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Permanent Mission of the Czech Republic to the United Nations

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Report of the International Law Commission on the work of its seventy-third and
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Statement by

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Madam / Mr. Chair,

The Czech Republic would like to express its appreciation to the Special Rapporteur, Mr. August Reinisch, for his first report on the renamed topic “**Settlement of disputes to which international organizations are parties**”. As we have already said, the Czech Republic welcomes the decision to include this topic on the agenda of the Commission.

The Czech Republic also duly notes the renaming of this topic. This title now adequately reflects the intended broadening of the scope of this topic and the fact that it should cover all kinds of disputes to which international organizations are parties, including the disputes of a private law character. We acknowledge, nevertheless, that this broadening of scope is both an ambitious and challenging exercise.

Madam / Mr. Chair,

The Commission’s desired output should be draft guidelines and recommendations, which would guide States, international organizations and other users to settlement of disputes that is consistent with existing rules and most appropriate for contemporary practice. Under the Commission’s view, the guidelines should be mainly concerned with the availability and adequacy of means for the settlement of disputes to which international organizations are parties. As we said previously, the Czech Republic believes that the Rapporteur’s and Commission’s work will consolidate and clarify both theoretical and practical aspects of this topic and will be of benefit to practice of States and international organizations in this area. Therefore, the Czech Republic welcomes the proposed outcome. We would also support the Commission’s intention to develop a set of model clauses that may be used in treaties or other instruments governed by international law, as well as in contracts or other national law instruments.

This year, the Commission has provisionally adopted draft guidelines 1 and 2 with the commentaries dealing with the scope of the topic and definitional issues. We appreciate the overview of possible categories of disputes of international or private law character to which international organizations may become parties, provided in the commentary to article 1. [*Notably, the immunity of international organizations in many cases prevents individuals who have suffered harm by conduct of an international organization from bringing a successful claim before a domestic court.*] We concur with the conclusion by the Commission that disputes of a private law character may raise important issues determined by international law, such as the relationship between the jurisdictional immunity of international organizations and human rights obligations, in particular the access to justice, which include also relevance of alternative modes of settlement. We are looking forward to the discussion of the Commission on these practical aspects of the topic.

We would like to add a few comments on the definitions contained in draft guideline 2. The definition of “international organization” in draft guideline 2, subparagraph (a), is

based on article 2, subparagraph (a), of the draft articles on the responsibility of international organizations of 2011,¹ but does not copy it entirely. We welcome and appreciate that the commentary to draft guideline 2 usefully clarifies the concept of international organization and its basic characteristics: its own international legal personality, the establishment by a treaty or other instrument governed by international law, and existence of an organ capable of expressing a will distinct from that of its members.

At the same time, we are of the view that the Commission could reflect more on the differences between suggested definition and the definition under articles on the responsibility of international organisations and on possible effects of their divergence. For example, the reference to the “other entities” in the main part of the definition might give the impression that they are regular members of international organizations. For reasons of terminological consistency and to avoid fragmentation, the Czech Republic would currently prefer that the definition would reflect more closely already adopted definition in article 2(a) of the draft articles on the responsibility of international organisations.

Further, it may be useful to clarify whether the draft definition covers all aspects of specialized international organizations or institutions such as International Criminal Court or certain other international tribunals, which meet the basic characteristics of an international organizations, but also seem to have certain special features. For example, they do not have “members” in the proper sense and are governed also by international organs, which are not part of such institution.

As regards the definitions of “disputes” in draft guideline 2 subparagraph (b), suggested text is formulated in very general terms. We wonder whether the definition should not be more concrete and expressly include basic types of disputes covered by the topic, namely international disputes and disputes of a private law character.

Similarly, concerning the definition of means of dispute settlement in subparagraph (c), the Commission could consider whether the text should not reflect, in more detail, the scope of the topic covering also „non-international“ or private law disputes. Current wording, including the use of terms “other peaceful means of resolving disputes”, seems to refer, *prima facie*, mainly to international disputes among subjects of international law.

Madam / Mr. Chair,

We note with interest the beginning of Commission’s work on the topic of “**Prevention and repression of piracy and armed robbery at sea**”. We believe that the work on this topic will contribute to the clarification of various legal aspects of the fight against contemporary piracy and armed robbery at sea. The first report of the Special Rapporteur

¹ “International organization” means an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality.

Mr. Yacouba Cissé and the Memorandum prepared by the Secretariat laid a solid groundwork for the consideration of the topic. The work on this topic progressed swiftly and the Commission was able to adopt, on the basis of drafts proposed by the Special Rapporteur, the text of three draft articles with commentaries concerning the “scope”, and definitions of the “piracy” and “armed robbery at sea”.

We concur with the conclusion of the Commission that the work on the present topic should not duplicate, or even alter, existing legal frameworks, but should aim at identifying and clarifying new issues of common concern.

Indeed, some elements of the definition of piracy in UNCLOS may pose questions concerning their proper interpretation and application. In this regard, we welcome Commission’s commitment to respect the integrity of the generally accepted definition of piracy contained in article 101 of the UN Convention on the Law of the Sea (UNCLOS), and Commission’s intention to explain certain elements of modern piracy primarily in the commentary.

Hence, we appreciate the commentary by the Commission on these elements. Still, certain of these elements – such as the expression „committed for private ends“, the status of offshore oil platforms or the scope of permissible exercise of jurisdiction over piracy – would, in our opinion, deserve deeper analysis.

Concerning draft article 3, we agree with changes in the International Maritime Organization Assembly’s definition, which were motivated by the language used in the resolution of the Security Council 2634(2022). They are adequately explained in the commentary. We therefore concur with the draft definition of armed robbery at sea in the draft Article 3.

Finally, we note that the Commission concurs with Special Rapporteur’s view that the work on this topic should take the form of draft articles. We invite the Commission to further explain its intentions concerning the character of the final outcome of its work on this topic.

I thank you.