



Statement on behalf of the Republic of South Africa

by

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before the Sixth Committee of the General Assembly

under Agenda Item 79:

**Cluster II: "Settlement of Disputes to which
International Organizations are Parties and
Prevention and Repression of Piracy and Armed
Robbery at Sea"**

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Chairperson

Thank you for affording us the opportunity to share our views on the reports of the international law commission, in particular on the topics of settlement of disputes to which international organizations are parties and prevention and repression of piracy and armed robbery at sea.

Chairperson

In relation to the topic of settlement of disputes to which international organizations are parties, my delegation wishes to express its gratitude to the International Law Commission and the Special Rapporteur, Mr August Reinisch, for the work carried out on this topic and for the comprehensive reports.

We agree with the approach of developing draft guidelines in relation to the settlement of disputes to which international organizations are parties, as opposed to draft articles.

Regarding draft guideline 1, whilst the complexity of disputes is understood and a clear delineation may indeed be difficult to draw in relation to the international law versus private law character of disputes, we do wish to underscore that the nature of the work of the Commission must remain primarily international law focussed.

Although the Statute of the Commission does not preclude it from entering the field of private international law, the Commission has only done so to a limited extent and the Commission should be cautious when entering the realm of preparing model clauses for disputes that are contractual in nature or arise out of the application of national laws.

Chairperson

South Africa appreciates the Commission's emphasis on *international legal personality* being the core feature of an "international organization" as defined in paragraph a) of draft guideline 2. The commentary describes comprehensively the reasoning for opting for a broader definition. Notwithstanding, South Africa's domestic law aligns more with the restrictive definition contained in the Vienna Convention on the Law of Treaties, 1969.

Chairperson

The definitions of "dispute" and "means of dispute settlement" contained in paragraph (b) and (c) of draft guideline 2 appear acceptable at this stage.

More broadly, whilst draft guidelines 1 and 2 appear largely acceptable, it will be necessary to have a full understanding of what the draft guidelines will encompass before South Africa will be able to express a firmer view.

We look forward to considering the further work on this topic.

Chairperson

My delegation notes the Report of the Commission as it relates to the prevention and repression of piracy and armed robbery at sea and wishes to thank the Secretariat of the Commission for its memorandum concerning the topic. We are equally grateful to the Special Rapporteur, Mr Yacouba Cissé, for his comprehensive First Report on the topic. The report is insightful and relevant and we welcome the manner in which the topic has been approached through a combination of historical facts, statistics, legislative, judicial and State Practice across various regions. We consider, however, that the root causes of piracy should also be factored in, including the social, economic, and environmental impact of illegal fishing and toxic waste dumping in vulnerable regions of the world.

Chairperson

Article 100 of the United Nations Convention on the Law of the Sea (UNCLOS) affirms the duty of all States to cooperate as far as possible in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State. Moreover, Article 105 permits all States to seize a pirate ship and exercise universal jurisdiction over persons committing piracy.

South Africa's piracy regime is provided for in its Defence Act of 2002 which, as the Special Rapporteur's report points out, incorporates the crime of piracy as defined in Article 101 of UNCLOS. The same Act incorporates universal jurisdiction for the act of piracy into South Africa's domestic law in terms of Section 24(3) thereof. While the Defence Act does not define nor criminalise armed robbery at sea, South Africa is a signatory to the initial Djibouti Code of Conduct of 2009 and the subsequent Jeddah Amendment to the Djibouti Code of Conduct of 2017, concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden.

It will be recalled that the Jeddah Amendment contains the UNCLOS definition for piracy and goes further than UNCLOS to also include a definition for "robbery at sea". These paragraphs mirror the International Maritime Organization (IMO) in its Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships. The Commission's Draft Article 3, except for the latter's sub-article (c) which is a new inclusion by the Commission, accords with the Jeddah Amendment and IMO Code definitions.

We consider that the Draft Articles are in line with the instruments referenced, and to which South Africa subscribes.

Chairperson

Apart from the positive steps taken by South Africa from a legislative point of view, it has also engaged in pro-active methods of deterring the crime of piracy on the seas following the conclusion of a Trilateral Memorandum of Understanding (MOU) with Tanzania and Mozambique in 2012, which successfully ensured effective patrolling of the East Coast of the Southern African Indian Ocean. In the region of the Southern African Development Community, we have deployed naval assets for anti-piracy operations in the Mozambique Channel to protect the busy shipping lane east of the sub-continent.

Consequently, Indian Ocean piracy has decreased in recent years, largely due to enhanced patrols which have also resulted in a substantial decline in maritime crime, particularly illegal fishing, in the region. We consider that a comprehensive approach is required to address poverty and instability which create conditions conducive to piracy, and must include strategies for effective environmental conservation and fisheries management.

Chairperson

A number of African continental efforts continue to focus on the prevention and repression of piracy. In this regard the African Union adopted the 2050 Integrated Maritime Strategy in 2014 and the Charter on Maritime Security, Safety and Development in 2016. The Union also declared 2015 to 2025 as the Decade of the African Seas and Oceans. We further draw attention to the resolution of the African Union Peace and Security Council at its 1090th meeting on 28 June 2022 on Maritime Piracy in the Gulf of Guinea. The resolution, *inter alia*, calls on countries of the region to enact laws, criminalise acts of piracy under their domestic law and to investigate, prosecute and extradite the perpetrators; and to conclude extradition agreements between the countries of the region.

In conclusion, my delegation is encouraged by the work of the Commission on this important topic and urges it to continue considering evolving aspects of piracy; to approach it holistically by considering its root causes and environmental consequences. It is also necessary to consider whether the definitions sufficiently encompass modern piracy by means other than only ships and aircraft as understood when the definitions of piracy and armed robbery at sea were developed.

I thank you.