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*Check against delivery*

**Prevention and repression of piracy and armed robbery at sea**

Statement of the Chair of the Drafting Committee, Ms. Phoebe Okowa

1 July 2024

Mr. Chair,

This afternoon, it is my pleasure to introduce the third report of the Drafting Committee for the seventy-fifth session of the International Law Commission, which concerns the topic “Prevention and repression of piracy and armed robbery at sea”. The report, which is to be found in document [A/CN.4/L.1000](#) and was issued on 5 June 2024, contains the text and title of the draft article provisionally adopted by the Drafting Committee at the present session.

Mr. Chair,

My statement today is presented in the form of an interim report, intended to provide the Commission with information on the progress made in the Drafting Committee during this session. The Drafting Committee held four meetings on this topic, on 28 to 30 May 2024, and provisionally adopted one draft article, namely draft article 4.

Before addressing the details of the report, allow me to pay tribute to the Special Rapporteur, Mr. Yacouba Cissé, whose guidance and cooperation greatly facilitated the work of the Drafting Committee. I also would like to thank the other members of the Committee for their active participation and significant contributions to the Committee’s work. Furthermore, I wish to thank the Secretariat for its invaluable assistance. As always, and on behalf of the Drafting

Committee, I am pleased to extend my appreciation to the interpreters.

**General discussion regarding the topic as a whole and its future direction**

Mr. Chair,

Before I introduce the draft article provisionally adopted by the Drafting Committee, allow me to recall that, at the conclusion of its Plenary debate at its 3672nd meeting, the Commission decided to refer the four draft articles proposed by the Special Rapporteur in his second report<sup>1</sup> to the Drafting Committee. This was on the basis that the Committee would take into account the views expressed and proposals made during the Plenary debate. It was also assumed that the Committee would first hold a general discussion regarding the topic as a whole and its future direction.

The Drafting Committee held such a discussion on the basis of six guiding questions that I put to it. These were:

- 1) What is the relationship between UNCLOS and the work of the Commission on the topic?
- 2) In regard to piracy, what are the areas where Members perceive there to be legal gaps?
- 3) In regard to piracy, what new conclusions can be drawn from State practice and, in particular, is such practice at a sufficiently advanced stage to permit the codification of additional rules?
- 4) In which specific areas do Members see the Commission making an impactful contribution to the fight against piracy and armed robbery at sea?
- 5) In regard to armed robbery at sea, what is the role of international law in its regulation? Should piracy and armed robbery at sea be considered together or separately?

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<sup>1</sup> [A/CN.4/770](#).

6) What should be the final form and structure of the output of the Commission on the topic?

The Committee considered each question in turn, leading to a wide-ranging discussion on the topic and the direction that the Commission should take as its work continues. A number of points of general agreement emerged among members of the Committee.

To begin with, the Committee agreed that UNCLOS was the starting point for the topic, and the Commission would not seek to change it. It recalled that the intention not to alter the provisions of UNCLOS whatsoever was reflected in the syllabus for the topic.<sup>2</sup> Nevertheless, several members recognized that the Commission, drawing on State practice, could assist in providing specifics by interpreting the Convention, elaborating on it, operationalizing its provisions and filling in gaps where such gaps exist. Such an approach of working within the normative limits of the UNCLOS framework was termed an “UNCLOS+” approach. It was noted that the Convention did not address the crime of armed robbery at sea specifically, and several members recognized that the Commission could clarify the obligations of States in the area. It was also recalled that, in its preamble, UNCLOS affirmed that matters not regulated by it continued to be governed by general international law. The relevance of other treaties to the work of the Commission on the topic, including the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (the Rome Convention), the 2000 United Nations Convention against Transnational Organized Crime (the Palermo Convention) and the respective protocols thereto, was also highlighted.

The Committee identified a number of areas where there were gaps in the existing law or where the application of law raised legal issues that the Commission could address. Some of these were questions about the definitions of piracy and armed robbery at sea, which had been and could be further addressed in the commentaries, for example, the meaning of “illegal acts of violence or depredation”, the “private ends” criterion and the application of the definitions to new technologies including uncrewed aerial vehicles (UAVs) and marine autonomous vessels (MAVs). The Commission could also address the application of the definition to modern forms of piracy, including supporting acts that take place on land. The Committee also discussed the possibility of considering further issues, such as those relating to national legislation, jurisdiction, enforcement, pursuit of suspected offenders, the use of armed private security on ships and the root causes of piracy. Other issues concerned with modalities of cooperation, for example the sharing of information, the use of shipriders, mutual legal assistance and transfer of persons detained on suspicion of piracy or armed robbery at sea, were raised. Human rights and humanitarian aspects of the problem, including the rescue, repatriation and compensation of victims of piracy and armed

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<sup>2</sup> [A/74/10](#), Annex C, para. 34

robbery at sea were also discussed.

The Committee recognized that the jurisdictional bases for measures respectively against piracy and armed robbery at sea were different, but that the two should be considered jointly in a coordinated manner. The need to carefully consider areas of overlap was underscored. Some members noted that the legal basis for rules relating to armed robbery at sea was not as clear as those contained in the UNCLOS provisions relating to piracy. It was observed that various existing instruments dealt with the crimes together, where appropriate, and separately, where necessary. It was recognized that the Commission could contribute with respect to armed robbery at sea while respecting the territorial sovereignty of coastal States within the framework of UNCLOS. It was noted that whether the two crimes should be considered in separate provisions or even separate parts of the draft articles would depend on the subject-matter at hand and become clearer as work on the topic progressed.

With respect to the final form of the work of the Commission on the topic, the Special Rapporteur recalled that his goal, as he had explained in the Plenary, was to develop draft articles for a possible new convention that, in view of the diversity of State practice in the area, would involve a significant degree of progressive development of the law. Several members of the Committee agreed with proceeding in that vein. It was noted that a possible new convention would be subject to the approval of States, and that therefore the Commission had more latitude to propose developments in the law in the form of draft articles than it would working on a soft-law product that would aim to codify existing law. It was recalled that the possible development of a new convention was foreseen in the original syllabus for the topic.<sup>3</sup> The conclusion of implementing agreements to UNCLOS was also highlighted as reflecting the acceptance by the international community of the possibility of further developing UNCLOS through the conclusion of new treaties. Nevertheless, it was also noted that a number of members of the Commission had expressed a preference for a soft-law approach more focused on codification in their statements in the Plenary debate or in the Drafting Committee.

Members of the Committee identified several areas where the Commission could add value by proposing draft articles for a possible future convention. One was to fill gaps in UNCLOS and other relevant international legal instruments. Another was to spell out in detail what the cooperation required by article 100 of UNCLOS entails. The Commission could also elaborate on further requirements for the prevention and repression of piracy and armed robbery at sea, including the establishment of relevant criminal offenses and jurisdiction in national criminal laws,

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<sup>3</sup> *Ibid.*, para. 35.

providing for enforcement measures and mutual legal assistance and related matters.

The role of the Commission in addressing international legal issues relevant to the topic was highlighted. It was also emphasised that it was not the role of the Commission to replace or to duplicate other international organizations working on the topic. In particular, the IMO had done a large amount of work on the topic, and it was important for the Commission to keep that work in perspective as it proceeded with the topic.

#### **Draft article 4 – General obligations**

Mr. Chair,

Let me now turn to draft article 4.

With the general sense that the way forward would be to work on a set of draft articles that may form the basis for a possible future treaty, the Drafting Committee proceeded to the consideration of the draft articles proposed by the Special Rapporteur in his second report. The Drafting Committee provisionally adopted draft article 4 on the basis of a revised proposal of the Special Rapporteur that builds on both draft articles 4 and 5, as proposed in his second report. The provision specifies the general obligation of States to prevent and repress piracy and armed robbery at sea, which will be specified in more detail in further draft articles.

Allow me to begin by discussing the structure of the provision and its **chapeau**. The provision takes the form of a single paragraph that provides that “States undertake to prevent and to repress piracy and armed robbery at sea, in conformity with international law” with two subparagraphs that specify that this is to be done through both certain measures and cooperation. The Drafting Committee considered the possibility of beginning the paragraph by “[e]ach State” or “[e]very State”, but it was considered that “States” was the preferable term as it avoided the implication that States were expected to act even if they lacked the material capacity to do so.

The chapeau of the provision uses the word “undertake” to describe States’ obligations with respect to the prevention and repression of piracy and armed robbery at sea. Members of the Drafting Committee generally agreed that this carried the same sense of obligation as the word “shall”, and a discussion was held regarding which term was more appropriate for the draft article. It was noted that, in several treaties, the word “undertake” was often used with respect to a general obligation, while “shall” was used concerning more specific obligations that followed. The Convention on the Prevention and Punishment of the Crime of Genocide and the International

Covenant on Civil and Political Rights were raised as examples.

Consistent with this, the Committee considered a proposal for the provision that would have had two sentences, the first, specifying that States undertake to prevent and to repress piracy and armed robbery at sea, and the second providing that States shall take measures and cooperate for that purpose. The Committee chose not to use such a structure to streamline the provision.

It was noted that the phrasing of the chapeau was consistent with the tendency of the Committee to move toward the drafting of articles that could form the basis of a new treaty that built upon the obligations reflected in UNCLOS. It was recalled that a number of the members of the Commission had expressed a preference in the Plenary debate for the drafting of a soft-law instrument that limited itself to codifying the existing law. To such an end, the use of the phrase “should undertake” was proposed, but not taken up.

The phrase “in conformity with international law”, while not strictly necessary, was included to highlight that measures taken under draft article 4 must be taken in conformity with the other obligations of the State under international law, for example with respect to the sovereign rights of other States and international human rights law. This was considered important in light of the distinct contexts in which piracy and armed robbery at sea occur, both in terms of jurisdiction over the maritime spaces where the two crimes, respectively, occur and the legal basis for rules relevant to the two crimes. As I will discuss later with respect to sub-paragraph b), the phrase has an important role in ensuring the rights of coastal States, especially as regards armed robbery at sea. The Committee noted that the phrase might also be read as requiring measures to be taken under draft article 4 only when such measures are otherwise required by international law. This is not the intention behind the use of the phrase.

Mr. Chair,

I shall now turn to **sub-paragraph a)**, which specifies that one of the ways in which States will prevent and repress piracy and armed robbery at sea is through “taking effective legislative, administrative, judicial or other appropriate measures.” It anticipates that, at future sessions, draft articles will be proposed and considered that provide for such measures with greater specificity. Examples of such measures could include the establishment of relevant offenses or applicable bases for jurisdiction in a State’s national criminal law, as the Special Rapporteur had proposed in his second report.

In drafting the provision, the Committee discussed how appropriately to describe the

relationship between the State and the various kinds of measures it could take. In general, it was considered that the provision should be broad and encompass various kinds of measures. One proposal by the Special Rapporteur referred to “the adoption of effective legislative, administrative, judicial or other appropriate measures”. The concern was raised that such drafting might not be appropriate, and it was discussed whether it was correct to say that a State can “adopt” judicial measures. It was highlighted that it is often the executive or government of a State that is the addressee of treaty obligations. It was also recalled that a State comprises all its organs, including the legislature and the judiciary, and that it was not uncommon for treaty obligations to address these branches as well. To address concerns regarding the word “adoption” in particular, the Drafting Committee settled on the word “taking”, drawing inspiration from article 2, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Another possibility considered was to refer to the adoption by States of “legislative and other measures”, taking inspiration from the chapeau of article 4, paragraph 1, of the United Nations Convention against Transnational Organized Crime. However, several members considered it important to retain the reference to judicial measures to maintain a focus on the prosecution of acts of piracy and armed robbery at sea.

Mr. Chair,

Draft Article 4, **sub-paragraph (b)**, concerns cooperation. It provides that States undertake to prevent and to repress piracy and armed robbery at sea through “cooperating to the fullest possible extent with other States and competent international organizations at the international, regional and subregional levels.”

An important question facing the Committee was the inclusion of the expression “to the fullest possible extent” in the sub-paragraph. The phrase is taken from article 100 of UNCLOS (and from article 14 of the Convention on the High Seas) and therefore represents the current state of the law as applies to piracy. With respect to armed robbery at sea, it was recognized that the provision was a proposal for the progressive development of the law. It was noted that this approach was different from that taken by the Institute of International Law, which did not assimilate the general obligations applicable to piracy and armed robbery at sea because the

Institute was not proposing to change customary international law.<sup>4</sup>

A proposal was considered to add the phrase “consistent with the territorial sovereignty and jurisdiction of a State, where applicable” at the end of the sub-paragraph to emphasize that the notion of “the fullest possible extent” did not prejudice the rights of coastal States under UNCLOS, which were of particular relevance to armed robbery at sea. This phrase was considered unnecessary in view of the inclusion of “in conformity with international law” in the chapeau, as I have already discussed.

A number of members expressed the view that the phrase “to the fullest possible extent” also accommodates differences in the capacities of States. In this connection, some members emphasized the importance of the duty to cooperate in ensuring that States with more resources assist those States that had fewer resources in the prevention and repression of piracy and armed robbery at sea. The Committee considered a proposal to add the phrase “according to their capacity” to the chapeau of the provision. It was noted that adding such a qualifier would derogate from the text of article 100 of UNCLOS. Additionally, several members considered that an explicit reference to capacity could be subject to abuse by States lacking the political will to fight piracy and armed robbery at sea. It was also suggested that technical cooperation and capacity building would be appropriate matters to address more specifically in further draft articles.

The Committee had before it the very detailed presentation of the practice of cooperation at the regional and sub-regional levels contained in the second report of the Special Rapporteur. It was on this basis that, the Committee engaged in a thorough discussion of how best to reflect the varied and multi-layered contexts in which States were called upon to cooperate, as appropriate, in the prevention and repression of piracy and armed robbery at sea. For example, one alternative considered instead of “international” was “global”. Another proposal was to use the term “inter-regional” to reflect the practice of cooperation between States and international organizations from multiple regions. It was also noted that the term “bi-regional” was used in the framework of general cooperation between Latin America and Europe. It was noted, however, that some of those terms were less common in international instruments.

The present formula was chosen in view of its simplicity, and its scope is not intended to exclude the possibility of cooperation between States or international organizations from different

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<sup>4</sup> Institute of International Law, report of the Eleventh Commission, “Piracy, present problems”, *Annuaire*, vol. 83 (2023), pp. 156–238, at p. 227.



regions or sub-regions. It rather reflects the breadth of possible modes of cooperation.

Mr. Chair,

The title of draft article 4 is “General obligations”. This reflects the expectation of the Drafting Committee that further draft articles will provide for various means of prevention and repression in greater specificity. I should note that, as the work of the Committee on this topic drew to a close for the present session, members were in general agreement that it would be useful to discuss the way forward in relation to further provisions in informal consultations during the second part of the session.

Mr. Chair,

This concludes my introduction of the third report of the Drafting Committee at the seventy-fifth session, devoted to the topic “Prevention and repression of piracy and armed robbery at sea”. I wish to confirm that the Commission is not, at this stage, being requested to act on the draft article provisionally adopted by the Drafting Committee, as this report is being presented for information purposes only.

I thank you for your kind attention.