the Members of the League and other Governments.]

[C. P. D. I. 58.]

Geneva, February 9th, 1926.

LEAGUE OF NATIONS

Committee of Experts for the Progressive Codification of International Law.

QUESTIONNAIRE No. 6

adopted by the Committee at its Second Session, held in January 1926.

PIRACY.

The Committee has the following terms of reference [1]:

(1) To prepare a provisional list of the subjects of international law the regulation of which by international agreement would seem to be most desirable and realisable at the present moment;

(2) After communication of the list by the Secretariat to the Governments of States, whether Members of the League or not, for their opinion, to examine the replies received; and

(3) To report to the Council on the questions which are sufficiently ripe and on the procedure which might be followed with a view to preparing eventually for conferences for their solution.

The Committee has decided to include in its list the following subject:

"Whether, and to what extent, it would be possible to establish by an international convention, appropriate provisions to secure the suppression of piracy."

On this subject the Committee has the honour to communicate to the Governments a report presented to it by a Sub-Committee consisting of M. MATSUDA as Rapporteur and M. WANG CHUNG-HUI [2].

The nature of the general question and of the particular questions involved therein appears from the report. The report contains a statement of principles to be applied and of particular solutions derived from these principles. The Committee considers that this statement indicates the questions to be resolved for the purpose of regulating the matter by international agreement. All these questions are subordinate to the larger question set out above.

It is understood that, in submitting the present subject to the Governments, the Committee does not pronounce either for or against the general principles set out in the report or the solutions suggested for various particular problems on the basis of these principles. At the present stage of its work, it is not for the Committee to put forward conclusions of this kind. Its sole, or at least its principal, task for the present consists in drawing attention to various questions of international law the regulation of which by international agreement would seem to be desirable and of realisable.

In doing this, the Committee should doubtless not confine itself to generalities but should put forward the proposed questions with sufficient detail to facilitate the decision as to the desirability and possibility of their solution. The necessary details will be found in the final conclusions of M. Matsuda's report [3].

In order to be able to continue its work without delay, the Committee will be glad to be put in possession of the replies of the Governments before October 15th, 1926.

The Sub-Committee's report is annexed.

Geneva, January 29th, 1926.

(Signed) Hj. L. HAMMARSKJÖLD,
Chairman of the Committee of Experts.

VAN HAMEL,
Director of the Legal Section of the Secretariat.

1 See Assembly Resolution of September 22nd, 1924.

2 M. Wang Chung-Hui signed the original text of the Sub-Committee's report. Having unfortunately not been able to attend the session of the Committee of Experts, he is not responsible for the actual text as annexed to the present document, this text containing certain amendments made by the Rapporteur as a result of the discussion in the Committee.

3 See page 4.

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Annex.

REPORT BY THE SUB-COMMITTEE.

M. MATSUDA, Rapporteur.
M. WANG CHUNG-HUI[1].

Whether, and to what extent, it would be possible to establish, by an international convention, appropriate provisions to secure the suppression of piracy.

[*Translation.*]

Authors of treaties on international law often differ as to what really constitutes this international crime. In order to avoid any confusion, a clear distinction should be drawn between piracy in the strict sense of the word and practices similar to piracy. The former comes within the scope of international law in general, the latter either under international treaty law in force between two or more States or simply under a national law. We will examine each of these aspects of the problem in turn, although the first alone is of real general importance from the international point of view.

A. PIRACY IN INTERNATIONAL LAW.

I. According to international law, piracy consists in sailing the seas for private ends without authorisation from the Government of any State with the object of committing depredations upon property or acts of violence against persons. The pirate attacks merchant ships of any and every nation without making any distinction except in so far as will enable him to escape punishment for his misdeeds. He is a sea-robber, pillaging by force of arms, stealing or destroying the property of others and committing outrages of all kinds upon individuals.

Piracy has as its field of operation that vast domain which is termed "the high seas". It constitutes a crime against the security of commerce on the high seas, where alone it can be committed. The same acts committed in the territorial waters of a State do not come within the scope of international law, but fall within the competence of the local sovereign power.

When pirates choose as the scene of their acts of sea-robbery a place common to all men and when they attack all nations indiscriminately, their practices become harmful to the international community of all States. They become the enemies of the human race and place themselves outside the law of peaceful people.

Certain authors take the view that desire for gain is necessarily one of the characteristics of piracy. But the motive of the acts of violence might be not the prospect of gain but hatred or a desire for vengeance. In my opinion it is preferable not to adopt the criterion of desire for gain, since it is both too restrictive and contained in the larger qualification "for private ends". It is better, in laying down a general principle, to be content with the external character of the facts without entering too far into the often delicate question of motives. Nevertheless, when the acts in question are committed from purely political motives, it is hardly possible to regard them as acts of piracy involving all the important consequences which follow upon the commission of that crime. Such a rule does not assure any absolute impunity for the political acts in question, since they remain subject to the ordinary rules of international law.

By committing an act of piracy, the pirate and his vessel *ipso facto* lose the protection of the State whose flag they are otherwise entitled to fly. Persons engaged in the commission of such crimes obviously cannot have been authorised by any civilised State to do so. In this connection we should note that the commission of the crime of piracy does not involve as a preliminary condition that the ship in question should not have the right to fly a recognised flag.

Every enterprise for the purpose of committing robbery at sea is not necessarily piratical in character. A wrecker, for instance, unlike a pirate, has a nationality, despite the fact that he is indirectly a menace to safety at sea. In like manner, a mere quarrel followed by acts of violence or depredations occurring between fishermen on the high sea ought not to be regarded as an act of piracy, since such acts do not constitute a menace to the international maritime commerce for the protection of whose security every civilised State is to some extent interested in intervening so far as its power permits.

A ship may clearly be a pirate ship even if it was not fitted out for that purpose or if it began its voyage without criminal intention. If a mutiny breaks out on board and the mutineers seize the vessel and use it to commit acts of piracy, the vessel *ipso facto* loses the original protection of its flag.

Acts of piracy can as a general rule only be committed by *private* vessels. A warship or public vessel can never, so long as it retains that character, be treated as a pirate. If such vessels commit acts of depredation or unjustifiable violence, the State whose flag they fly demands reparation from them and has to inflict suitable penalties upon the commander and crew and pay lawful damages

[1] See Note 2 on preceding page.

to the victims of such acts. If the crew of a warship or other public vessel mutinies and sails the seas for its own purposes, the vessel ceases to be a public one, and the acts of violence which it commits are regarded as acts of piracy.

The case appears more difficult when there is a civil war and the regular Government's warships take the side of the rebels before the latter have been recognised as belligerents. The regular Government sometimes treats such ships as pirates, but foreign Powers ought not to do so unless these ships commit acts of violence against vessels belonging to the Powers in question. Third Powers, on the other hand, may consider such ships as pirates when they commit acts of violence and depredations upon vessels belonging to those Powers, unless the acts are inspired by purely political motives, in which case it would be exaggeratedly rigorous to treat the ships as declared enemies of the community of civilised States.

II. Before taking action against pirates, it must first be ascertained that they really are pirates. The mere fact of hoisting a flag does not prove the right to fly it; and, accordingly, if a vessel is suspected of piracy, other means have to be used to establish its nationality.

The two following principles are recognised both by law and in practice:

(1) Any warship has the right upon the high seas to stop and seize any vessel, under whatever flag it may be sailing, which has undoubtedly committed an act of piracy.

(2) If the vessel is only under suspicion, the warship is authorised to verify its true character. It must, however, use this right judiciously and with caution. The commander of the warship is responsible for any action taken. If, after inspection of the suspected vessel, the suspicion proves to have been unfounded, the captain of the suspected vessel is entitled to reparation or compensation, according to circumstances.

If, on the other hand, the suspicion of piracy is confirmed, the commander of the warship either himself proceeds to try the pirates (unless the arrest took place in the territorial waters of a third Power) or he brings them into the port of some country to be judged by a competent tribunal, and the fate of the vessel and its crew is determined by the domestic law of the country in question. The attacks of pirates are directed against the interests of maritime trade throughout the world, and pirates are therefore justiciable in every civilised country. The State which seizes the pirate vessel and arrests the crew is the obvious judge of the validity of the capture and the guilt of the parties concerned. It should by preference be accorded the right to investigate and to pass judgment in the case, unless the internal law or some international convention otherwise decides, or unless the case is that dealt with in the following paragraph.

May a warship pursue and arrest pirates in the territorial waters of a foreign Power without thereby violating the sovereign rights of that Power? Under normal circumstances, the sovereign of the territory alone has the right, in territorial waters, to protect national and international interests; but in the case of acts intended to safeguard international relations, it would appear reasonable to assume that the Government of the territory tacitly consents if it is not in a position to continue the pursuit successfully; otherwise, if the coastal State could not take the necessary measures to carry through the pursuit in time, the result would be to facilitate the flight of the pirate and enable him to escape punishment. In such cases, however, the right to try for piracy devolves upon the State to which the territorial waters belong. It is the recognition due to its sovereignty. The right to pursue, attack and seize a pirate belongs to warships.

The effects of the capture, the consequences of the validity of the seizure, the right of recovery by the lawful owners and the reward to be given to the captors are questions which are governed by the law of the State having jurisdiction. Accordingly they are solved in a different manner by each State, either in its domestic legislation or in its special conventions. The following four conditions must as a rule be fulfilled in the exercise of the right of recovery and restitution of the goods stolen:

(1) The owner must lodge his claim within a year after sentence of capture has been passed;

(2) The claimant must vindicate his claim of ownership before the competent tribunals;

(3) The costs of recovery are fixed by such tribunals;

(4) The costs must be borne by the owner.

B. PIRACY IN TREATIES AND SPECIAL LAWS OF STATES.

In addition to piracy by the law of nations, States have occasionally, by treaty or in their internal law, established a piracy by analogy which has no claim to be universally recognised and must not be confused with true piracy; the assimilations in question can only create a sort of piracy under internal law and from the point of view of the countries which make them. The acts dealt with are of a grave nature, it is true, but they do not constitute a danger to the shipping and commerce of all nations indiscriminately. Legislators are justified in taking strong measures in such cases, but the classification of such acts as piracy is a fact which only concerns the State whose laws contain provisions to that effect. From the international point of view, the acts come within the competence only of the country in which they are punishable. No country making

a capture can cite them as the basis of a claim to international competence nor can they justify actual capture by a foreign State unless there is a convention which expressly provides otherwise.

We shall now examine the salient facts and the commonest of these analogous forms of piracy. In the first place, there is privateering.

1. The immediate object of privateering is the use of violence for purposes of gain, and this gives it a certain resemblance to piracy.

Although the object of the privateersman is to take the property of others, his acts are only committed against the national enemy of the country which has given him his letters of *marque*. This circumstance gives him a legal standing as regards nationality; at the same time it places responsibility upon the nation whose flag he flies, and thereby excludes any idea of piracy. Moreover, if a vessel so commissioned infringes the rights of other nations by acts of violence or irregularities which exceed the powers it holds, it cannot on that account be regarded as a pirate unless its intention is obviously piratical. In such a case, the State which commissioned it is responsible to other countries for any illegal acts it may commit, and has the right to try and punish.

2. Vessels have also been regarded as pirates when, their own countries remaining neutral, they received a commission from a foreign belligerent State and captured vessels belonging to a Power which, while an enemy of that State, was at peace with the vessel's own country.

This, too, is not piracy according to international law, but only according to the domestic law of one or more States.

Certain writers hold that, as a result of the acts it commits, such a vessel is denationalised, and is not legitimately under the protection of any flag; such acts would thus be true acts of piracy according to international law. This view, however, is mistaken; such a vessel is not denationalised. It is covered in respect of third Powers by the commission it has received. It has a respondent answerable to third Powers, namely, the State which commissioned it and which becomes liable for its acts. Lastly, it should be borne in mind that the vessel does not attack all merchant shipping indiscriminately; it merely captures the vessels of the Power at war with the State which commissioned it. It makes war upon a certain nation. It is not an enemy of the human race. This, then, cannot be said to be a case of piracy under international law, but such a vessel can certainly be classed as a pirate by the domestic law of an individual State.

3. Then, again, the sailors forming the crew of a merchantship are generally treated as pirates if they mutiny against the commander during a voyage, murder him and the other officers and seize the ship. But this too is piracy only under the domestic law of individual States.

4. Governments struggling to quell a rebellion have an incontestable right to describe as pirates, or to announce that they will treat as pirates, rebels who sail the seas for the purpose of seizing property belonging to subjects or citizens who have remained faithful to the duly established authorities. Rebellions are entirely a matter for the domestic law of the individual State, and a Government has every right to threaten to treat rebels as pirates, however widespread the rebellion may be.

Foreign Powers, however, are not obliged to accept this description or agree to such persons being treated as pirates.

C. Conclusions.

The confusion of opinion on the subject of piracy is due to failure to draw a clear distinction between piracy in the strict sense of the word, as defined by international law, and piracy coming under the private laws and treaties of individual States. In our view, therefore, it would be preferable for the Committee to adopt a clear definition of piracy applicable to all States in virtue of international law in general. Accordingly, we have the honour to submit to the Committee the following draft.

Draft Provisions for the Suppression of Piracy[1].

Article 1. — Piracy occurs only on the high sea and consists in the commission for private ends of depredations upon property or acts of violence against persons.

It is not involved in the notion of piracy that the above-mentioned acts should be committed for the purpose of gain, but acts committed with a purely political object will not be regarded as constituting piracy.

Article 2. — It is not involved in the notion of piracy that the ship should not have the right to fly a recognised flag, but in committing an act of piracy the pirate loses the protection of the State whose flag the ship flies.

Article 3. — Only private ships can commit acts of piracy. Where a warship, after mutiny, cruises on its own account and commits acts of the kind mentioned in Article 1, it thereby loses its public character.

Article 4. — Where, during a civil war, warships of insurgents who are not recognised as belligerents are regarded by the regular Government as pirates, third Powers are not thereby obliged to treat them as such.

Insurgents committing acts of the kind mentioned in Article 1 must be considered as pirates, unless such acts are inspired by purely political motives.

Article 5. — If the crew of a ship has committed an act of piracy, every warship has the right to stop and capture the ship on the high sea.

On the condition that the affair shall be remitted for judgment to the competent authorities of the littoral State, a pursuit commenced on the high sea may be continued even within territorial waters unless the littoral State is in a position to continue such pursuit itself.

Article 6. — Where suspicions of piracy exist, every warship, on the responsibility of its commander, has authority to ascertain the real character of the ship in question. If after examination the suspicions are proved to be unfounded, the captain of the suspected ship will be entitled to reparation or to an indemnity, as the case may be. If, on the contrary, the suspicions of piracy are confirmed, the commander of the warship may either proceed to try the pirates, if the arrest took place on the high sea, or deliver the accused to the competent authorities.

Article 7. — Jurisdiction in piracy belongs to the State of the ship making the capture, except: (*a*) in the case of pursuit mentioned in Article 5, paragraph 2; (*b*) in the case where the domestic legislation or an international convention otherwise decides.

Article 8. — The consequences of capture, such as the validity of the prize, the right of recovery of the lawful owners, the reward of the capters, are governed by the law of the State to which jurisdiction belongs.

Geneva, January 26th, 1926.

(Signed) M. Matsuda.

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[1] As amended by M. Matsuda as the result of the discussion in the Committee of Experts.