23 October 2024

UNGA 79 Sixth Committee / Agenda item: 79 - Report of the International Law Commission on the work of its seventy-first session: Cluster III
Statement by the Delegation of Armenia

Mr Chairman,

Concerning the topic 'prevention and repression of piracy and armed robbery at sea', we thank the first Special Rapporteur, Dr Yacouba Cissé, for his work and congratulates the second Special Rapporteur, Dr Louis Savadogo, on his appointment. A core aspect of the project is that 'elements of the definition contained in article 101 [of the United Nations Convention on the Law of the Sea] were difficult to apply and that clarifications were needed in order to adapt the classic definition of piracy in line with developments in the law of the sea'.[1] Moreover, the Convention does 'not contain provisions explicitly dealing with armed robbery at sea.'[2]

Key issues are whether State practice supports Article 101 as customary international law and facilitates a definition of armed robbery at sea.[3] Certain members of the Commission 'noted that some of the provisions proposed by the Special Rapporteur seemed to go beyond the content of the [Convention].'[4] As the Convention acknowledges that matters not regulated therein continue to be governed by general international law,[5] the question would seem to be the interpretation of practice since 1982.[6]

Since Security Council resolution 1816, preambular paragraphs have affirmed 'that international law, as reflected in [the Convention], sets out the legal framework applicable to combating piracy and armed robbery'.[7] As explained in the Secretariat memorandum, Members 'highlighted the importance of the [Convention], while emphasizing that measures in the resolution should be based on the consent of the national authority and should be strictly limited to the territorial waters of Somalia.'[8] However, Article 101 applies to acts on the 'high seas' or 'in a place outside the jurisdiction of any State'.

Since the relevant resolutions refer to the act of 'piracy', the question therefore arises whether the definition of piracy applies equally to the territorial waters and other maritime zones. The resolutions could be interpreted as affirming the geographical element of Article 101 but 'derogating' from it.[9] An aspect that might be useful to consider is the legal basis relied upon by the ten States that conducted prosecutions of piracy until 2010 under resolution 1897.[10] It is possible that they asserted jurisdiction to prosecute for 'piracy' under special regimes or that they considered piracy to apply generally to territorial zones. Even if it can be concluded that the prescriptive definition of piracy in customary international law has evolved beyond Article

[1] A/CN.4/770 ('First Cissé Report') para. 6.
[2] A/79/10, para. 102.
[3] Ibid., para. 106.
[4] Ibid., para. 108.
[5] Ibid., para. 102.
[6] Ibid., para. 107.
[7] A/CN.4/757 ('Secretariat Memorandum') 47-73.
[8] Ibid., 48.
[9] A/CN.4/770 ('Second Cissé Report') para. 17; A/79/10, para. 107.
[10] Secretariat Memorandum (note 7) 66.

101, the emphasis placed by the Security Council on the consent of the coastal States would appear to deny universal enforcement jurisdiction.[11]

While the commission of piracy from the air is a longstanding issue, it has been lent greater impetus by new technologies.[12] The Secretariat memorandum indicates potential evidence for a permissive interpretation of the words 'ship or aircraft' in Article 101 as emphasising the location of the act rather than its perpetrator.[13] Investigation into State practice could confirm this point.

On the 'private' character of the ship or aircraft, that qualifier might not continue to hold. As the Commission has previously considered that acts of piracy committed by a warship or military aircraft under mutiny are 'assimilated to acts committed by a private vessel',[14] the question appears to be less the status of the vessel or aircraft than their 'private ends'.

We regret that three draft articles were not only referred to the Drafting Committee but also provisionally adopted by the Commission without having heard States' views on the first report. Modern practice might not support draft Article 3 for a separate offence of 'armed robbery at sea' as largely corresponding to 'piracy' but committed within 'a State's internal waters, archipelagic waters and territorial sea'. A slower pace of work could be beneficial, as normative value of the draft articles with commentaries is not yet clear.[15]

Concerning the topic 'Non-legally binding international agreements', we salute the approach of the Special Rapporteur, Professor Mathias Forteau, to compose a 'first report of a preliminary nature [that] deliberately did not propose any draft provisions.'[16] Taking into account its conceptual aspects, we concur with the Special Rapporteur that a cautious approach is necessary 'to avoid converting indirectly non-binding agreements into binding ones'.[17]

On the important question of terminology, we are content with the current term 'agreements' as capturing the essence of the subject without implying that they are either 'legal' or 'non-legal' in character.[18] A new term such as 'instruments' could be used but carries the risk of being misunderstood as embracing a wider meaning than is intended.[19] Regarding the category of acts adopted by bilateral or multilateral intergovernmental conferences, we recommend the Special Rapporteur to undertake a survey of practice before deciding whether 'to limit the scope of the topic to international agreements concluded outside a multilateral institutional framework.'[20]

We concur with the Special Rapporteur to avoid excluding the final acts of intergovernmental conferences leading to the adoption of treaties.[21] We also agree to the exclusion of 'arrangements concluded between substate entities of different countries' and the inclusion of

[11] Ibid., 48-50, 58.
[12] Second Cissé Report (note 9) para. 6.
[13] Secretariat Memorandum (note 7) 10, 12, 15.
[14] Ibid., 16.
[15] Ibid., para. 129.
[16] A/79/10, para. 35.
[17] Ibid.
[18] A/CN.4/772 ('First Forteau Report') para. 95.
[19] Ibid., para. 94; A/79/10, para. 36.
[20] Ibid., para. 99.
[21] Ibid., para. 109.

agreements within the meaning of a specific legal provision.[22] Concerning the 'thorny' question of the potential effect of non-legally binding international agreements, we support the approach of the Special Rapporteur whereby the 'starting point of the present work is not at all to posit that such legal effects exist.' In this respect, we recommend that the starting point be that *no* legal effects exist due to the declaratory or exhortatory character of the agreement.[23] Although we remain of the view that the nature of the subject could lend itself better to an analytical report,[24] we are open to the proposal of the Special Rapporteur that the Commission adopt draft conclusions.[25]

On the topic 'succession of States in respect of State responsibility', we welcome the decision of the Commission to reconstitute its Working Group under the chairmanship of Mr Bimal Patel. We also welcome the mandate of the Working Group to prepare 'a summary report that would describe the difficulties faced in the work on the topic without going into its substance and that would be prepared with a view to concluding the work on the topic at the following session of the Commission.'[26] For the preparation of that summary report, we suggest that the Commission emphasise that the working documents prepared in the course of the project should not be accorded the same value as texts that are adopted by the Commission. As neither the draft articles with commentaries nor the draft guidelines were adopted by the Commission at first reading, let alone second reading, we consider it to be important to expressly state this in the summary report to facilitate understanding of its status in doctrine and practice. Incidentally, this point is also relevant for the project on 'subsidiary means for the determination of rules of international law'.

[22] Ibid., paras 113, 115.
[23] E.g. – 31 ILM 148; UNTS No. I-55241, para. 1.
[24] A/CN.4/L.682.
[25] First Forteau Report (note 18) paras 140-142.
[26] A/79/10, para. 39.