirely within its rights in submitting its observations to the Commission and that for two reasons. To begin with, it was entitled to do so as a Member of the United Nations which had suffered considerable loss owing to the systematic violation of the freedom of navigation in the China Seas. But in addition the General Assembly resolution of 17 December 1954 expressly invited States Members to transmit to the Commission their views on the principle of the freedom of navigation on the high seas.

15. In accordance with that resolution (821 (IX)) the Polish Government's memorandum (A/CN.4/L.53) expounded that government's view about the principle of freedom of navigation on the high seas and at the same time adduced specific facts which undoubtedly constituted a violation of that principle. It should be emphasized that the facts had never been denied by those responsible for them. For the time being he did not wish to go into details because the Commission must first decide how to deal with the problem. It could either examine the facts recorded in the documents transmitted by the General Assembly and to which the Polish memorandum also referred, or it could declare, as some members seemed to have suggested, that it was not competent under the terms of its Statute to examine those facts. He would bow to the Commission's decision, being prepared if called upon to give further details on the facts or on points of law.

16. Mr. SANDSTRÖM did not think that, in transmitting to the International Law Commission the records and documents of the relevant meetings of the *Ad hoc* Political Committee, the General Assembly's intention had been that the former should pronounce judgment on a particular case. Its purpose had been merely to give governments an opportunity of making known to the International Law Commission their views on freedom of navigation on the high seas.

17. The Commission's task was limited to examining the rules governing piracy on the high seas in general; it had no competence to deal with specific cases. But that did not prevent members of the Commission from making use of any material contained in the Polish complaint which, in their opinion, might be relevant, by way of example, in the discussion of piracy in general.

18. Mr. HSU agreed with Mr. Sandström. He would therefore refrain from replying in detail to the points raised by Mr. Zourek—particularly the question of merchant vessels other than those flying the Polish flag. He could not but regret that Mr. Zourek should have seen his way to supporting the Polish complaint which was tantamount to seizing the International Law Commission of a matter which did not concern it.

19. Mr. SCALLE agreed with Mr. Sandström. The Commission was about to consider article 23 and to make an objective examination of piracy. It was therefore incumbent upon it to set aside all questions of a subjective character.

20. Mr. KRYLOV said that the duel the Commission was witnessing might well have taken place between Mr. Hsu and the eminent British jurist who had just been elected to the Commission. For, indeed, no less than 140 British ships had been arrested, detained or seized in recent years by "unknown ships" in the China Seas.

21. In any discussion of article 23, it was desirable that members should be in possession of all relevant facts.

¹ 288th meeting, para. 58.