

Document:-  
**A/CN.4/L.60**

**Collaboration with the Inter-American Bodies. Draft resolution submitted by Mr. F. V. Garcia Amador - incorporated in A/2934, para. 36**

Topic:  
**Cooperation with other bodies**

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,<sup>1</sup> 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.

<sup>1</sup> 288th meeting, para. 58.

Therefore the Polish complaint and Mr. Zourek's remarks were both entirely justified. He would revert to the matter when the text of article 23 came up for examination, when he would have occasion to quote the authoritative opinion of Mr. Lauterpacht. At the present stage, he would say only that he had confidence in the Commission's decision.

22. The CHAIRMAN congratulated members on the manner in which they had dealt with the questions raised by the memorandum submitted by the Polish Government. The General Assembly resolution did not ask the Commission to deal with the Polish charge: it simply invited governments to transmit to the Commission their views concerning the principle of freedom of navigation on the high seas. Members had now had an opportunity of making known their views on the Polish memorandum, the only one to be submitted by a government in pursuance of General Assembly resolution 821 (IX). All the Commission could do was to take note of the memorandum and members' remarks, all of which would be taken into consideration when article 23 was discussed. It was not for the Commission to express either approval or disapproval of the memorandum; nor was it incumbent upon it to go into the facts of the case, for it was not a court of justice.

23. Each member was at liberty, when contributing to the discussion on article 23, to take into consideration the Polish memorandum and the comments thereon; indeed, they might well derive inspiration from them for the amendment of that article.

24. Mr. SCALLE said that it was necessary first to make an objective examination of article 23; only after such discussion would it be possible for each member to decide whether in his opinion the particular case at issue constituted an act of piracy.

25. Mr. ZOUREK considered that the view expounded by the Polish Government in its memorandum was correct. Indeed it had neither been questioned nor had the facts given in the memorandum been denied. He pressed for a formal decision concerning the objection that the Commission was not competent to discuss the facts relating to the violation of the freedom of navigation in the China Seas which were the subject both of the documents transmitted to the Commission in pursuance of General Assembly resolution 821 (IX), and of the Polish Government's memorandum.

*It was decided by 8 votes to none, with 2 abstentions, that the Commission had no competence to deal with the complaint made by the Government of the Polish People's Republic in its memorandum (A/CN.4/L.53).*

26. Mr. GARCÍA AMADOR explained that he had not abstained. He had deliberately taken no part at all in the vote. In accordance with the terms of its Statute (A/CN.4/4),<sup>2</sup> the Commission had for its exclusive object the promotion of the progressive development of international law and its codification. The Polish mem-

orandum therefore raised an issue upon which the Commission was explicitly forbidden to take a vote.

27. Mr. AMADO said that he too had refused to take part in the vote for the same reasons.

*Article 23 [14]: Policing of the high seas<sup>3</sup>*

28. The CHAIRMAN invited Mr. François (Special Rapporteur) to open the discussion on article 23 of his draft articles on the régime of the high seas.

29. Mr. FRANÇOIS (Special Rapporteur) said that the subject of piracy had been studied very thoroughly by the Harvard Research Centre, to which Professor Joseph W. Bingham had submitted an exhaustive report, together with the text of a draft international convention consisting of 19 articles published by the Harvard Law School in 1932.<sup>4</sup> He had felt that he could not do better than to take the principal articles in Professor Bingham's report, and the comments thereon, as a basis for the discussion on the subject of piracy, dealt with in articles 23 *et seq* of his own sixth report. His own draft had only six articles on piracy, namely, articles 23 to 28. He had attached no comment to his individual articles, that appended to the Harvard articles, to which he referred members, being exhaustive and entirely satisfactory.

30. The Commission was concerned with the notion of piracy in international law, and not with the national concept of that crime. Under the legislation of some States, certain acts were treated as piracy if they were committed in their territorial sea. Such was the case with the United Kingdom, the laws of which treated as piracy any attempt to carry on slave trading in waters under British jurisdiction. The concept of piracy in international law was a narrower one: it applied only to those acts which were liable to prosecution by the authorities of any State, even if the interests of that State were not at stake.

31. As the Commission was concerned only with piracy in international law, it was not concerned with municipal law on the subject.

32. Turning to article 23, the drafting of which was admittedly somewhat complex, he explained that it was

<sup>3</sup> Article 23 read as follows:

"Piracy is any of the following acts committed in a place not within the territorial jurisdiction of any State:

"1. Any act of violence or of depredation committed with intent to rob, rape, wound, enslave, imprison or kill a person or with intent to steal or destroy property, for private ends without the *bona fide* purpose of asserting a claim of right, provided that the act is connected with an attack on or from the sea or in or from the air. If the act is connected with an attack which starts from on board ship, either that ship or another ship which is involved must be a pirate ship or a ship without national character.

"2. Any act of voluntary participation in the operation of a ship with knowledge of facts which make it a pirate ship.

"3. Any act of instigation or of intentional facilitation of an act described in paragraph 1 or paragraph 2 of this article."

<sup>4</sup> *Research in International Law* (Harvard Law School, Cambridge, 1932), pp. 769-838.

<sup>2</sup> United Nations publication, Sales No.: 1949.V.5.