

**Report of the International Law Commission on the work of its  
seventy-fourth session  
(Agenda item 79)**

**Cluster II**

**Chapters: V (Settlement of disputes to which international organizations are parties) and VI (Prevention and repression of piracy and armed robbery at sea)**

**Settlement of disputes to which international organizations are parties  
– Chapter V of the ILC Report**

Mr./Madam Chair,

We would like to start by commending the Commission for having included this topic in its programme of work at its seventy-third session, in 2022. We also want to thank and acknowledge the thorough work of the Special Rapporteur appointed for the topic, Mr. August Reinisch.

At its first opportunity to address the topic in this Committee, my delegation would like to stress the importance of the subject by echoing the remarks made by the Commission more than 20 years ago, in 2002, when at the time referred to the “widely perceived need to improve methods” for settling disputes involving international organizations. Indeed, difficulties in the resolution of disputes to which international organizations are parties, in particular when the other party is an individual, are broadly known and would benefit from some guidance. Therefore, my delegation affirms its commitment with the debate and the work towards shedding some further light upon this complex issue.

Mr./Madam Chair,

Making an overall assessment, Portugal believes that the proposed guidelines represent a balanced and adequate first approach to the subject.

In particular, and looking into draft guideline 1, the scope of application of the draft guidelines seems to be broad enough to encompass all relevant aspects that shall be covered, specially taking into account the concerns the Commission has outlined in paragraph 7 to the commentary thereto.

Portugal concurs with the decision of the Commission not to include the word "international" before "disputes" in the scope of the present draft guidelines. It makes clear that all kinds of disputes to which international organizations are parties shall be covered by these draft guidelines.

Accordingly, Portugal is of the opinion that disputes of a private law character should be addressed, since it represents a very relevant percentage of disputes to which international organizations are parties, susceptible of raising several issues, including in what concerns access to appropriate settlement of disputes mechanisms by individuals.

Mr./Madam Chair,

As for draft guideline 2, in our view the definitions provided for therein appear to be generally accurate and suitable. Nevertheless, my delegation would like to point out some remarks regarding the definition of "international organization".

As acknowledged by the Commission, the definition of "international organization" builds on the definition contained in the articles on the responsibility of international organizations, adopted by the Commission in 2011. The most important difference between those two lies in the final part of the definition included in draft guideline 2, which adds the requirement that an international

organization must have “at least one organ capable of expressing a will distinct from that of its members”. My delegation welcomes the express inclusion of this element as it is decisive to distinguish international organizations from other entities and platforms of international cooperation that, although established by treaties, do not enjoy international legal personality of its own.

Mr./Madam Chair,

I would now conclude my intervention on this topic by reaffirming Portugal’s appreciation for the work of the Commission and of the Special Rapporteur. We look forward for the opportunity to address this topic again next year.

## **Prevention and repression of piracy and armed robbery at sea – Chapter VI of the ILC Report**

Mr./Madam Chair,

I will now turn to the topic “**Prevention and repression of piracy and armed robbery at sea**”.

At the outset, Portugal would like to congratulate Mr Cissé on his appointment as Special Rapporteur and thank him for his thorough first report. Portugal also thanks the Secretariat of the Commission for the quite useful memorandum it has prepared. [*The usefulness of both documents goes far beyond the draft articles and their corresponding commentaries that the Commission dealt with in its report. They will provide valuable guidance not only for the future work of the Commission, but also for the work that we will conduct here.*]

Mr. / Madam Chair,

Piracy and armed robbery at sea are important aspects of ocean governance. This is one of the reasons why Portugal is actively and committedly involved in multilateral and bilateral initiatives that reflect the priority that Portugal gives to maritime security, including in the Gulf of Guinea within the framework of the Yaoundé Security Architecture. For example, Portugal has actively participated in the work of the G7++Fog and held the presidency of this group in 2016. Moreover, Portugal cooperates in the implementation of the European Union Strategy and the Maritime Security Action Plan in the Gulf of Guinea and has participated in all the initiatives of the European Union CMP in the Gulf of Guinea, including the implementation of one of the components of the Support to West Africa Integrated Maritime Security. Portugal also co-chaired the Legal Forum of the Contact Group on Piracy off the Coast of Somalia; and it chairs the Maritime Working Group of the Montreux Forum on Private Military and Security Companies in the maritime domain.

In this context, Portugal can only welcome the inclusion of this topic in the Commission's programme of work and hopes that a broader approach will be taken in addressing this issue, taking into account in particular all the implications arising from international law.

Mr./Madam Chair,

As general remarks, Portugal notes, *first*, that the comments on the draft articles, in particular draft articles 2 and 3, could be further substantiated by the relevant material gathered by the Secretariat and the Special Rapporteur. [*When interpreting international rules, international and national courts and tribunals often rely on the Commission's comments. Therefore, Portugal believes that the Commission can further improve its comments based on the legislative and judicial practices identified in the first report of the Special Rapporteur and the memorandum prepared by the Secretariat.*]

*Second*, Portugal notes with appreciation that the scope of the draft articles also includes the issue of the prevention of piracy and armed robbery at sea. Both phenomena are intertwined with complex and sensitive economic and social conditions, including those of the perpetrators. Portugal has long been committed to recognizing and meaningfully addressing the root causes of piracy and armed robbery at sea. Accordingly, Portugal would consider appropriate for the Commission to further analyse successful initiatives that address these phenomena in a holistic manner. [*This is all the more important since the UNSC resolutions seem more focused on repression, at least until Resolution 1950 (2010). Accordingly, Portugal believes that the issue of prevention is an issue worthy of consideration, in particular, on how States can meet their international obligations to prevent piracy and armed robbery at sea.*]

*Third*, another topic that Portugal considers of great importance is the question of the transfer of persons suspected of having committed piracy. It has long been recognized that the exercise of universal jurisdiction carries with it specific international obligations, including human rights obligations. For example, when an alleged pirate is arrested, the authorities of the arresting State must bring him or her before an independent and impartial tribunal within a specified time frame. Such a time frame is usually short, which is incompatible with the specifics of an arrest on the high seas. This significantly impedes the effective exercise of universal jurisdiction. One way to overcome this challenge could be the conclusion of international agreements on the transfer of persons suspected of committing piracy or armed robbery at sea. Under such agreements, the arresting State would transfer the arrested person to the authorities of the other State, which in turn would be responsible for prosecuting and sentencing the suspected pirate.

[*Finally, Portugal would appreciate further clarification on how the Special Rapporteur plans to further address this topic. Portugal believes that efforts should be made to avoid duplicating in the draft articles the regime on piracy*

*provided for in UNCLOS. If there are no relevant developments in international law regarding piracy, the Commission should consider limiting the scope of the topic to armed robbery at sea. There seems to be no reason to prepare draft articles on piracy that are limited to duplicating the regime of UNCLOS, as it can jeopardize its integrity.]*

Mr./Madam Chair,

As regards Draft Article 2, paragraph 1, Portugal would like to address four different issues. *First*, Portugal is pleased that the definition of piracy reflects *ipsis verbis* Article 101 of UNCLOS. Portugal shares the view that the definition invites no update and reflects long-established customary international law. *[Accordingly, this was also the approach taken at our national level by the Decree-Law No. 159/2019, of 24 October, which establishes the legal regime governing the exercise of armed private security activities on board Portuguese-flagged vessels passing through areas of high risk of piracy. However, Portugal would have preferred that the Commission had followed a similar methodological approach, that is, drafting Draft Article 2 as a renvoi rule to Article 101 of UNCLOS.]*

*Second*, it is undeniable that technological and technical progress has created legal uncertainties. As the Special Rapporteur notes, piracy requires an attack on the high seas by one private ship or private aircraft against another ship or aircraft. Today's reality, however, is that the operation of a ship may occur many miles from where such an attack occurs, including by means of unmanned vessels. Such a vessel may even be operated from a maritime area under the sovereignty or jurisdiction of a State. This leads to a fragmentation of the legal requirements for the crime of piracy, which in turn leads to legal uncertainty. Portugal considers that in this case the conditions for piracy are not met. This is not because the vessel from which the attack originates has no crew, but because the crew is either on land or in a maritime area under State jurisdiction or

sovereignty. Be that as it may, without prejudice to what is already provided for in paragraph 20 of the commentary on Draft Article 2, Portugal suggests that the implications of technological and technical progress be further explored by the Commission.

*Third*, the concept of *private ends* can indeed coexist with *political ends*, provided that they are committed by the crew or passengers of a private ship or aircraft. These requirements make it clear that political ends pursued by the crew or passengers of warships, government ships or government aircrafts do not constitute piracy, except in the exceptional situation provided for in Article 102 of UNCLOS. Therefore, Portugal welcomes the Commission's commentary to Draft Article 2 that reads, and I quote, "[...] the pursuit of private ends can coexist with political or ideological objectives." However, Portugal would like to emphasize that coexistence means that an act that meets all the requirements for piracy, except that it is committed solely for political ends, does not amount to an act of piracy but to an act of maritime terrorism.

*[Finally, Portugal would welcome clarification of paragraph (8) of the commentaries to Draft Article 2. In particular, in the last sentence of this paragraph, we are unsure whether where it says "[...] piracy entails acts against "private aircraft" not "State aircraft"", one should not instead read "[...] piracy entails acts by "private aircraft" not "State aircraft""]*

Mr./Madam Chair,

With respect to Draft Article 3, the key difference between piracy and armed robbery at sea relates to the area in which such criminal offences take place. While piracy can only take place in the high seas, the EEZ, or in a place outside the jurisdiction of any State, armed robbery at sea occurs within a State's internal waters, archipelagic water, and territorial sea.

It should also be noted that, in Comment 7 to Draft Article 2, the Commission clarifies that it decided “[...] to retain this geographical limitation as set out in the United Nations Convention on the Law of the Sea and to provide a definition of ‘armed robbery at sea’ to cover geographical areas at sea where acts, which can be assimilated to piracy, may occur.” In other words, armed robbery at sea can be materially similar to an act of piracy, the only difference being the maritime area in which it occurs.

Therefore, Portugal considers that the expression “other than an act of piracy” in Draft Article 3, subparagraph a) can be deleted. This is because the expression “within a State’s internal waters, archipelagic waters and territorial sea” is sufficient to distinguish armed robbery at sea from an act of piracy without the fear of overlap. Otherwise, there is a danger that “other than an act of piracy” will be interpreted to include only acts that take place “within a State’s internal waters, archipelagic waters and territorial sea,” which is not in essence piracy but something else.

Finally, Portugal would like to take this opportunity to express its gratitude and recognize the invaluable work being done by global and regional international organizations, such as the United Nations Office on Drugs and Crime and the Economic Community of West African States, among others.

Thank you.