

because of constitutional limitations prevailing in different countries, and it contains the suggestion that each government should notify other governments of its constitutional provisions as to treaties and their interpretation. The *rapporteur's* view that "legal relations between states would greatly gain both in security and clearness" if this suggestion were followed will probably not be widely shared, for it presupposes that ignorance now prevails as to such constitutional limitations. A complete collection of constitutions, published in various languages, might be serviceable, but this again is hardly a task for a codification committee. The "list of matters susceptible of regulation" contains numerous topics, some of which would seem to be of less interest to the legislator than to the publicist.

The committee has not adopted the subcommittee's view that the subject referred to it—the formulation of rules to be recommended for the procedure of international conferences, and the conclusion and drafting of treaties—should be placed on the "list of subjects of international law the regulation of which by international agreement would seem to be desirable and realizable." The whole matter has not been placed before the governments in such a form as would induce them to express very definite views. It is to be hoped that the committee will give the subject extended further consideration before recommending to the Council any attempt at codification in this field.

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THE QUESTIONNAIRE ON PIRACY¹

The so called questionnaire on piracy, like the other questionnaires communicated by the Committee of Experts, has been submitted for transmission to the various governments in the hope that replies may be elicited which will indicate official opinion as to the ripeness of the subject for codification. Like certain of the other so called questionnaires, this one consists of a subcommittee's report and some draft provisions. It is a little surprising that the committee should have thought the document worth communicating to governments in its present stage, and perhaps more surprising that the committee should consider the statement of principles and solutions in the document sufficient to indicate "the questions to be resolved for the purpose of regulating the matter by international agreement."² A good beginning has been made, but much remains to be done. In its present immature stage, the questionnaire seems unlikely to elicit anything very useful in the way of replies.

From the rather superfluous observation that "authors of treaties [*sic*] on international law often differ as to what really constitutes this international crime." the report proceeds in the second paragraph with a wholly insufficient attempt at definition running as follows:

¹ See this JOURNAL, Vol. 20, Supplement, Special Number, p. 222.

² *Ibid.*

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.³

One is tempted to ask what the subcommittee means by "sailing the seas for private ends," by "outrages of all kinds upon individuals," or by others of the phrases used. But this would be captious. The passage quoted is typical of the whole document. It is evident that the document presents nothing more mature than the tentative draft of a subcommittee's report. So regarded, it comprises much that is of interest and value for students, but little that is ripe for consideration by governments.

The statement of principles and solutions in the report indicates quite inadequately "the questions to be resolved for the purpose of regulating the matter by international agreement." For example, the report lays it down dogmatically that piracy may be committed only on the high seas; but it is not at all clear in truth that the question of place can be resolved so simply. The report disapproves subjective tests of piratical acts, but it goes on to add that acts committed "from purely political motives" cannot be considered piratical. The report takes the position that when suspicion of piracy proves unfounded the captain of the vessel searched is "entitled to reparation or compensation according to circumstances," but it may well be doubted whether such a solution is supported either by reason or authority. The suggestion that pirates may be pursued and taken in foreign territorial waters when the territorial state is not "in a position to continue the pursuit successfully," the pirates if captured to be turned over to the territorial state for trial, indicates at best a possible but rather precarious compromise. There seems no justification for leaving warship commanders the right to try pirates at the present day. Common law countries, at least, will be reluctant to leave the effect of piratical seizures upon property rights to be determined by the law of the state which captures the pirate and recovers the property.

Draft provisions on piracy sufficient to elicit helpful replies from governments, while they may be frankly tentative and imperfect, should be systematically organized and formulated with enough exactness of expression to provide an immediate basis for discussion. They should deal at least with the definition of piracy in international law, the objects for which it is committed, the nature of piratical acts, the place where they may be committed, the jurisdiction to search, seize, arrest, and punish for international piracy, and the effect of such piratical seizures upon property rights.

³ *Ibid.*, p. 223.

Influenced no doubt by the Assembly Resolution of September 22, 1924, and by a desire to make a full report of its efforts to date, the Committee of Experts has communicated in the so-called questionnaire a report with draft provisions which hardly measure up to the suggested standard. Whether the course taken was expedient or not remains to be demonstrated. Possibly it would have been as well to communicate only the subject and a brief commentary giving reasons for its inclusion in the list. In any event, the outlook is encouraging. The subject of piracy is probably as ripe for codification in the orthodox sense as any subject in international law. A preliminary examination has been made and followed by the submission of a so-called questionnaire of the nature of a preliminary report. Unless replies received are positively discouraging, and this seems unlikely, there is no apparent reason why the subject should not be reported to the Council as "sufficiently ripe," nor why the real labor of investigation should not be initiated in the not too distant future according to such procedure as the Committee of Experts may conclude to recommend.

EDWIN D. DICKINSON.

EXPLOITATION OF THE PRODUCTS OF THE SEA

The League of Nations Committee of Experts for the Progressive Codification of International Law have included in their "provisional list of the subjects of international law the regulation of which by international agreement would seem to be most desirable and realizable at the present moment" the following subject: "Whether it is possible to establish by way of international agreement rules regarding the exploitation of the products of the sea."

This question has been submitted, as Questionnaire No. 7, to the members of the League and to certain other governments, accompanied by a report by Mr. José Leon Suárez, the Argentine member of the committee, indicating the problems presented and the conclusions reached, and emphasizing the urgent need of international action.¹

This report declares that the limited and local fisheries regulations, which hitherto have been adopted by international agreements among a few of the nations, are wholly inadequate for the protection of sea products from extermination, because they have been intended mainly to establish police measures, and to secure reciprocity and commerce regardless of biological interests. The great importance of considering biological interests is, according to the report, because "biological solidarity is even closer among the denizens of the ocean than among land animals, and the disappearance of certain species would destroy the balance in the struggle for existence and would bring about the extinction of other species also." The question presented is, therefore, fundamentally biological rather than political or commercial, and, quoting again from the report:

¹ Printed in Special Supplement to this JOURNAL, July, 1926, pp. 230-241.