

Document:-  
**A/CN.4/L.61**

**Question of Stating Dissenting Opinions. Proposal by Mr. Zourek - incorporated in A/2934,  
para. 37**

Topic:  
**Other topics**

Extract from the Yearbook of the International Law Commission:-  
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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. SCELLE 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. GARCIA 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.