



Statement on behalf of the European Union*

by

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European Commission

at the General Assembly

on the Agenda item 79:

‘Report of the International Law Commission on the work of its seventy-third and seventy-fourth sessions’

‘Statement of the European Union on Settlement of Disputes to which international organizations are parties’

United Nations

New York

27 October 2023

– CHECK AGAINST DELIVERY –

*In accordance with Resolution 65/276 (Participation of the European Union in the work of the United Nations).

Mr/Ms Chairperson,

1. The European Union has the honour to address the Sixth Committee on the work of the International Law Commission relating to the topic of **Settlement of disputes to which international organizations are parties** based on the first report prepared by Special Rapporteur Mr. August Reinisch.
2. As an International Organization, the European Union is greatly interested in this topic, and it welcomes the further work of the ILC on this important topic. In light of the continuing work of the ILC on this topic, the European Union would like to make the following concrete observations on the draft set of guidelines and the commentaries to them for possible further consideration by the ILC.

Mr/Ms Chairperson,

3. The European Union notes the choice of the Commission to modify the topic from “*Settlement of international disputes to which organizations are parties*” to “*Settlement of disputes to which international organizations are parties*”. That change is also reflected in the scope that the Commission wants to give to the guidelines pursuant to Guideline 1.
4. This change enlarges the scope of the exercise in order to cover any issues of international public law that may arise in national disputes where the international organizations are faced with legal disputes with private parties. On this point, the European Union suggests clarifying in Guideline 1 that the intention is to

cover only the *international law aspects* of disputes involving international organizations.

5. Hence, guideline 1 could be redrafted as follows: *The present draft guidelines concern **the settlement of international law aspects** of disputes to which international organization are parties.*
6. The European Union understands that the Commission intends to address, among other international public issues raised in private law proceedings, the issue of immunities and privileges. The European Union considers this a very important and delicate topic and will carefully follow the further work of the Commission on this issue.
7. As specified in the second paragraph of the commentary to Guideline 1, the draft articles intend to cover internal disputes with Member States of the international organization. On this point, the European Union recalls, as also acknowledged in paragraph 33 of the commentary to Guideline 2, that international organizations can be subject to specific dispute settlement obligations pursuant to their constituent instruments.
8. The European Union would like to reaffirm here that, while the European Union has been established by international public law instruments, it has developed a *sui generis* legal order. In accordance with the jurisprudence of the Court of Justice of the European Union, any internal disputes to the EU (be it between two or more EU Member States or between one or more EU

Member State and the EU institutions) in relation to European law, including when implementing international public law obligations, fall within the exclusive jurisdiction of the Court of Justice of the European Union. While international public law principles can still be used for interpretative purposes by the Court of Justice of the European Union, these disputes are governed by European Law and remain subject to the specificities of that *sui generis* legal framework.

9. For that reason, the European Union would suggest adding a second paragraph to Guideline 1 specifying that “***These draft guidelines are without prejudice to any specific dispute settlement obligations in relation to their internal disputes or to any distinctive aspects of the legal framework established by the constituent instrument of the international organization***”.
10. Furthermore, concerning Guideline 2, the European Union would like to propose some clarifications to the definition of “international organization”.
11. The European Union fully agrees with the Commission that international organization may include as members other entities, such as international organizations, beyond States. The European Union is itself Member of several international organizations on its own or with its Member States, depending on the competences involved. The European Union has also been a founding member of new international organizations.

12. However, the current text of the definition of “international organizations” under paragraph (a) of Guideline 2 refers vaguely to “other entities”. The European Union recognizes that this part of the definition has been taken from previous definitions such as the one in the Draft Articles on the Responsibility of International Organizations. However, neither the text nor the commentary excludes private law entities from the term “other entities”.
13. The European Union suggests clarifying, either in the definition itself under paragraph (a) of Guideline 2 or in the commentary, that “other entities” that can be full members of international organizations are international public law entities i.e., other entities that are themselves established or defined under and in accordance with international public law, such as international organizations or territories. While it is not excluded that private law entities may participate in the activities of certain international organization, they are not usually admitted as *full* members of such international organizations.
14. Similarly, the European Union acknowledges that the constituent instrument establishing an international organization can take various forms. That flexibility was already recognized in the Draft Articles on the Responsibility of International Organizations, which also refers to an organization “*established by a treaty or other instrument governed by international law*”.
15. However, the Union considers that it would be good to clarify, either in the definition itself under paragraph (a) of Guideline 2

or in the commentary, that the establishment of an international organization still requires some sort of “formal” adherence, acceptance or ratification of its members to the constituent instrument. The commentary refers to UNIDO has an example of an international organization that was not instituted by a Treaty. However, UNIDO was given a constitution when it was transformed into a proper specialized agency. The latter foresaw the “formal” signature, ratification, acceptance or approval by founding members and the subsequent possibility of “formally” acceding by others.

Mr/Ms Chairperson,

16. In conclusion, the European Union wishes to express its appreciation once again for the work done so far by the ILC on this important topic and is looking forward to continuing and contributing further to the debates on this matter in the 6th Committee.

Thank you for your attention.



Statement on behalf of the European Union*

by

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at the UNGA Sixth Committee

on the Agenda item 79 :

**‘Report of the International Law Commission on the work of its seventy-third
and seventy-fourth sessions**

“Prevention and Repression of Piracy and Armed Robbery at Sea”

United Nations

New York

26 October 2023

– CHECK AGAINST DELIVERY –

*In accordance with Resolution 65/276 (Participation of the European Union in the work of the United Nations).

Ms./Mr. Chairperson,

1. The European Union has the honour to address the Sixth Committee on the topic of the prevention and repression of piracy and armed robbery at sea, which was considered by the International Law Commission (ILC) and which is discussed in Chapter VI of its report.

2. It refers to the draft Articles provisionally adopted by the ILC at its seventy-fourth session, on the definitions of piracy and of armed robbery at sea, as well as to the corresponding commentaries also provisionally adopted by the Commission.

3. The European Union welcomes the work undertaken by the ILC on the draft Articles and on their commentaries. It builds on a strong body of international law, reflected in particular

- in Article 101 of the United Nations Convention on the Law of the Sea, regarding the definition of piracy, and

- in paragraph 2.2 of the Annex to Resolution A.1025(26) of the International Maritime Organisation on IMO's Code of Practice for the investigation of the crimes of piracy and armed robbery against ships, regarding the definition of armed robbery at sea.

4. The ILC envisages to clarify and build upon existing frameworks and academic studies, as well as to identify new issues of common concern. In that context, it is important that elements of definition, which could trigger questions of interpretation or application are addressed, in view of the evolving nature of modern piracy, including the consequences of technological developments.

5. The European Union welcomes that the Special Rapporteur has considered the law and practice of the European Union and its Member States in his first report. Indeed, the European Union is actively contributing to the fight against piracy and armed robbery at sea. As identified in the European Union Strategic Compass of March 2022 and its Maritime Security Strategy, criminal activities such

as piracy undermine maritime security. Piracy and armed robbery at sea constitute evolving security threats, which require actions guided by a cross-sectoral approach, respect for international law and maritime multilateralism.

6. On 25 January 2021, the European Union launched the first pilot of the new Coordinated Maritime Presences concept in the Gulf of Guinea off the coast of West Africa, thereby strengthening its role as a global maritime security provider, in close cooperation with our African partners of the organisation of the Yaoundé Architecture, supporting their objective to tackle piracy and criminal activity at sea.

7. In its Resolution 2383 of 7 November 2017, as in several other ones, the Security Council commended, amongst others, the efforts of the Naval Operation EUNAVFOR ATALANTA. As reflected in the First Report of the Special Rapporteur, its mission is to suppress piracy and to protect ships cruising off the coast of Somalia. The Security Council also welcomed and encouraged, notably, the European Union's activities under the EU Capacity

Building Mission in Somalia, which assists Somalia in strengthening its maritime security capacity in order to enable it to enforce maritime law more effectively. It then noted efforts by several actors, including the European Union, to develop regional judicial and law enforcement capacity to investigate, arrest, and prosecute suspected pirates and to incarcerate convicted pirates consistent with applicable international human rights law.

8. EU NAVFOR ATALANTA is the European Union longest running naval operation. Over the past 15 years, EU NAVFOR ATALANTA has demonstrated effectiveness and dedication to achieve its objectives throughout the area of operations, notably with 171 suspected pirates transferred to regional authorities in view of their prosecution.

9. The transfer agreements concluded between the European Union and regional States eager to contribute to the fight against piracy, namely Kenya, the Republic of Seychelles, the Republic of Mauritius and the United Republic of Tanzania were instrumental in that regard. We

also commend regional initiatives under the African Union, the East African Community, the Southern Africa Development Community, the Djibouti Code of Conduct and the Regional Maritime Security and anti-piracy Strategy adopted in Mauritius in 2010. We welcome the fact that the First Report of the Special Rapporteur also acknowledges the cooperation between the European Union and coastal States in that regard.

Ms/Mr Chairperson,

10. In conclusion, the European Union congratulates the ILC, and in particular Special Rapporteur Mr. Yacouba Cissé, for the timely work undertaken on a matter that is of very high importance for the whole international community and the future generations. The European Union looks forward to the continuation of the work of the ILC on this topic. As described in its work programme, three further reports until the completion of the draft Articles on second reading in 2027 are foreseen. The Special Rapporteur will in its second report focus on regional and subregional practices and initiatives for combating piracy and armed

robbery at sea, and the European Union stands ready to contribute to that work.

11. In view of the importance of the matter, the European Union will continue engaging in further debates on it in the Sixth Committee.

Thank you for your attention.