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**Summary record of the 292nd meeting**

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\* The number within brackets indicates the article number in the draft contained in Chapter II of the Report of the Commission (A/2934).

*Chairman* : Mr. Jean SPIROPOULOS

*Rapporteur* : Mr. J. P. A. FRANÇOIS

*Present* :

*Members* : Mr. Gilberto AMADO, Mr. Douglas L. EDMONDS, Sir Gerald FITZMAURICE, Mr. F. V. GARCÍA AMADOR, Mr. Shuhsi HSU, Faris Bey el-KHOURI, Mr. S. B. KRYLOV, Mr. Carlos SALAMANCA, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jaroslav ZOUREK.

*Secretariat* : Mr. LIANG, Director of Codification Division, Office of Legal Affairs, Secretary to the Commission.

**Filling of casual vacancies in the Commission  
(item 1 of the agenda)**

(*resumed from the 288th meeting*)

1. After a short discussion, it was decided by 9 votes to 1, with 2 abstentions, to hold a private meeting on the question of the filling of the casual vacancy caused by Mr. Córdova's resignation.

2. On the resumption, the CHAIRMAN announced that Mr. Luis Padilla Nervo had been elected to fill the casual vacancy caused by Mr. Córdova's resignation.

**Régime of the high seas (item 2 of the agenda)  
(A/CN.4/79) (*resumed from the 291st meeting*)**

DRAFT ARTICLES (A/CN.4/79, SECTION II)  
(*resumed from the 291st meeting*)

Articles 23 [14] (*resumed from the 291st meeting*) and 24–28 [16–20]: Policing of the high seas<sup>1</sup>

3. The CHAIRMAN announced that there were a number of proposals before the Commission concerning articles 23 to 28.

4. The first proposal was that of the Special Rapporteur: it was a simplified version of the draft in the Special Rapporteur's sixth report (A/CN.4/79), and read as follows:

**"Article 23**

"Piracy in the sense of these rules is any act of violence or depredation, committed for private ends by the crews or the passengers of a private vessel against another vessel on the high seas, with intent to rob, rape, wound, enslave, imprison or kill a person, or with intent to steal or destroy property.

"The acts, committed on board a public vessel, whose crew mutinies, directed against other vessels, are assimilated to acts committed by a private vessel.

**"Article 24**

"A ship is a pirate ship when it is devoted by the persons in dominant control to the purpose of committing acts described in article 23."

**Article 25**

*No change.*

**"Article 26**

"Every State may seize by its public vessels, in a place not within the territorial jurisdiction of another State, ships committing acts of piracy, and things or persons on board. The State may exercise jurisdiction over them."

5. There was no change to article 27, and article 28 had been dropped.

6. The second proposal was by Mr. Sandström, and con-

<sup>1</sup> Articles 24 to 28 read as follows:

Article 24:

"A ship is a pirate ship when it is devoted by the persons in dominant control to the purpose of committing an act described in the first sentence of article 23, paragraph 1, or to the purpose of committing any similar act within the territory of a State by descent from the high sea, provided in either case that the purposes of the persons in dominant control are not definitely limited to committing such acts against ships or territory subject to the jurisdiction of the State to which the ship belongs."

Article 25:

"A ship may retain its national character although it has become a pirate ship. The retention or loss of national character is determined by the law of the State from which it was derived."

Article 26:

"In a place not within the territorial jurisdiction of another State, a State may seize a pirate ship or a ship taken by piracy and possessed by pirates, and things or persons on board."

Article 27:

"A ship seized on suspicion of piracy outside the territorial jurisdiction of the State making the seizure is neither a pirate ship nor a ship taken by piracy and possessed by pirates, and if the ship is not subject to seizure on other grounds, the State making the seizure shall be liable to the State to which the ship belongs for any damage caused by the seizure."

Article 28:

"A seizure because of piracy may be made only on behalf of a State, and only by a person who has been authorized to act on its behalf."

sisted in the replacement of articles 23 to 28 as drafted in the sixth report (A/CN.4/79) by the following texts :

#### "Article 23

"1. Any State may seize on the high seas a ship on or from which an act of piracy has been committed or which is intended for piracy (pirate ship) and possessed by pirates, the ship or ships taken by the pirates and the persons or things on board the ships.

"2. The State making the seizure may bring the offenders before its courts for punishment, or if the crime was committed within the jurisdiction of another State, deliver them to that State at its request.

"3. The State making the seizure is entitled to dispose of the goods seized provided that it protects the legitimate interests of third parties.

#### "Article 24

"For the purposes of the present rules, piracy shall be understood to mean :

"(a) Any act of violence or depredation committed with intent to rob, wound, enslave, imprison, or kill, or with intent to steal or destroy property, and undertaken by private persons for private (non-political) ends, provided that such act is connected with an attack at sea or an attack on land made from a pirate ship ;

"(b) Seizure of a ship by the crew or passengers for the purpose of committing thereon, or using it for committing, acts mentioned in paragraph (a) above, or attempting such seizure ;

"(c) Any act of participation in one of the ventures referred to in paragraphs (a) or (b) above, with knowledge of its purpose ;

"(d) Any act designed to instigate or facilitate such a venture.

#### "Article 25

"Article 27 of the draft."

7. Thirdly, there was the amendment proposed by Mr. Edmonds to article 23, to make it read :

"Any act of violence or depredation committed on the high seas or in the superjacent air with intent to rob, rape, wound, enslave, imprison, or kill a person or to steal or destroy property for private ends, except in the course of the *bona fide* assertion of a claim."

8. Fourthly, there were the amendments proposed by Mr. Zourek to the Special Rapporteur's simplified text of article 23. Mr. Zourek proposed the following changes :

(a) Delete the words "for private ends" from the first paragraph ;

(b) Delete the words "in the sense of these rules" from the same paragraph ;

(c) Replace the words "private vessel" in the second line of the first paragraph by the words "vessel or aircraft" ;

(d) Delete the words "against another vessel on the high seas" ;

(e) Add the following phrase, based on the Special Rapporteur's original draft, to the first paragraph :

"provided that the act is connected with an attack on or from the high seas or in or from the air" ; and

(f) Replace the second paragraph of article 23 by the following :

"In the event of civil war, the acts of violence or depredation referred to in the foregoing paragraph, committed against vessels or aircraft not belonging to the Parties to the conflict or to their nationals, constitute acts of piracy."

9. Mr. FRANÇOIS (Special Rapporteur) said that the situation could be summed up in comparatively simple terms. The main differences between his own draft and Mr. Sandström's proposal concerning article 23 were : (a) that Mr. Sandström proposed to include within the definition of piracy attacks by pirates on a coast ; (b) that under Mr. Sandström's draft acts of violence or depredation committed on board a ship would come within the definition of piracy.

10. The best course for the Commission would be to vote on the principles involved, and when agreement had been reached thereon, to appoint a drafting committee, composed of the authors of the various proposals, to draw up a final text.

11. Mr. SCHELLE said that piracy always had its origin at sea ; pirates organized their activities from a ship. If they committed depredations along a coast, such depredations would come under the jurisdiction of the local courts. But problems of jurisdiction were not necessarily linked with the definition of the crime of piracy. An act of piracy which made its perpetrators liable to prosecution by the courts of any country if they were seized on the high seas did not preclude the possibility of local jurisdiction by the coastal State.

12. Sir Gerald FITZMAURICE agreed that predatory acts committed in a place within the territorial jurisdiction of any State would normally come under the jurisdiction of the local authorities of that State. But in the case of predatory acts committed on a territory which was *res nullius*—for example, on certain Pacific islets and rocks where guano was collected—such acts would not have taken place in an area within the territorial jurisdiction of a State. They would thus apparently fall within the definition of piracy.

13. Mr. FRANÇOIS (Special Rapporteur) said that there were three schools of thought on the problem. One view was that piracy could only take place on the high seas. Another was that piracy could only occur in a place not within the territorial jurisdiction of any State,

a definition which included not only the high seas, but also unoccupied lands such as had been mentioned by Sir Gerald Fitzmaurice. The third, held by a very few writers on international law, W. E. Hall,<sup>2</sup> for example, was that piracy could consist in acts of violence within the territory of a State after descent from the sea.

14. As explained at the Commission's 290th meeting, the Harvard report,<sup>3</sup> together with the whole weight of jurisprudence, was in favour of the limitation embodied in his own revised draft.

15. The Commission was first and foremost concerned with the codification of international law and it should therefore, so far as possible, not depart from existing law.

16. Mr. SANDSTRÖM said that in drafting his text he had had more in mind the Commission's duty to promote the progressive development of international law rather than its codification, and found it inadmissible that a warship meeting a pirate vessel on the high seas should be obliged to refrain from seizure because the act of piracy had been committed in territorial waters or on land.

17. Mr. SCHELLE entirely agreed with the preceding speaker.

18. Mr. ZOUREK asked whether the Special Rapporteur excluded from his definition of piracy attacks made on the coast by vessels descending from the high seas. The consequence of such a limitation would be that once those vessels had returned to the high seas they could not be pursued.

19. Mr. FRANÇOIS (Special Rapporteur) said that, unless pursuit had started in the territorial sea, once the vessel had reached the high seas nothing could be done.

20. Mr. AMADO agreed with the Special Rapporteur's strict definition of piracy.

21. The CHAIRMAN then put to the vote Mr. Sandström's text.

*Mr. Sandström's text was rejected by 6 votes to 4 with 1 abstention.*

22. Mr. AMADO explained that he had abstained from voting on Mr. Sandström's text because he did not consider it to be far removed from that of the Special Rapporteur.

23. The CHAIRMAN, speaking as a member of the Commission, expressed the view that the two texts were diametrically opposed.

24. Mr. FRANÇOIS (Special Rapporteur) considered that the Commission should decide whether, in the light of Sir Gerald Fitzmaurice's statement, it should assi-

milate to the high seas territory not under the jurisdiction of any State.

*The question was decided in the affirmative by 11 votes to 1.*

25. Mr. FRANÇOIS (Special Rapporteur) referring to the question of whether a mutiny alone sufficed to make the ship a pirate, said that he had followed the Harvard draft in maintaining that it would only become a pirate ship if the persons in dominant control committed acts of piracy against another ship.

26. Mr. SANDSTRÖM observed that an act of piracy did not necessarily require the presence of two vessels. Indeed, the latest development was to be found in cases in which passengers or crew boarded vessels with the intention of seizing and gaining control of the ship once it was out at sea.

27. If the draft were to be effective that contingency must be covered.

28. Mr. AMADO asked what kind of acts committed by crew or passengers aboard a vessel transformed it into a pirate.

29. Mr. SANDSTRÖM, observing that he was uncertain whether the fact of mutiny alone could transform a ship into a pirate, said that he had had in mind the different case of persons posing as crew or passengers in order to commit acts of piracy once the vessel had reached the high seas.

30. Mr. SCHELLE observed in passing that it was not vessels but persons who became pirates. He regarded Mr. Sandström's view as well founded. Mutineers were not, *ipso facto*, pirates, but only if they committed acts within the definition of that crime.

31. Mr. FRANÇOIS (Special Rapporteur) said that even if mutineers killed the captain and ship's officers the vessel did not thereby become a pirate unless acts of piracy were committed against another ship.

32. If Mr. Sandström's view were accepted, persons committing robbery on board ship would be pirates.

33. Mr. SANDSTRÖM drew the attention of the Special Rapporteur to the fact that, under the definition in subparagraph (b) of his (Mr. Sandström's) text of article 24, such persons must seize or attempt to seize the ship.

34. Sir Gerald FITZMAURICE endorsed the Special Rapporteur's view of the interesting problem raised by Mr. Sandström. In the light of the fact that, according to most legislations, passengers were subject to the ship's discipline and the orders of the master, the case of passengers taking possession of a vessel was fundamentally similar to that of mutiny and seizure of the ship by the crew in violation of the laws of the flag State, but in both cases the seizure might have another object than piracy. For example, it might be prompted by political motives and the desire to navigate the vessel to a different port.

<sup>2</sup> *International Law* (eight edition, by Pearce Higgins), p. 314; see *supra*, 290th meeting, para. 50.

<sup>3</sup> Harvard Law School, *Research in International Law* (Cambridge, 1932), pp. 786-810.

35. It was only after an act of piracy had been committed that the vessel became a pirate, and in that respect Mr. Sandström's wording in sub-paragraph (b) of article 24 was not satisfactory, since the purpose of seizure of a ship by crew or passengers could not be known until their subsequent action provided evidence.

36. In conclusion, he expressed general agreement with the Special Rapporteur, subject to one point. In view of the last decision taken by the Commission it would be preferable to make it clear that piracy was not confined to acts committed on the ship itself, but that it essentially consisted in acts committed against another ship or persons not on the pirate vessel itself.

37. Mr. FRANÇOIS (Special Rapporteur), expressing the view that a pirate could only be seized by a warship, observed that Mr. Sandström's text extended that power to other State vessels.

38. Mr. SANDSTRÖM explained that he had had in mind the definition of a warship contained in article 12 which had already been approved.

39. Mr. ZOUREK asked whether the seizure could be made by a police boat.

40. Mr. FRANÇOIS (Special Rapporteur) replied that it would be preferable for practical purposes to limit the right of seizure to warships. Any extension of the principle he advocated, which was supported by most authorities, might encourage abuse.

*The Commission upheld by 9 votes to 1, with 2 abstentions the Special Rapporteur's view that ships which had committed acts of piracy or were suspected of piracy, could be seized only by a warship.*

41. Mr. AMADO observed that in his new text of article 26 the Special Rapporteur had used the expression "public vessels".

42. Mr. FRANÇOIS (Special Rapporteur) stated that there had been a mistake; those words should be replaced by the word "warships".

43. Mr. SCELLE, explaining his vote, said that in the belief that acts of piracy could also take place in the territorial sea or on land, he could not accept the thesis that warships alone could seize vessels guilty of such acts. If police vessels also were empowered to seize pirate ships, the possibility of error might well be reduced.

The meeting rose at 6 p.m.

## 293rd MEETING

Tuesday, 17 May 1955, at 10 a.m.

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Chairman : Mr. Jean SPIROPOULOS

Rapporteur : Mr. J. P. A. FRANÇOIS

Present :

*Members:* Mr. Gilberto AMADO, Mr. Douglas L. EDMONDS, Sir Gerald FITZMAURICE, Mr. F. V. GARCÍA AMADOR, Mr. Shuhsi HSU, Faris Bey el-KHOURI, Mr. S. B. KRYLOV, Mr. Carlos SALAMANCA, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jaroslav ZOUREK.

*Secretariat:* Mr. LIANG, Director of Codification Division, Office of Legal Affairs, Secretary to the Commission.

### Régime of the high seas (item 2 of the agenda) (A/CN.4/79, A/CN.4/L.56) (*continued*)

#### DRAFT ARTICLES (A/CN.4/79, SECTION II) (*continued*)

##### Article 23 [14]: Policing of the high seas (*continued*)

1. The CHAIRMAN asked the Special Rapporteur to indicate what further issues beyond those already disposed of at the previous meeting had yet to be considered by the Commission in respect of article 23.

2. Mr. FRANÇOIS (Special Rapporteur) replied that the Commission had to decide, first, whether or not an attack by one aircraft against another should, in certain circumstances, come within the definition of piracy; secondly, whether an attack by an aircraft on a ship came within the definition; and thirdly, whether military aircraft should have the same powers as warships to apprehend vessels suspected of piracy.

3. Though Mr. Edmonds had included in his definition attacks by one aircraft on another, he (the Special Rapporteur) did not think that was necessary in a draft dealing specifically with the high seas.

4. On the other hand, he would be prepared to re-introduce into the definition attacks on vessels on the high