

Document:-
A/CN.4/R.4

Principles Proposed by G. Amado - incorporated in A/CN.4/SR.64, footnote 1

Topic:
Law of the sea - régime of the high seas

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64th MEETING

Monday, 10 July 1950, at 3 p.m.

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Chairman: Mr. Georges SCELLE.

Rapporteur: Mr. Ricardo J. ALFARO.

Present:

Members: Mr. Gilberto AMADO, Mr. James L. BRIERLY, Mr. Roberto CORDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Manley O. HUDSON, Mr. Faris el-KHOURY, Mr. A. E. F. SANDSTRÖM, Mr. Jean SPIROPOULOS, Mr. Jesús María YEPES.

Secretariat: Mr. Ivan KERNO (Assistant Secretary-General in charge of the Legal Department); Mr. Yuen-li LIANG (Director of the Division for the Development and Codification of International Law, and Secretary to the Commission).

Regime of the High Seas: Report by Mr. François (item 7 of the agenda) (A/CN.4/17) (continued)

2. Mr. AMADO announced that he had had the opportunity of studying afresh the question before the Commission, and had endeavoured to draw up a few principles relating to the high seas to serve as a basis for discussion. He had intended to communicate the results of his work to Mr. François, but had been unable to do so. He then read out the document.¹

¹ Doc. A/CN.4/R.4, which read as follows:

PRINCIPLES PROPOSED BY MR. AMADO

1. The high seas can neither be owned by individuals nor subject to State sovereignty.
2. Ships on the high seas are under the exclusive jurisdiction of the State whose flag they fly.
 - (a) Every sovereign State shall be entitled to decide to whom it will give the right to fly its flag and to establish the regulations governing the granting of that right.
 - (b) Every ship shall have the right to ascertain the nationality of vessels of doubtful nationality, (right of approach) and to exercise the right of visit and search in the case of ships without nationality. In the event of international conflict, warships shall also have the right of visit and search in respect of ships of enemy nationality in order to ascertain whether the rules concerning contraband and blockade are being observed.

SECTION 1: CONCEPTION OF THE FREEDOM OF THE SEA (continued)

3. Mr. HUDSON said that, having been obliged to absent himself from the end of the previous meeting, he would like to state that, in section (I) of the report, entitled "Conception of the freedom of the sea", he saw no reason for referring to right of ownership. The points of interest were freedom of navigation and freedom of fishing, and he thought it superfluous to do any more than re-affirm those two freedoms. The latter, in fact, were not derived from the absence of State sovereignty. Once those rights were recognized, the high seas could be subject to a right of sovereignty. In the treaty signed by the United Kingdom of Great Britain

(c) The ships of a riparian State shall have the right to continue, on the high seas, a pursuit commenced in territorial waters of a foreign vessel which has committed an offence within those waters. In case of the capture of such ship, the flag should be notified without delay to the State under whose flag it sails. Pursuit may not be continued in the territorial waters of another State and cannot be resumed after the ship has entered the port of another State.

(d) In the case of collision on the high seas, the courts of the two flag States shall be competent.

3. All States shall have the right to lay submarine telegraph or telephone cables on the high seas. As the provision of the Convention of 14 March 1884 have never given rise to criticism, I feel that the Commission might well adopt them for regulating the right to lay submarine cables. Below is an extract from the main provisions of the Convention, as quoted by Oppenheim (7th edition, page 573):

Intentional or culpably negligent breaking or damaging of a cable in the open sea is to be punished by all the signatory Powers, except in the case of such damage having been caused in the effort of self preservation.

Ships within sight of buoys indicating cables which are being laid, or which are damaged, must keep at least a quarter of a nautical mile distant.

For dealing with infractions of the interdictions and injunctions of the treaty the courts of the flag State of the infringing vessel are exclusively competent.

Men-of-war of all signatory Powers have a right to stop and verify the nationality of merchantmen of all nations which are suspected of having infringed the regulations of the treaty.

All stipulations are made for the time of peace only, and in no wise restrict the action of belligerents during time of war.

4. Vessels of all nationalities shall be free to engage in fishing on the high seas, subject to their observance of the police regulations in force in the fishing areas, as established by Convention, and of the principles embodied in the treaties for the protection of the products of the sea and especially the protection of seals and the large cetaceans.

5. A sovereign State may exercise specific administrative powers beyond the limit of its territorial waters in order to protect its fiscal or customs interests. The zone in which it may exercise these powers may not exceed twice the breadth of the territorial waters.

6. Where fishing has been carried out over a prolonged period at the same points by ships flying the flag of a particular State, all other States shall be required to respect such peaceable fishing operations.

7. The subsoil of the high seas is a *res nullius* which may be freely exploited by the riparian States, provided such exploitation produces no marked effect on the bed of the high seas.