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Held at the Palais des Nations, Geneva, on Friday, 5 May 2023, at 10 a.m.

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Prevention and repression of piracy and armed robbery at sea

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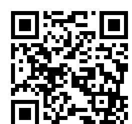

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***Present*:**

Chair:	Ms. Oral
Members:	Mr. Akande
	Mr. Argüello Gómez
	Mr. Asada
	Mr. Cissé
	Mr. Fathalla
	Mr. Fife
	Mr. Forteau
	Mr. Galindo
	Ms. Galvão Teles
	Mr. Grossman Guiloff
	Mr. Huang
	Mr. Jalloh
	Mr. Laraba
	Mr. Lee
	Ms. Mangklatanakul
	Mr. Mavroyiannis
	Mr. Mingashang
	Mr. Nesi
	Mr. Nguyen
	Ms. Okowa
	Mr. Ouazzani Chahdi
	Mr. Oyarzábal
	Mr. Paparinskis
	Mr. Patel
	Mr. Reinisch
	Ms. Ridings
	Mr. Ruda Santolaria
	Mr. Sall
	Mr. Savadogo
	Mr. Tsend
	Mr. Vázquez-Bermúdez

***Secretariat*:**

Mr. Llewellyn	Secretary to the Commission

The meeting was called to order at 10.10 a.m.

Prevention and repression of piracy and armed robbery at sea (agenda item 6) (A/CN.4/758)

Mr. Cissé (Special Rapporteur), introducing his first report on prevention and repression of piracy and armed robbery at sea (A/CN.4/758), said that acts of piracy and armed robbery at sea had been recorded throughout history. The great cities of ancient and medieval times and the major maritime Powers of the modern period had developed military strategies to prevent and repress such acts. Yet, in the seventeenth century, which had seen the golden age of piracy, some cities and States had taken advantage of the phenomenon to establish or consolidate their economic and military power. In different times and places, piracy had been seen as a profession and a way of escaping poverty. Maritime piracy had come to be regarded as a crime against the law of nations and, as such, the first international crime. Shipping was a key contributor to the wealth of nations, and piracy and armed robbery at sea were the most violent and deadly forms of maritime insecurity.

Data compiled by the Maritime Information Cooperation and Awareness Center (MICA Center) showed that acts of piracy and armed robbery had taken place in all regions of the world apart from Europe. In general, the acts in question amounted to grave crimes that had resulted in death or serious bodily injury. Pirates moved from one region to another in accordance with the volume of maritime traffic and the ease with which they were able to operate. The current hotspots were concentrated around the Gulf of Guinea, the Gulf of Aden, the Indian Ocean, the Strait of Malacca and the South China Sea. Owing to unprecedented military action by an international coalition of States, including the major naval Powers, the number of reported cases of piracy had fallen from the peak reached in the period 2008–2012. Experience showed that, whenever States had cooperated to combat piracy, they had been able either to eradicate it or to significantly reduce its scale and intensity.

According to the data collected by the MICA Center, the number of reported cases of piracy had fallen significantly in Oceania, Latin America and the Caribbean. The same downward trend had been observed in West Africa. Although Asia remained a piracy hotspot, it too had witnessed a significant reduction in the number of attacks in 2021. In the Americas and the Caribbean Sea, most reported cases involved thefts from anchored yachts or drug trafficking. In the Indian Ocean, the most affected coastal States were India, Mozambique, Oman and Yemen. In the Strait of Malacca, where there had been a sharp drop in cases, those reported were mainly thefts in anchorage areas or from ships at berth. Although the overall number of reported cases of piracy had fallen, the existence of other, directly related phenomena, for example “narco-piracy”, should not be overlooked.

The socioeconomic costs of piracy and armed robbery at sea were alarmingly high. In addition, piracy and armed robbery at sea were often accompanied by other illegal acts. Crew members might be held captive for a prolonged period, seriously injured or violently killed, and shipowners might be forced to pay large ransoms. Marine insurance companies took the risks of piracy and armed robbery at sea into account, which increased the overall cost of maritime transport. One solution had been to involve private companies in efforts to combat piracy, although such an approach and its basis in international law were controversial.

As a crime against the law of nations, piracy had for centuries been punishable under the laws and customs of the sea, including the customary rule of universal jurisdiction, under which all nations had jurisdiction to pursue, arrest, try and punish pirates found on the high seas. Throughout the ages, pirates had legally been characterized as enemies of humanity in order to justify the exercise by all States of universal jurisdiction over them. Freedom of the high seas was one of the customary rules that had applied to the oceans. The progressive development of the law of the sea had given rise to a distinction between piracy and armed robbery at sea, which depended on where the acts in question had been committed. Thus, acts of piracy committed in territorial waters, internal waters and archipelagic waters were characterized as armed robbery at sea rather than piracy. Furthermore, under the customs of the sea, the high seas had long been considered an international space protected from any private appropriation by States.

The international law applicable to the prevention and repression of piracy consisted of both customary international law and treaty law, in particular the 1958 Convention on the High Seas and the 1982 United Nations Convention on the Law of the Sea. Harvard University had undertaken work on piracy as early as the 1930s. It was on the basis of that work that the Commission had drafted the relevant provisions of its draft articles concerning the law of the sea, which had in large part been reproduced in articles 14 to 23 of the 1958 Convention on the High Seas. Those same provisions, in turn, had in very large part been incorporated into the 1982 United Nations Convention on the Law of the Sea, which would provide the point of departure for the Commission's current work on the topic. Aspects that were not directly governed by those provisions would be considered on the basis of other instruments and State practice with a view to proposing, where appropriate, either the codification of emerging customary rules or the progressive development of international law on piracy in a manner that might be useful to States.

The legal regime on piracy was governed by specific provisions of the 1982 Convention, in particular articles 100 to 111. Other articles that cross-referenced the articles on the legal regime of the high seas were also relevant in that regard. For example, article 58 (2) provided that articles 88 to 115 applied also to the exclusive economic zone insofar as they were not incompatible with the legal regime of the exclusive economic zone.

From a legal standpoint, piracy was a crime that was committed on the high seas, where no jurisdiction or authority other than that of the flag State could be exercised. Nevertheless, international law had not only established a duty to cooperate to the fullest possible extent in the repression of piracy but also contemplated the application of universal jurisdiction in that regard. Article 105 of the 1982 Convention provided that, on the high seas, or in any other place outside the jurisdiction of any State, every State could seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and decide upon the penalties to be imposed and the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith. In reality, however, that article was of an optional nature and did not impose on States any obligation to prosecute or exercise jurisdiction over acts of piracy committed on the high seas.

The provisions that had proved most controversial and had given rise to contradictory interpretations in the legislative and judicial practice of States concerned the definition of piracy. Article 101 of the 1982 Convention set out the various acts that constituted piracy. They included any illegal act of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship and directed, on the high seas, against another ship or against persons or property on board such ship. It followed that, under the applicable law, the commission of the crime of piracy was territorially or geographically limited to the high seas, which were governed by the principle of freedom of navigation. Only the flag State had jurisdiction over a ship on the high seas. Yet the principle of freedom of the high seas entailed certain exceptions to the law of the flag. For example, in the case of piracy committed on the high seas, the law of the flag no longer applied, since it was recognized that all States had the power to prosecute and punish acts of piracy on the basis of universal jurisdiction. Of the world's 194 States, 93 had not established a definition of maritime piracy.

However, the applicable law was not limited to general international law and treaty law; it also included the domestic law of States that had adopted legislation on the prevention and repression of piracy and armed robbery at sea. Although international law set out the principle that acts of piracy were to be prosecuted and repressed, the exercise of jurisdiction with regard to criminalization and punishment was left to States. To a large extent, it was the domestic law of States that was most often applied in respect of piracy, since there were currently no international legal mechanisms for adjudicating on cases of maritime piracy and armed robbery at sea. Although piracy had been defined under international law, neither the nature nor the content of the applicable penalties had been specified. National courts therefore had the task of applying either national statutes, where they existed, or article 101 of the 1982 Convention, which defined the concept of piracy, and article 105, which set out the responsibility of States with regard to the prosecution and repression of acts of piracy.

In practice and in theory, however, the international legal framework applicable to piracy and armed robbery at sea suffered from a number of shortcomings that to some extent hampered the implementation of preventive and repressive measures.

The first was the partitioning of the marine environment into several maritime spaces, each of which had a distinct legal regime governed by equally distinct principles. Such legal partitioning did not always facilitate the repression of acts of piracy. For example, a pursuing ship could not enter the territorial sea or internal waters of a coastal State without first having obtained authorization from that State. The partitioning of the marine environment thus complicated any attempt to define the crime of maritime piracy on the basis of the place where the offence was committed.

The second shortcoming concerned the motive for the crime, which, in both the 1958 Convention on the High Seas and the 1982 United Nations Convention on the Law of the Sea, was described as being the pursuit of "private ends". The exact expression used to describe that motive differed from one statute to another, which reflected the difficulty of interpreting that concept in situations in which a government ship was used to commit acts of piracy for private ends. A distinction was thus drawn between the private ends that characterized acts of piracy and the political or ideological ends that generally characterized acts of terrorism committed to destabilize a Government or for religious or ethnic reasons. While in theory that distinction was tenable, in practice it was not always easy to discern: a political motive for a terrorist act at sea could be coupled with a private motive, namely the pursuit of spoils.

The third shortcoming was the fact that, under article 101 of the 1982 Convention, an act of piracy was defined as an attack by the crew or passengers of one ship against another ship. However, the Convention did not provide a precise and objective definition of a ship. In fact, the very concept was somewhat ambiguous, since, under maritime law, all watercraft that were capable of moving at sea tended to be considered ships.

The fourth shortcoming was related to the notion of a private ship, to which reference was made in article 102 of the 1982 Convention. The implications of that provision extended beyond the assimilation of acts committed by a government ship to those committed by a private ship. Logically, a government ship that lost its status as such because its crew had mutinied and committed acts of piracy became not only a private ship but also a pirate ship, as a result of the commission of acts assimilated to those defined in article 101.

The fifth shortcoming was the mildness of the language used, which did not impose any legal obligation on States to prosecute and punish pirates. The use of the word "may" in article 105 of the 1982 Convention left States free to decide whether to prosecute the perpetrators of and accomplices to acts of piracy. The weak normative value of such language might run counter to the aim of prosecuting and punishing piracy. It was possible that article 105 of the Convention weakened article 100, which made cooperation in the repression of maritime piracy a legal obligation of States.

The sixth and final shortcoming was the tendency to regard the absence of applicable national legislation as a reason not to prosecute pirates after their arrest. It was particularly regrettable that such criminals were then released without any further proceedings. Article 100 of the 1982 Convention seemed to offer a solid legal basis for the physical pursuit of pirate ships or legal proceedings on the basis of universal jurisdiction, as established in customary international law and later codified by article 105 of the Convention.

The methodological approach taken in the report was based on the assumption that piracy was considered to be a "geographical" or "geographically localized" crime because it was committed in maritime zones or regions that were clearly defined by law. Regional maritime governance of the seas and oceans might therefore offer one of the most suitable and pragmatic solutions. The study of the topic would thus reflect a regional approach involving the analysis of State practice, including both national legislation and the decisions of national courts concerning maritime piracy and armed robbery at sea. The analysis would encompass the practice of all States with a real or potential interest in protecting the oceans from piracy and armed robbery. Particular attention would be paid to how national courts interpreted the definition of piracy set forth in article 101 of the 1982 Convention, as reflected in the legal framework of their respective States; how States were implementing the

Convention; whether they were exercising universal jurisdiction and, if so, on what legal basis; and whether the concept of armed robbery at sea, as defined in International Maritime Organization (IMO) resolution A.1025(26) setting forth the Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships, was used by States and, if so, how it was interpreted by their courts. In other words, the analysis would allow the Commission to determine whether and how national laws and judicial systems distinguished piracy from armed robbery at sea and what conclusions could be drawn from that information.

Chapter II (A) of the report focused on legislative and judicial practice in Africa concerning piracy and armed robbery at sea. Twenty-eight African States had established definitions of maritime piracy in their criminal codes or in specific laws on piracy and armed robbery at sea. Twelve African States reproduced the definition of piracy contained in article 101 of the 1982 Convention fully, while others did so only partially. Legislative practice on the inclusion, in the same body of legislation, of both maritime piracy and armed robbery at sea as two separate crimes with separate penalties was disparate. Of the 28 African States that had defined maritime piracy in their legislation, only 3 had also defined armed robbery at sea. Only one State on the African continent reproduced fully the definition of armed robbery at sea contained in IMO resolution A.1025(26). Most African court decisions on piracy and armed robbery at sea came from the East African region, specifically Kenya, the United Republic of Tanzania, Seychelles and Mauritius.

In Asia, only 16 States had defined maritime piracy in their national legislation. Of those, two States had fully reproduced the definition of piracy set forth in the 1982 Convention, while the others had reproduced it partially, using one or more elements of the definition. It was noteworthy that Indian law provided that the definition of piracy also included any act deemed piratical under customary international law. Two Asian States had established a definition of armed robbery at sea, but their definitions differed from the one set forth in the IMO resolution. Very few States in Asia had brought persons accused of piracy or armed robbery at sea to justice. Courts in just 6 of the 46 countries in the Asian region – China, India, Malaysia, the Philippines, Singapore and Sri Lanka – had issued decisions that dealt primarily with maritime piracy. Of those States, the Philippines had the most extensive jurisprudence on the topic. Only the Philippines and India had recent jurisprudence covering the period from 1980 to 2010. No decision of an Asian court mentioned or reproduced the definition of piracy set forth in article 101 of the 1982 Convention. In China, Malaysia and Singapore, all relevant decisions dated back to the nineteenth or early twentieth centuries. Regarding more recent jurisprudence, in particular that of the Philippine courts, the most recent decisions, which dated from the 1980s, did not reproduce the definition contained in the Convention, largely because the Philippines had its own definition of piracy, which was set out in Presidential Decree No. 532 of 1974 establishing the Anti-Piracy and Anti-Highway Robbery Law. With regard to the exercise of universal or national jurisdiction, one view espoused by courts in Asia was that piracy was a crime *jure gentium*, that those who engaged in it were *hostis humani generis* and that piracy was therefore punishable everywhere, including when it was committed outside the limits of national territorial jurisdiction.

In the Americas and the Caribbean, 19 States had established a definition of piracy, but only 2 had adopted legislation defining armed robbery at sea. Six States reproduced the definition of piracy contained in article 101 of the 1982 Convention. One of those States was Guyana, whose legal framework expanded the territorial scope of the definition set out in the Convention to include its territorial waters. Only one State, Antigua and Barbuda, specifically reproduced the definition of armed robbery at sea contained in IMO resolution A.1025(26). Some States of the region did not reproduce the definition set forth in article 101 in its entirety but included some of its elements in their definitions. Of the few piracy-related judicial decisions identified in the region, most had been issued in the 1810s and 1820s or in the early 2010s. Nine such decisions had been identified in the United States of America; the only other relevant decision had been issued in Ecuador. Piracy had, however, been mentioned in decisions issued in other countries in the region. The United States had no jurisprudence that mentioned armed robbery at sea. The majority of the cases surveyed dealt with maritime piracy on the high seas, often in relation to crimes such as illicit drug and arms trafficking in international waters. Courts in the United States had exercised universal jurisdiction, having

characterized pirates as enemies of humanity and piracy as an "act against all nations and all humankind".

European States had, on the whole, reproduced the definition of piracy set forth in article 101 of the 1982 Convention in their legislation. A total of 32 States had adopted laws defining maritime piracy. A number of those States used elements of the definition contained in article 101, and six States reproduced it in full. Only four States in Europe had adopted a definition of armed robbery at sea. The decisions issued by European courts, notably in France, Germany, the Kingdom of the Netherlands and Spain, reflected the provisions of article 101 to a large extent. Once the constituent elements had been established, courts generally specified the way in which they should be interpreted. In Europe, the only penalties imposed for maritime piracy were prison sentences; no European State imposed life imprisonment or the death penalty for piracy. The exercise of universal jurisdiction had been referred to by the courts of the States that had prosecuted pirates, namely France, Germany and the Kingdom of the Netherlands. Since the acts had been committed by foreign nationals, specifically nationals of Somalia, jurisdiction had been a central issue in those cases. However, the States in question had tried those cases on the basis of universal jurisdiction.

In Oceania, only six States had established a definition of maritime piracy; three had established a definition of armed robbery at sea. Five of those States had reproduced the definition of piracy set forth in article 101 of the 1982 Convention. Australia and Nauru, in their laws, had added a reference to the "coastal sea" to the definition established in the Convention. Two States, namely Australia and the Marshall Islands, had reproduced exactly the definition of armed robbery at sea set forth in IMO resolution A.1025(26). Some States had established a definition of maritime piracy that did not reproduce the definition set forth in article 101 in its entirety but contained elements of it. Twenty-three judicial decisions mentioning piracy had been issued in the region, but none of them centred on the issue specifically. In some decisions issued in Australia, for example, piracy was referred to primarily as a reminder of the initial function of admiralty courts or admiralty jurisdiction. In some decisions, piracy was mentioned by way of comparison with war crimes or other examples of the most serious "international crimes", such as genocide. Furthermore, in certain States, piracy was a crime for which the death penalty could still be imposed. Universal jurisdiction in respect of piracy was also mentioned in those decisions.

In conclusion, there was abundant State practice relevant to the topic, with more than 100 national laws on the criminalization and repression of maritime piracy and armed robbery at sea. However, State practice was not uniform or consistent, since the laws in which piracy and armed robbery at sea were defined differed from one another, even though the States concerned were parties to the 1982 Convention. Some States reproduced article 101 of the Convention to the letter in their legislation, linking the crime exclusively to the high seas. Other States referred to the article only partially or did not mention it at all, preferring to define piracy in their own terms. Some added new elements to the definition, such as the illegality of sailing under multiple flags or no flag or without travel documents, or the acquisition of flags of convenience. Other elements added to the definition set forth in article 101 included the alteration of signals from the land, sea or air for the purpose of attacking property or persons on board a ship, the fact of seizing by force a mobile or fixed platform located on the continental shelf, and the loss of a flag owing to piracy or because the ship was no longer compliant with the law of the flag State.

Regarding the geographical area where piracy was committed, not all laws required that the crime must have been committed on the high seas. It appeared that the traditional crime scene for piracy was shifting from the high seas to coastal waters. Some laws used the expression "international waters" to denote the place of commission of piracy. Some laws allowed acts committed in the territorial sea or in internal waters to be characterized as piracy. Other laws used terms that were too broad to define piracy, including general references to the "sea" or to "ports" as places of commission of piracy, to acts against the "safety of maritime navigation" and to "maritime violence".

In some cases, piracy was punishable even when it had not previously been defined as a separate offence by the State, which could exercise jurisdiction by applying the general provisions of its criminal code or code of criminal procedure. Some States had established the power to exercise universal jurisdiction on the basis of their domestic law over acts

committed either in their territory or abroad, while other States had done so without linking piracy to the high seas. Universal jurisdiction could be based on either national law or the 1982 Convention, or both. While article 105 of the Convention was an example of an optional clause on the exercise of universal jurisdiction, States could, depending on their national law, decide to transform that optional clause into a compulsory clause for the purpose of bringing pirates to justice in their territory.

Some States clearly distinguished piracy from armed robbery at sea in their laws. Others considered that piracy was in itself armed robbery at sea, or included the latter in the definition of the former. In some places, armed robbery at sea was clearly defined as a crime that could be committed both on the high seas and in maritime spaces under national jurisdiction. To a large extent, however, armed robbery at sea remained undefined; in the rare instances where it was defined, the law generally reproduced verbatim the provisions of IMO resolution A.1025(26). Those laws that did not reproduce the IMO definition were not particularly clear, because they defined armed robbery at sea as being any act other than piracy or provided that piracy itself was nothing but robbery on the high seas.

In ruling on the issue of maritime piracy and, in rare cases, on the issue of armed robbery at sea, national courts had applied the criminal code of the prosecuting State, rules and principles of general or conventional international law or both national law and international law applicable to piracy. In the different regions studied, action to prevent and punish piracy was taken in accordance with each State's criminal code and code of criminal procedure, given that international law did not specify how piracy was to be prosecuted and punished, but left States with an obligation to do so, in keeping with the general legal principle of *nullum crimen*, *nulla poena sine lege*. In each region, national courts that had ruled on cases involving piracy and armed robbery at sea had had to deal with a variety of procedural and substantive legal issues.

The question of universal jurisdiction had often been raised in proceedings against persons accused of piracy. On that point, judicial practice showed that the relevant provisions of the 1982 Convention could provide the basis for the jurisdiction of national courts even in the absence of legislation in domestic law, provided that the prosecuting State was a party to the Convention. Some national courts had characterized piracy as a violation of a *jus cogens* norm and an imprescriptible crime, interpreting the notion of piracy broadly by criminalizing, in addition to piracy as such, any other crime related to or associated with piracy. In such cases, the courts had applied either article 101 of the 1982 Convention or the criminal code of the prosecuting State.

An analysis of the general practice of States from a regional perspective had led him to the conclusion that article 101 of the 1982 Convention largely reflected customary international law. Indeed, several States parties to the Convention referred to customary international law in their definitions of piracy. In other respects, definitional practice remained disparate, although States had a common desire to prevent and repress maritime piracy and armed robbery at sea. Security Council resolutions on piracy off the coast of Somalia appeared to be short-term responses that were not intended as a sustainable solution to the problem of such crimes.

The three draft articles proposed in the first report dealt with the scope of the topic, the definition of piracy and the definition of armed robbery at sea. His second report would be devoted to an analysis of regional approaches to the prevention and repression of piracy and armed robbery at sea.

Mr. Ouazzani Chahdi said that he wished to thank the Special Rapporteur for his clear, precise and well-documented first report on prevention and repression of piracy and armed robbery at sea. He also wished to thank the secretariat for its memorandum on the topic (A/CN.4/757), which would facilitate the Commission's work. Piracy had become an issue of major concern for the international community when the phenomenon had resurfaced in the late 1970s and later exploded in the 1990s. The resurgence of piracy could be explained by several factors, notably the existence of uncontrolled zones, the inability of certain States to ensure the security of their territorial waters, an exponential increase in maritime traffic and the significant levels of poverty in certain regions, which led some of the inhabitants to

resort to piracy. The situation was further complicated by the fact that modern-day pirates had begun to use advanced technology to carry out their acts.

In preparing his report, the Special Rapporteur had relied on a number of international and national sources, including history and custom, of which the principle of freedom of the seas, particularly the high seas, was an essential norm. The Special Rapporteur had also considered the views expressed by States in the Sixth Committee, which had generally welcomed the inclusion of the topic in the Commission's long-term programme of work. Some States, such as the Philippines and Brazil, had stressed that the direction taken should be consistent with the 1982 United Nations Convention on the Law of the Sea. France, meanwhile, had considered that the topic was of great interest for the progressive development of international law and its codification. The Special Rapporteur had stressed that aspects of the topic that were not directly governed by the 1982 Convention would be examined on the basis of other instruments and State practice, with a view to proposing, as appropriate, either the codification of emerging customary rules or an approach aimed at the progressive development of international law on piracy in a manner that might be useful for States, or the consideration of both codification and progressive development in a single legal instrument.

The report, while rather long and exceeding the established word limit, contained a wealth of information on State practice in relation to piracy and armed robbery at sea under international law at the legislative, judicial and executive levels. As noted in chapter 1 (H) on the methodological approach, the study of the topic would essentially be based on a regional approach taking account of State practice, in particular national statutes and the decisions of national courts regarding maritime piracy and armed robbery at sea. The Special Rapporteur had devoted five chapters to piracy and armed robbery at sea in Africa, Asia, the Americas and the Caribbean, Europe and Oceania.

In terms of the substance, the report provided a general overview of the subject of maritime piracy and armed robbery. The report outlined the historical and customary roots of the prevailing notion of piracy reflected in the 1982 Convention, namely, a violation of the law of nations that took place essentially on the high seas. It also reviewed the current situation with regard to piracy as a geographically localized phenomenon that had a significant socioeconomic impact and must therefore be countered through international cooperation. The report also described the evolution of piracy from a practice originally understood to occur only on the high seas to one that increasingly took place in the territorial seas and internal waters of States, particularly in Africa.

The report highlighted a number of difficulties. First, State practice was not uniform or consistent, since statutory definitions of piracy and armed robbery at sea differed from one another, even when the States concerned were parties to the 1982 Convention. Furthermore, most national legislation covered only piracy, and armed robbery was largely ignored, which suggested that some States conflated the two crimes. In most national laws, armed robbery was neither defined nor criminalized. Representatives in the Sixth Committee had pointed out that, since piracy was largely covered by the existing legal framework, the Commission should focus on armed robbery.

Another difficulty concerned the geographical areas to be considered. While international law, through the 1982 Convention, emphasized the high seas as the main place where piracy was practised, some States had already included territorial seas and even internal waters in their definitions of piracy. The Penal Code of Guatemala, for example, provided that piracy was a crime that was committed "at sea, on lakes or in navigable rivers", with no particular distinction made between maritime jurisdictions. Similarly, Honduran legislation extended the geographical scope of the crime of piracy to include the exclusive economic zone, the contiguous zone and all other maritime spaces. Other States also included airspace in their definition of piracy. In Nicaragua, for example, a pirate was any person who took "armed possession of a ship at sea, in the air or on the nation's lakes or rivers" or committed "acts of depredation or acts of violence against persons on board".

In addressing the law applicable to piracy and armed robbery, the Special Rapporteur clearly demonstrated the shortcomings of the international legal framework in that field, pointing out that it was mainly the domestic law of States that was applied with regard to

piracy because there were currently no international judicial mechanisms to rule on crimes of maritime piracy and armed robbery at sea.

The Special Rapporteur noted that some national courts, including in the United States, had characterized piracy as a violation of a *jus cogens* norm. However, it did not appear that the elevation of piracy to the rank of a *jus cogens* violation was widespread in the practice of the international community of States, although they considered piracy to be one of the most serious crimes punishable by the most severe penalties, such as capital punishment. To his knowledge, the only State to have raised the issue before the Sixth Committee was Switzerland, during the 2019 discussion on the topic “Peremptory norms of general international law (*jus cogens*)”. The Swiss delegation’s interest in the matter was understandable, given that the Swiss Constitution expressly prohibited any constitutional amendments that violated norms of *jus cogens*. During that debate, the Swiss delegation had mentioned the prohibition of piracy as one of the rules regarded as *jus cogens* norms and had encouraged the Commission to carefully analyse State practice with a view to expanding the non-exhaustive list of *jus cogens* norms that had been drawn up under that topic. Piracy had ultimately not been included in the non-exhaustive list, but there was nothing to prevent the Commission from adding to the list in the light of State practice.

With regard to the proposed draft articles, he welcomed the fact that the Special Rapporteur had drafted separate definitions for the two crimes of piracy and armed robbery. The Commission might consider further delimiting the scope of the topic in terms of the forms of piracy, since the draft articles also covered acts of piracy against aircraft. That question had been raised by the Commission in 1956 during the preparation of the draft articles that had served as the basis for the 1958 Convention on the High Seas and the 1982 United Nations Convention on the Law of the Sea. In paragraph 61 of the memorandum by the Secretariat on prevention and repression of piracy and armed robbery at sea, it was recalled that the Commission had decided, by a series of votes, that attacks by one aircraft against another should not fall within the scope of the definition of piracy, but that attacks by aircraft against ships should fall within that scope. That point could perhaps be taken up in the Drafting Committee.

The term “sea” would also need to be defined in the draft articles or in the commentaries. The draft article on the scope referred to piracy and armed robbery “at sea”, whereas the 1982 Convention referred to “the high seas”. Should that be taken to mean that the Special Rapporteur wished to extend the scope to territorial seas and other maritime areas? That question would also have to be discussed in the Drafting Committee. In conclusion, he said that he supported the referral of the draft articles to the Drafting Committee.

Mr. Nguyen said that the prevention and repression of piracy and armed robbery at sea was a topic of political concern for the international community. Having decreased significantly in the twentieth century, piracy had resurfaced at the beginning of the twenty-first, mainly in the area around Somalia and the South China Sea. In addition, there had been a significant increase in armed robbery in waters under national sovereignty. He agreed with the Special Rapporteur that a regional approach was the most effective and pragmatic, given the particularities and varied experiences in each region. However, the topic could not be addressed properly unless both a regional and a universal approach were taken, combining the principles of national sovereignty and universal jurisdiction.

The report’s in-depth analysis of more recent developments highlighted a number of issues. First, there had been a decrease in cases of piracy and a significant increase in cases of armed robbery at sea, especially in Asia, where recorded incidents of armed robbery at sea outnumbered incidents of piracy at sea by nine to one. Second, piracy and armed robbery at sea were no longer perpetrated for political reasons, as in earlier times; they were currently used as a means to steal cargoes and seize ships and crews for ransom, and were often carried out by professionals for private ends.

Third, States tended to regard piracy and armed robbery at sea as similar acts or, in some cases, to assimilate them to terrorist acts. Whether committed on the high seas or in waters under national jurisdiction, such acts destabilized countries’ maritime security order. States were increasingly interested in repressing armed robbery at sea by extending more of

their power from land to the high seas. In other words, piracy was increasingly considered a form of armed robbery at sea that took place in the exclusive economic zone and on the high seas. As a result, few countries had distinct definitions of piracy and armed robbery at sea and many imposed similar penalties for the two acts.

Fourth, the use of high-technology weapons such as drones in the commission of acts of piracy and armed robbery at sea was a new trend to be taken into consideration. The traditional definition of piracy in article 101 of the 1982 United Nations Convention on the Law of the Sea needed to be updated or better explained to take account of the new context. Pirates did not need to be crew members or passengers of a private ship or aircraft in order to commit an act of piracy at sea. They could pilot attack drones that targeted another ship or aircraft, or people or property on board, from the coast or a fixed platform located on the continental shelf.

Fifth, the role of international organizations in preventing and repressing piracy and armed robbery at sea was being continually reinforced, for example through the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia. Security Council resolution 1851 (2008) allowed States and international organizations to take all appropriate measures in Somalia to repress acts of piracy and armed robbery at sea. Although the resolution had been adopted under Chapter VII of the Charter of the United Nations and provided that the measures must comply with applicable international humanitarian and human rights law, some States, such as Indonesia, remained concerned. In the event of abuse, the boundaries between piracy and armed robbery at sea would blur, and there would be a shift in universal jurisdiction from the high seas to the areas closer to national coasts.

Sixth, the power to prevent and punish piracy and armed robbery at sea was primarily granted to ships and aircraft flying a country's national flag. In practice, some countries, such as Viet Nam and China, allowed maritime militias to protect their fishing boats from attacks by pirates and illegal armed groups. The question was whether such practices were in accordance with the law of the sea or whether the law needed to be updated or amended. New issues and trends should be examined in more detail in subsequent reports.

The topic should be addressed within the framework of the 1982 Convention, taking into account existing applicable law, extensive State practice and national legal systems. It was necessary to clearly define the two maritime crimes and to delimit the boundaries of universal jurisdiction and national jurisdiction in the prevention and repression of piracy and armed robbery at sea. The definition of piracy in article 101 of the 1982 Convention largely reflected customary international law, but that did not mean that it should not be updated to reflect the current reality. He therefore supported the referral of the three proposed draft articles to the Drafting Committee for review.

Regarding the scope of the topic, as established in draft article 1, he was in favour of a simpler formulation, stating that: "These draft articles concern the prevention and repression of piracy and armed robbery at sea." The methodology and legal basis for the topic would be developed in the commentary.

Draft article 2 (d) on the definition of piracy should be formulated with caution. First, it was necessary to add the words "outside national sovereign waters" after the word "sea" so as not to confuse the locations where such illicit acts were committed. Second, it was necessary to identify illicit acts similar to piracy that were committed at sea but could be carried out from land. Third, piracy was *hostes gentium* (a common enemy of all humanity) and occurred only on the high seas or in the exclusive economic zone. Therefore, the definition of piracy should be based on international law. On the other hand, the definition of armed robbery in waters under national sovereignty in draft article 3 should be based more on domestic law, since the 1982 Convention was silent on the issue.

The meeting rose at 11.40 a.m.