



**United Nations General Assembly | Sixth Committee  
78<sup>th</sup> Session  
Report of the International Law Commission  
(Agenda item 79)**

**CLUSTER II**

27 October 2023

*(check against delivery)*

Mr./Madam Chair,

Moving to the second cluster of items discussed in the report of the International Law Commission, Brazil would like to deliver some remarks regarding the topics contained in Chapters V and VI, namely: (i) settlement of disputes to which international organizations are parties and (ii) prevention and repression of piracy and armed robbery at sea.

Brazil thanks the Special Rapporteur, Mr. August Reinisch, for his first report on the settlement of international disputes to which international organizations are parties. We also thank the International Law Commission for the two draft guidelines provisionally adopted.

Brazil believes the ILC should maintain the definition of international organization contained in its draft articles on the Responsibility of International Organizations, adopted in 2011. In this context, we commend the ILC for including in draft guideline 2(a) the possession of its own international legal personality, as this is one of the most important elements of international organizations.

At the same time, we are not convinced that the ability of at least one of its organs to express a will of the international organization distinct from that of its members is a relevant element in the definition of international organizations. Brazil is not in a position to agree that this is a “generally accepted view”, as argued in paragraph 13 of the commentary to guideline 2. There is no clarity on what would be the “will” of an international organization, on whom would express it, how it would be formed and what could be its role in the formation of rules of international law. It is not clear, for instance, how the decision-making process of an organ where representatives of States receive instructions from their Governments could represent the will of a state-driven organization.

For these reasons, Brazil encourages the International Law Commission to preserve the definition of international organization adopted in 2011, and delete the final part of draft guideline 2(a).

Regarding draft guideline 2(b), Brazil welcomes the definition of international dispute based on the Mavrommatis definition, endorsed multiple times by the International Court of Justice. In this context, we commend the ILC for not adopting the controversial criterion of prior awareness, which does not reflect the ICJ’s *jurisprudence constante*.

Mr./Madam Chair,

Turning to chapter VI, Brazil commends the Special Rapporteur, Yacuba Cissé, for his first report on the prevention and repression of piracy and armed robbery at sea.

The report provides a comprehensive analysis of historical, socioeconomic and legal aspects of the topic. It reviewed national legislation and the judicial practice of states relating to the definition of piracy and the implementation of conventional and customary international law.

We also thank the Commission for provisionally adopting three draft articles. It may be worth reflecting on the most appropriate form for the Commission's output. Brazil encourages the ILC to focus its efforts on codification of existing rules, on the basis of general and reiterated practice of States. In this context, we are of the view that draft guidelines may be more appropriate for the development of the topic.

Brazil acknowledges that the main distinction between piracy and armed robbery at sea is the location of the act, according to paragraph 2 of the commentary to draft article 3. While the former is committed on the high seas and in exclusive economic zones, the latter happens in the internal waters, archipelagic waters and the territorial sea of the coastal State.

In this regard, we note that the inclusion of "threats" in the definition of armed robbery at sea in article 3(a) does not appear to correspond to widespread state

practice. It also presents a substantive distinction from piracy, while the purported intention is to establish an essentially geographic difference.

Finally, Brazil recalls that every State may seize a pirate ship or aircraft on the high seas, as an area outside the jurisdiction of any State. In this context, we highlight the recent evolution of the concept of “res communis”, under the Agreement on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction. The so-called High Seas Treaty is governed by the principle of common heritage of humankind. This principle needs to be taken into account when discussing activities in areas beyond national jurisdiction, such as the high seas.

Brazil looks forward to the future work of the International Law Commission on this important topic.

I thank you, Mr/Madam Chair.