

**Statement by Ambassador Kaan ESENER,
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NEW YORK, 27 October 2023

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INTERNATIONAL LAW COMMISSION REPORT (CLUSTER II)

(Settlement of disputes to which international organizations are parties)

Mr./Madam Chair,

I would like to thank the Special Rapporteur Mr. August Reinisch for his first report.

The two draft guidelines which were proposed by the Special Rapporteur and adopted by the Commission together with commentaries deal with two core issues, namely the scope and the definitions.

As regards the scope, we agree with the explanation provided in paragraph 7 of the commentary for the draft guideline 1 that a sharp distinction between international disputes and non-international ones is often not feasible.

Thus, we welcome the change of the title from “Settlement of international disputes to which international organizations are parties” to “Settlement of disputes to which international organizations are parties”.

The new title of the topic ensures that disputes of a private law nature and any other dispute that may be qualified as “non-international” fall within the scope of present work. As such, the new title better reflects the subject matter at hand.

Turning to the definitions under the draft guideline 2, the term “dispute” builds on the *Mavrommatis* definition stemming from the judgment by the Permanent Court the International of International Justice and endorsed by the International Court of Justice in numerous subsequent cases.

As mentioned both in the report of the Special Rapporteur and the commentary, the International Court of Justice further clarified the term by indicating that “[i]t must be shown that the claim of one party is positively opposed by the other” and “that the “positive opposition of the claim of one party by the other need not necessarily be stated *expressis verbis*”.

Consequently, the suggested definition for the dispute is “a disagreement concerning a point of law or fact in which a claim or assertion is met with refusal or denial”. Paragraph 71 of the report of the Special Rapporteur states that this formulation also takes into consideration the judicially developed requirement of the International Court of Justice for (express and implicit) positive opposition.

As known, in disputes, particularly in those between the officials/employees and the organizations, the failure to respond to the applications/requests within the specified time period can be deemed as rejection/refusal. Consequently, for the sake of clarity, we would suggest inclusion of “tacit/implicit refusal” in the definition,

As to the form for the outcome of the work on the topic of “settlement of disputes to which international organizations are parties”, the commentary suggests the elaboration of a “set of draft guidelines” as the most suitable form for the Commission’s output which is intended to direct States, international organizations and “other users” to answers that are consistent with the existing rules or that seem most appropriate for contemporary practice”. However, in the disputes of private nature, while one party is the international organization the other party will be private persons and as such the work of the ILC might not necessarily be within the purview of them. Hence, it is in our view questionable whether these guidelines would outreach these private persons to make the best use of it.

While we see merit in the suggestion for the development a set of model clauses that may be used in treaties or other instruments governed by international law, the same study might encounter with certain difficulties for the development model clauses to be used in contracts or national law instruments due to the variety of contract types and differences of national legislations. We therefore call for caution before embarking upon such work.

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

The scourge of piracy and armed robbery is a serious threat to international maritime safety, in particular to seafarers and international trade as well as to the security and prosperity of the countries.

As an example, 33,000 ships pass through the Gulf of Aden on yearly basis, this means, on each day approximately more than 100 ships sail through this area.

These numbers are concretizing the seriousness of the threat posed by piracy.

Moreover, with rapidly developing technology, some activities that elude the “traditional” definitions of piracy, such as acts of piracy committed by autonomous vehicles or cyber attacks, come to the fore and pose new challenges to global security.

Therefore, it is of great importance for the international community to timely develop the necessary technical and legal infrastructure to face these new challenges. With this understanding my delegation has voiced its support when the topic “Prevention and repression of piracy and armed robbery at sea” was included in the current programme of work.

We thank the Special Rapporteur Mr. Yacuba Cisse for the submission of his first report.

I wish to make few remarks on the subject before us.

Türkiye has always been a resolute supporter of rule of law at sea. Preserving freedom of navigation, safety of life and property, and ensuring the peaceful use of seas and oceans are priority objectives for us. We attach special importance to the development of international cooperation in the fight against piracy and armed robbery.

In this context, Türkiye has been supporting international efforts in the field of combating piracy since the beginning, and actively participates and contributes to the works carried out within the United Nations, NATO and IMO.

On the other hand, with the adoption of the UN Security Council Resolutions, a basis for international cooperation as well as a solid guidance was established in eliminating the ambiguities concerning the prosecution of pirates and related legal and procedural challenges. Türkiye is a founding member of the "Piracy Offshore Somalia Contact Group", which was established within the framework of UN Security Council Resolution 1851 to effectively combat piracy, and contributes to the Trust Fund established by the Contact Group in order to support the initiatives of states combating piracy off the coast of Somalia.

Türkiye has also been engaged in combating terrorism at sea in the Gulf of Aden, Somali territorial waters and off-shores, the Arabian Sea and adjacent regions, with a frigate assigned under the command of the Combined Task Force-151 (CTF-151) established within the United Naval Forces since 17 February 2009.

We stand ready to contribute to the fight against piracy. We sincerely believe that with international collaborative efforts, it is possible to tackle this problem. The ILC contribution towards this end would provide an added value to our common efforts.

Thank you.