Provisional

**For participants only**

12 July 2024

Original: English

# International Law Commission

**Seventy-fifth session (first part)**

**Provisional summary record of the 3670th meeting**

Held at the Palais des Nations, Geneva, on Thursday, 23 May 2024, at 10 a.m.

## Contents

***Present***:

| | |
|---|---|
| *Chair*: | Mr. Vázquez-Bermúdez |
| *Members*: | Mr. Akande |
| | Mr. Asada |
| | Mr. Cissé |
| | Mr. Fathalla |
| | Mr. Fife |
| | Mr. Forteau |
| | Mr. Galindo |
| | Mr. Grossman Guiloff |
| | Mr. Huang |
| | Mr. Jalloh |
| | Mr. Laraba |
| | Mr. Lee |
| | Ms. Mangklatanakul |
| | Mr. Mavroyiannis |
| | Mr. Nesi |
| | Mr. Nguyen |
| | Ms. Okowa |
| | Ms. Orosan |
| | Mr. Ouazzani Chahdi |
| | Mr. Oyarzábal |
| | Mr. Paparinskis |
| | Mr. Patel |
| | Ms. Ridings |
| | Mr. Ruda Santolaria |
| | Mr. Sall |
| | Mr. Savadogo |
| | Mr. Zagaynov |

***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 7) (*continued*) (A/CN.4/770)

**Ms. Mangklatanakul** said that she would like to thank the Special Rapporteur for his insightful second report on the topic "Prevention and repression of piracy and armed robbery at sea" (A/CN.4/770) and the secretariat for compiling a high-quality and useful memorandum on writings relevant to the definitions of piracy and of armed robbery at sea (A/CN.4/767). The report provided a good overview of international and regional frameworks for combating piracy and armed robbery at sea. That broad perspective was crucial for developing more comprehensive and coordinated approaches to combating maritime crime. She particularly welcomed the discussion of regional practices in the report, including Asian initiatives such as the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia and the Association of Southeast Asian Nations (ASEAN) code of conduct on piracy. She would welcome further analysis of how the practice identified in the report had led the Special Rapporteur to deduce the existence of the State obligations proposed in draft articles 4 to 7. She agreed with other members that piracy and armed robbery were fundamentally different and should therefore be dealt with in separate draft articles.

The breadth of the topic under consideration was reflected by the wide range of issues listed in paragraph 100 of the report, on the Special Rapporteur's future work, spanning the law of the sea, international criminal law and international human rights law. Given the complexity of the topic, it was difficult to see a clear outline for the future direction of the study. Before discussing the proposed draft articles, the Commission needed to discuss the general structure and content of the draft articles to be proposed in future reports.

The report stated that the Special Rapporteur's future work would include "a detailed study of the doctrine on different issues relating to the prevention and repression of piracy and armed robbery at sea". While sound academic writings provided a solid foundation for the Commission's work, the conduct of a study focusing on writings alone raised some concerns, as theory should always be grounded in practice and the two should thus be considered together. It might be useful to study each draft article by theme or subject area in the light of both writings and practice.

Some of the aspects mentioned in the second report, including the definition of piracy and questions concerning prevention and repression, had already been addressed in the draft articles that had been provisionally adopted by the Commission in 2023. She would thus like to know whether the Special Rapporteur wished to revisit those draft articles.

In order to ensure that the outcome of the Commission's work was of practical use to States, its future approach should focus, first, on identifying and strengthening existing laws and, second, on addressing legal gaps. On the first point, the Commission would benefit from an in-depth analysis of how the draft articles could fit into existing national legal systems and regional frameworks, in line with paragraphs 15 to 18 of the syllabus contained in the Commission's report on its seventy-first session (A/74/10). The Commission should not duplicate the legal frameworks already in place or the efforts being undertaken by other international organizations and academic institutions. Existing laws would therefore first have to be identified, especially the ones that would benefit from strengthening. The Special Rapporteur could build on the examination of State legislative and judicial practice set out in his first report (A/CN.4/758) and on the analysis of regional approaches set out in the second report. The reports clearly showed that there existed many international instruments, both binding and non-binding, that dealt with piracy. As pointed out by several members, relying on non-binding instruments in the codification and progressive development of law might pose problems. Therefore, it would be useful to clarify existing laws and explore ways to strengthen them.

In order to address legal gaps, the Commission should identify areas where its study could provide clarification on areas not covered by current instruments. Those areas had

already been noted in the syllabus and the reports, including aspects of international cooperation, the regulation of private security companies and universal criminal jurisdiction with respect to piracy at sea.

The comments made in the Sixth Committee in 2023 could also provide useful guidance. Most States had reaffirmed the primacy of the 1982 United Nations Convention on the Law of the Sea as the basis for the Commission's work on the topic and had welcomed the Commission's intention to clarify and build upon existing frameworks. Many States had called for the concept of universal jurisdiction to be explored. Lastly, the issue of the role of technology and its use both by pirates and in combating piracy had been discussed by many States. She would welcome further discussion on how those issues could be incorporated into the Commission's future work.

Several other issues would benefit from further study, as she had mentioned at the Commission's seventy-fourth session (A/CN.4/SR.3621). The first was the humanitarian aspect of an anti-piracy regime. The Special Rapporteur had mentioned that international human rights law would be studied in his future work, but had noted that it would be considered in the context of court proceedings against individual suspects. She invited him to consider, as well, the applicability of international human rights law and international humanitarian law in the context of assistance to victims of piracy, including international cooperation for rescue and repatriation and the provision of physical and psychological rehabilitation and compensation. Another question was whether existing international law was sufficient to respond to technological advances. There was a need to clarify the challenges posed by modern forms of piracy, including the use of artificial intelligence by pirates and the potential need to expand the legal regime to address emerging threats. New measures might be needed to establish a clear chain of responsibility, potentially holding accountable not only attackers but also those who created and distributed the artificial intelligence tools facilitating piracy and related offences.

Lastly, in the Sixth Committee, some States had questioned whether draft articles were the most appropriate form of outcome and had expressed a preference for draft guidelines. If the aim of the Commission's work was to simply suggest ways to harmonize the law and to identify and address legal gaps, she was open to discussing the form of outcome in the light of those comments by States.

As the Special Rapporteur had said in his introductory statement, the aim of proposed draft article 4 was to give form to the obligation of cooperation under article 100 of the 1982 Convention. Given the significance of such cooperation, she believed it would be beneficial to address the obligation of cooperation in a separate draft article. As was well demonstrated in the report, cooperation came in both binding and non-binding forms. A framework detailing the areas in which States were legally obliged to cooperate and with whom they must cooperate would be useful.

With regard to areas of cooperation, obligations to cooperate might also be relevant in addressing the landward bases that modern pirates used to escape hot pursuit. The Commission could look into an obligation to cooperate by allowing a State's pursuit of a vessel suspected of piracy from the high seas into another State's territorial waters, as provided for in the 1932 draft convention on piracy prepared under the auspices of Harvard Law School or in certain bilateral drug interdiction treaties concluded by the United States of America. With regard to actors involved in cooperation, a legal obligation of cooperation should make clear whether such cooperation included all States or only those affected and whether it extended to competent international organizations. That issue should be addressed in connection with draft article 5 (b).

She agreed that draft article 4 (1) should refer only to piracy and not armed robbery, since the prevention and repression of armed robbery was within the coastal State's authority. However, determining the zones in which pirates attacked could be challenging in practice. Reference could be made to the award in the *Arctic Sunrise* arbitration. While the facts in that case were not entirely analogous, as they did not involve piracy, the arbitral tribunal's discussion highlighted the difficulties in determining the zone in which the incident in question had occurred and the corresponding prescriptive and enforcement jurisdiction of the coastal State. Therefore, she would welcome the Special Rapporteur's

view on whether international cooperation applied or should apply to the prevention and repression of armed robbery at sea, which would complement the assertion that there was a lack of legally binding instruments to fill that gap, especially in Africa. The Special Rapporteur might wish to consider the related issue of coastal States' consent, which he had discussed in connection with the Security Council resolutions authorizing States to enter the territorial waters of Somalia on an exceptional basis, as well as the possibility of encouraging such cooperation.

Draft article 4 (2) provided that armed robbery was a crime under international law. That statement did not seem to correspond to practice, given that armed robbery occurred in the jurisdiction of the coastal State. In his first report, the Special Rapporteur had described the varying degrees of success in codifying armed robbery in national legislation, implying that the *lex lata* was that it was for States to criminalize armed robbery as a matter of domestic law, not international law. That understanding was also supported by the definition of armed robbery by the International Maritime Organization (IMO) and in the draft articles and commentaries that the Commission had provisionally adopted on the topic in 2023, which defined armed robbery as being committed in areas outside international waters. Furthermore, the 1982 Convention was silent on the question of the status of armed robbery in international law. Therefore, she would appreciate the Special Rapporteur's clarification as to whether he regarded the paragraph as codification of existing rules – and if so, which ones – or whether it was intended to progressively develop international law. She would also welcome an explanation of why the phrase "whether or not committed in time of armed conflict" had been included at the end of the paragraph.

With respect to paragraph 3, while she was not entirely opposed to the statement that no circumstances "may be invoked as a justification of piracy or armed robbery at sea", she would be interested to hear more about the reasons for including that statement and the academic literature and practice supporting it.

With respect to draft article 5, "Obligation of prevention", article 100 of the 1982 Convention, on which the draft article appeared to elaborate, covered the duty to cooperate in the repression of piracy. There was no corresponding duty to cooperate in the prevention of piracy. The Special Rapporteur's formulation of the *chapeau*, however, seemed to cover both the prevention and the repression of piracy and armed robbery, although that was not reflected in the title of the draft article. As Mr. Oyarzábal had proposed, the reference to repression should be clarified or deleted. She would be grateful if the Special Rapporteur could indicate whether he intended to add a corresponding draft article on the obligation of repression.

As mentioned in paragraphs (4) and (5) of the commentaries to draft article 1, the concepts of "prevention" and "repression" were distinct. "Prevention" was the act of stopping something from happening or arising, while "repression" was the act of subduing or suppressing something that had arisen. The two concepts comprised different elements and obligations and should therefore be analysed separately.

Draft article 5 (a) provided that each State was to undertake to prevent and repress piracy and armed robbery at sea through "[e]ffective legislative, administrative, judicial or other appropriate preventive measures in any territory under its jurisdiction and on the high seas". The Commission would have to carefully consider the implications of such "preventive measures" for the principles of freedom of the high seas under article 87 and exclusive flag State jurisdiction under article 92 (1) of the 1982 Convention. As the Convention was predicated on the delicate balancing of interests between coastal States and other States that had a vested interest in protecting those freedoms, any "preventive measures" taken must not interfere with those principles and upset the very carefully negotiated balance.

She would like to hear the Special Rapporteur's views on whether the elements set out in subparagraphs (a) and (b) constituted an exhaustive list of elements of the obligation of prevention or whether there were or should be other elements. She would welcome examples of the preventive measures that the Special Rapporteur had in mind. The obligation of prevention was an obligation of conduct, not of result. For example, a State could not be obliged to conclude agreements on extradition or mutual legal assistance, but it

should seek to cooperate in good faith in preventing and repressing piracy, in accordance with article 300 of the 1982 Convention.

With respect to draft article 6, the definitions of piracy in article 101 of the 1982 Convention and draft article 2 under the current topic took a broad approach by encompassing "any act of inciting or of intentionally facilitating" an act of piracy. A similarly broad approach was appropriately taken in draft article 6 (2), which included both complete and inchoate offences, since the elements of acts of piracy should also be addressed. National laws also often criminalized acts such as arming or leasing vessels for piracy, preparatory actions, assisting pirates or even unsuccessful attempts. It would therefore be useful to elaborate on the different elements of acts of piracy, including inchoate offences such as conspiracy, aiding and assisting, and attempt, to ensure clarity and accuracy.

Draft article 6 (4) and (5) seemed to imply that States had the capacity to commit piracy and armed robbery at sea, which was problematic. Piracy must be "committed for private ends" according to the definition in article 101 of the 1982 Convention and draft article 2 provisionally adopted by the Commission. While there had been a lively debate in the Sixth Committee in 2023 on the nuances of the meaning of "private ends", it seemed uncontroversial that an offence "committed pursuant to an order of a Government" and an offence "committed by a person performing an official function" were excluded from the definition of piracy.

With regard to draft article 6 (6) on the non-applicability of a statute of limitations, a similar provision was contained in article 29 of the Rome Statute of the International Criminal Court with respect to genocide, crimes against humanity, war crimes and the crime of aggression. She doubted that piracy was comparable to those crimes in either its extent or its gravity. While she understood that the draft articles were proposed in the context of domestic offences, unlike the Rome Statute, she would still welcome clarification of the basis for that choice by the Special Rapporteur, especially considering that corruption and transnational crimes, which were of a similar gravity in her view, were subject only to a "long statute of limitations" under the United Nations Convention against Corruption and the United Nations Convention against Transnational Organized Crime.

Lastly, she agreed with Mr. Oyarzábal that it was not enough to merely criminalize piracy under national law; the prevention and repression of piracy depended largely on effective enforcement. That issue had been explored throughout the Special Rapporteur's report, and she would welcome further discussion on it.

With regard to draft article 7, which set out the cases in which a State must establish criminal jurisdiction, it would be useful to clarify in paragraph 1 how the establishment of jurisdiction applied in each maritime zone. It would also be useful to discuss whether the obligation to prosecute or extradite set out in paragraph 2 could be said to represent customary international law that could or should be codified in the current context and whether similar obligations could be found in similar criminal law instruments to support its inclusion. It must be noted that, while the widespread inclusion of "prosecute or extradite" provisions in treaties suggested potential evidence of State practice, it did not necessarily indicate *opinio juris*.

**Mr. Patel** said that, at a time when seafarers and IMO were expressing their deep appreciation to the Indian navy for leading counter-piracy operations in the Indian Ocean, it was immensely satisfying to read the second report of the Special Rapporteur, which mapped out with great precision the practices of States, international organizations and, most strikingly, regional organizations. In that connection, he had shared information on the Colombo Security Conclave, a regional arrangement comprising seven littoral States of the Indian Ocean, with the Chair of the Commission at the beginning of the current session.

In the Sixth Committee, a number of delegations had said they agreed with the Commission that its work should not duplicate existing frameworks but should rather aim at identifying issues of common concern. While the second report contained an excellent description of regional and multilateral cooperation mechanisms, it did not clearly show which issues of common concern the Special Rapporteur was trying to address. That lack of clarity was visible in some of the draft articles, such as draft article 6, which referred to

issues that were not otherwise discussed in the report. As Mr. Forteau and other members had pointed out, the Commission was being asked to discuss draft articles on cooperation, prevention, criminalization and jurisdiction even though the Special Rapporteur had not yet studied all the relevant material.

Draft article 2 (2), which had been provisionally adopted at the seventy-fourth session, contained a reference to article 58 of the 1982 United Nations Convention on the Law of the Sea intended to indicate that the rules governing action against piracy also applied in a State's exclusive economic zone. The Sixth Committee had sought further clarification as to the extent to which anti-piracy rules would apply in that zone, in view of the phrase "in so far as they are not incompatible with this Part" contained in article 58. As he had said in the Drafting Committee at the previous session, the exclusive economic zone and the high seas were two distinct maritime spaces in which different rights and obligations applied, and cooperation in the exclusive economic zone should be without prejudice to the sovereign rights of the coastal State. In that regard, the commentary should clearly reflect the differences of opinion among Commission members and the discussions that had taken place at the previous session to offer clarity on that very important distinction in the Convention.

In the Sixth Committee, States had raised other issues that they would like the Commission to address, including the root causes of piracy and armed robbery at sea, humanitarian assistance for victims of piracy and armed robbery at sea, especially hostages held for ransom, the transfer of persons suspected of committing piracy and the placement of military or privately contracted armed security personnel aboard merchant vessels. He appreciated the fact that the Special Rapporteur had addressed some issues related to the root causes of piracy in draft article 6 (2) and (3), but references to those issues were at best peripheral in the second report. The Commission should study those matters in detail before deciding to deliberate upon and provisionally adopt any draft articles. Referring all the draft articles to the Drafting Committee at the current stage might be unproductive for both the Special Rapporteur and the Commission. If the draft articles were to be referred to the Drafting Committee, he would like to make some specific comments on them.

He welcomed the reference in the report to the ongoing targeting of vessels by Houthi rebels, insofar as it helped to draw attention to the increasing role played by drones in piracy. However, he had some concerns about the mention of Houthi rebels and piracy in the same breath. It was beyond doubt that the Houthi actions had had an adverse effect on the navigational rights and freedoms of merchant vessels. However, neither the Security Council nor the coalition of States currently engaged in maritime security operations had characterized the ongoing Houthi actions as acts of piracy. It was well accepted that the acts of illegal violence or detention that characterized piracy must be "committed for private ends". However, there was controversy as to how the notion of "private ends" was to be understood. As noted in the secretariat's memorandum, the main difference in interpretation was whether acts "committed for private ends" were to be understood as acts without State or governmental authorization or whether "private ends" were to be understood as opposite to political ends. Given that the reference to Houthis and piracy could be interpreted as reflecting a certain stance by the Commission, it would be prudent to pre-emptively dispel any possible confusion on that score by making explicit any underlying assumptions or choices.

Draft articles 4 and 6 dealt with a State's general obligations and criminalization under national law. A combined reading of those two draft articles raised the question of the appropriate relationship between those provisions and the relatively dormant practice of "privateering" or "commerce raiding". Draft article 4 (3) provided that no circumstances of any kind could be invoked as a justification of piracy or armed robbery at sea. Paragraph 2 of that draft article specifically stated that piracy and armed robbery at sea remained crimes under international law, whether or not they were committed in time of armed conflict. Draft article 6 (4) and (5) required each State to take the necessary measures to ensure that the mere fact that piracy had been committed in an official capacity or on the orders of a Government, whether military or civilian, was not a ground for excluding criminal responsibility.

In his first report, the Special Rapporteur had drawn attention to the clear distinction made by certain national courts, specifically in the United States, between pirates and privateers. Given that the current draft articles contained explicit references to armed conflict, official capacity and government orders, the question arose as to whether they could be understood as an explicit endorsement of the Paris Declaration respecting Maritime Law, according to which the practice of privateering had been abolished under international law.

Draft article 6 (5) explicitly stated that the fact that an offence had been committed by a person in an official capacity was not a ground for excluding criminal responsibility. That gave rise to several questions. The first was the question of private ends, or whether an act that would otherwise qualify as an act of piracy would not be characterized as such simply because it had been carried out with governmental authorization. The second was the question of how the topic of piracy was related to the Commission's work on the immunity of State officials from foreign criminal jurisdiction. Could the crime of piracy be considered one of the crimes under international law in respect of which immunity *ratione materiae* did not apply? Admittedly, the Commission had chosen not to include the crime of piracy in draft article 7 on the immunity of State officials, but that in no way precluded the possibility that it could potentially be covered under the category of crimes against humanity. Lastly, he wondered whether there was any State practice to support the provision in draft article 6 (5). Given the interpretative controversies concerning the "private ends" question, it might not be wise to engage in the progressive development of law in the absence of a clearly articulated stance on the issue.

In drawing attention, in paragraph 7 of the report, to the international legal instruments for combating transnational organized crime, the Special Rapporteur had noted that some groups of maritime pirates could be defined as transnational criminal organizations. In draft article 6 (3), he called for States to ensure that "financiers, sponsors, superiors or other persons giving orders are criminally responsible for acts of piracy … committed by their subordinates". That definition did not overlap precisely with the definition of piracy in article 101 of the 1982 Convention. Indeed, the language was not reflected in any of the numerous regional codes of conduct cited in the report, all of which replicated the definitions found in the Convention. It was not entirely clear whether the more expansive formulation in the draft article was intended to criminalize the targeted actions as part of or independently from the language relating to piracy.

The bases for the exercise of jurisdiction in cases involving transnational criminal organizations and piracy were not identical. Most notably, piracy on the high seas was well understood as representing the textbook example of an offence that could be punished by States through the exercise of universal jurisdiction. It would be helpful if the Special Rapporteur could provide further clarification on those points. One of the animating impulses behind the concept of universal jurisdiction, at least in relation to international criminal law, had been the desire to ensure that there was no impunity for certain offences. That had fuelled the tendency to establish a mandatory universality regime that obliged a State to exercise its jurisdiction to prosecute a suspected offender or to extradite the suspect to a State that was willing to do so, based on the principle of *aut dedere aut judicare*. Perhaps the Special Rapporteur could comment on where he believed the Commission stood legally on that principle in relation to the obligation of States to cooperate to the fullest possible extent in the repression of piracy.

In conclusion, he was grateful to the Special Rapporteur for the detailed outline of the regional and multilateral cooperation mechanisms that existed to address the scourge of piracy. Some of the comments and suggestions made during the debate would help the Special Rapporteur as his efforts built momentum in the Commission and as States commented actively on the emerging outcome. He remained available to the Special Rapporteur to share any relevant practice that might assist him in his future work.

**Ms. Ridings** said that she wished to thank the Special Rapporteur for his second report and particularly for his oral presentation, which had highlighted the key points drawn from the report's useful description of regional practice. The secretariat's excellent memorandum would be particularly useful when the commentaries to draft articles 1 to 3 were reviewed. It would have been very useful to have had the memorandum in 2023, when

the Commission had considered the definitions of piracy and armed robbery at sea, although she understood the constraints on the secretariat's time.

There were some gaps in the information provided in the report on regional and multilateral frameworks for the prevention and repression of piracy and armed robbery at sea. For example, chapter II (B) of the report addressed the major role that IMO played in efforts to combat piracy and armed robbery at sea and referred to some relevant instruments it had adopted. However, there was no reference to other IMO instruments, including its resolution MSC.324(89) of 20 May 2011, "Implementation of best management practice guidance", and the revised industry counter-piracy guidance of 2021.

With regard to regional arrangements, the Special Rapporteur had, of course, considered the Djibouti Code of Conduct. However, he could also have considered the 2017 Jeddah Amendment to the Djibouti Code of Conduct, which had significantly expanded the scope of the Code and was aimed at developing a common regional maritime security strategy among the participants, an information-sharing network and strengthened capacity-building programmes.

In paragraph 6 of the report, the Special Rapporteur referred to the recent attacks by Houthi rebels on United States ships in the Red Sea but did not elaborate on the reaction of States to those developments. It was potentially relevant to note that IMO had indicated that States should work together to ensure freedom of navigation in the context of the Red Sea attacks. The European Union had similarly referred to freedom of navigation as an international legal basis linked to cooperation among States for the prevention and repression of potential acts of piracy on the Red Sea. That demonstrated the crucial linkages between piracy and the important international legal frameworks on the law of the sea.

There was also a close connection between the topic at hand and the United Nations Convention against Transnational Organized Crime, which was referred to in the report. Clarification of the interaction of the draft articles with the legal framework of the Convention could shed light on the degree to which the draft articles represented progressive development *vis-à-vis* codification of international law. In general, piracy seemed to fall under the definition of a "serious crime" under article 2 (b) of the Convention where the offence was transnational in nature. For the Convention to apply, there must also be participation in an organized criminal group. States parties to the Convention had an obligation to adopt the legislative and other measures necessary to establish as criminal offences the acts covered by the Convention and to cooperate in taking law enforcement action to combat those offences.

Some other information gaps had already been mentioned by other members. However, she understood the tension between the need to keep the report manageable in size, which the Special Rapporteur had done, and to meet the desire of Commission members to include additional material.

Much of the report was devoted to a description of multilateral and regional cooperation in the prevention and repression of piracy and armed robbery at sea, although the Special Rapporteur had drawn out the key elements from that practice in his oral presentation. The report's descriptive nature affected the Commission's ability to draw conclusions from the information provided. There was no analysis of the legal issues involved in efforts to enhance cooperation. It would have been beneficial if the Special Rapporteur had drawn together the key elements of the practice that would assist in the development of draft articles.

In that regard, there was little connection between the content of the report and the proposed draft articles, which would make it very difficult for the Drafting Committee to discuss them. She supported the views expressed by other members on that point.

Turning to the draft articles themselves, she said that basing them on the Commission's work on crimes against humanity did not seem to be the most suitable approach. The report emphasized cooperation and the modes of cooperation at the bilateral, regional, subregional and multilateral levels. However, the proposed draft article 4 (1) provided only for a general obligation for States to cooperate to the fullest possible extent in the prevention and repression of piracy on the high seas or in any other place outside the

jurisdiction of a State. The draft article thus did not identify the modalities that the Special Rapporteur envisaged to fulfil that duty.

The Special Rapporteur acknowledged in paragraph 2 of the report that identifying how States cooperated was a key aim of his work. The duty to cooperate in the prevention and repression of piracy was already established in article 100 of the 1982 United Nations Convention on the Law of the Sea. One solution might have been to include in draft article 4 (1) a general obligation requiring States to cooperate directly or through competent regional, subregional or multilateral organizations in the prevention and repression of piracy and armed robbery at sea. That would draw on article 100 of the Convention, which related to piracy, and extend the general obligation to cooperate to also cover the prevention and repression of armed robbery at sea.

Draft article 4 (2) suggested that armed robbery at sea was an international crime and thus conflated piracy and armed robbery at sea, despite their very different jurisdictional bases. The Commission had no basis on which to assess whether armed robbery at sea was or should be an international crime. She agreed with other members that the reference to the commission of the offence "in time of armed conflict" was not appropriate.

The fact that the two subparagraphs of draft article 5 appeared to combine two different ideas – taking effective legislative, administrative, judicial or other appropriate preventive measures, on the one hand, and cooperation with other States and competent organizations and non-State actors, on the other – was somewhat problematic. First, it was not clear what "preventive measures" were. Second, the draft article addressed prevention but not repression, even though repression was mentioned in the *chapeau* of the paragraph. The Special Rapporteur should explain whether there was a difference between prevention and repression. Third, it was not at all clear what precise obligations the draft article would impose on States. In addition, the requirement of cooperation with non-State actors posed a problem, as had been mentioned by other members.

She had significant concerns about draft articles 6 and 7. First, draft article 6 implied that piracy could be committed pursuant to an order of a Government or by a person performing an official function. That was not consistent with the definition of piracy. Second, piracy and armed robbery at sea were addressed together, and the draft articles seemed to provide for universal jurisdiction not only for piracy but also for armed robbery at sea. That was not consistent with the jurisdictional parameters of armed robbery at sea. She was not convinced that the Drafting Committee could productively discuss and adopt the proposed draft articles within the time available.

Concerning the way ahead, members had put forward three main proposals: not to refer the draft articles to the Drafting Committee; to refer them to the Drafting Committee and proceed as usual; or to establish a working group with a clear mandate to prepare a road map for the topic to help define the Special Rapporteur's approach. In her view, the latter two proposals were not mutually exclusive. The Drafting Committee and a working group could work in a complementary manner and help the Commission move forward on the topic in line with the Special Rapporteur's vision. It seemed that members did not have a clear idea of what the Special Rapporteur intended to cover in his third report and how the work that had been done to date, including the secretariat's memorandums, would provide the basis for the development of draft articles. The Special Rapporteur's outline for his third report was extensive and seemed to cover all relevant aspects of the topic. A road map that clearly set out the various elements of the topic that the Special Rapporteur intended to cover and their sequencing would enhance progress on the topic.

**Mr. Zagaynov** said that he was grateful to the secretariat for its memorandum, which would also have been useful for the elaboration of the commentaries to the draft articles provisionally adopted at the Commission's seventy-fourth session. In the Special Rapporteur's second report, the review of practices and approaches for combating piracy and armed robbery at sea was informative and useful. The geographical scope of the review was particularly noteworthy, covering not only the practices of international organizations and groups of countries, but also approaches to the problem in various regions, as well as a number of bilateral agreements.

Regarding the Special Rapporteur's comments on the Security Council resolutions on piracy and armed robbery at sea, he agreed that those resolutions had played an important role in facilitating cooperation among States in preventing and repressing piracy and armed robbery at sea in the Gulf of Aden and off the coast of Somalia. Their importance extended beyond their geographical scope, as they had contributed to the development of practices and approaches in the fight against piracy and armed robbery at sea.

However, he wished to address some of the observations contained in paragraphs 16 and 17 of the report. In paragraph 16, it was noted that "the Security Council gave exceptional authorization to States cooperating with Somalia to enter its territorial waters and use within those waters all necessary means to repress acts of piracy and armed robbery at sea". Similarly, in paragraph 17, it was stated that the Security Council "has thereby established a legal framework that derogates from the United Nations Convention on the Law of the Sea by authorizing States to enter the territorial waters of Somalia in exercise of the right of hot pursuit". However, the relevant paragraph of the Security Council resolutions on piracy off the coast of Somalia, the first of which was resolution 1816 (2008), was formulated in such a way as not to undermine the legal framework established by the Convention. It expressly required authorization by the coastal State itself in the form of a notification from the Transitional Federal Government to the Secretary-General.

That point had been emphasized in the literature. According to some authors, resolution 1816 (2008) had more of a political and practical purpose and its content was largely a consequence of the unstable political situation in Somalia. The 2023 report of the Institute of International Law on the issue of piracy put forward a similar interpretation of the invocation of Chapter VII of the Charter of the United Nations in tandem with the requirement of Somali authorization. The resolution had been intended to overcome obstacles to cooperation with the Transitional Federal Government. In any case, the Security Council had established a mechanism that, at the time, had satisfied all parties concerned and made it possible to enumerate a set of measures to combat piracy and armed robbery at sea. The Security Council had not intended to revisit the 1982 United Nations Convention on the Law of the Sea or to change the regime established therein.

Hot pursuit, to which the Special Rapporteur referred in the context of the Security Council resolutions on Somalia, was not a term used in any of them. Presumably, if the Security Council had intended for States to enter the territorial waters of Somalia only for the purposes of hot pursuit, that concept would have been explicitly stated. It was logical to infer that entry into the territorial sea of Somalia had been authorized not only in the context of pursuit from the high seas, but also when the offence took place exclusively within Somali territorial waters.

The Special Rapporteur had referred to initiatives to establish specialized courts to deal with piracy cases. As noted in the memorandum submitted by the secretariat at the seventy-fourth session (A/CN.4/757), the Secretary-General, pursuant to Security Council resolution 1918 (2010), had presented a report outlining options to further the aim of prosecuting and imprisoning persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia (S/2010/394). Those options had included the establishment of a regional or international tribunal, but that initiative had never been pursued.

In paragraph 6 of the report, the Special Rapporteur referred, in the context of piracy, to "attacks by Houthi rebels on United States ships in the Red Sea", a reference he considered to be unfounded.

Unquestionably, the work on the proposed draft articles and on the topic as a whole must continue to be based on the 1982 Convention. Draft article 4 (2) set out an obligation for each State to prevent and repress piracy and armed robbery at sea, although such an obligation was not currently foreseen in the Convention or other international agreements. Some countries, such as those that were landlocked or did not have the technical or other capacity to devote large-scale efforts to combating piracy and armed robbery at sea, would struggle to fulfil such a sweeping obligation. In the commentary to draft article 38 of its draft articles concerning the law of the sea, which had formed the basis for article 14 of the 1958 Convention on the High Seas and, subsequently, article 100 of the 1982 Convention,

the Commission had emphasized that "[a]ny State having an opportunity of taking measures against piracy, and neglecting to do so, would be failing in a duty laid upon it by international law". However, it had gone on to note that "[o]bviously, the State must be allowed a certain latitude as to the measures it should take to this end in any individual case". He would refrain from commenting on *The "Enrica Lexie" Incident (Italy v. India)* in that context, as it had already been cited by other members.

It was worth noting that, as shown by the *travaux préparatoires* for the 1982 Convention, a proposal to include an obligation on all States to prevent and punish piracy had been put forward at the Third United Nations Conference on the Law of the Sea. The decision not to accept that proposal indicated the intention of States not to establish such an obligation. Reference could also be made to the commentary to the 1932 draft convention on piracy prepared under the auspices of Harvard Law School, on which the Commission had drawn in preparing its 1956 draft articles concerning the law of the sea. The draft convention had been intended to serve only as a basis for establishing the jurisdiction of each State to prosecute pirates. Accordingly, its article 18 contained only a general discretionary obligation on States to discourage piracy by exercising their rights of prevention and punishment as far as expedient. It was observed in the relevant commentary that States probably would not be willing to assume a more definite general duty to seize or to prosecute pirates, as that would involve liabilities for non-performance. In its 2023 report entitled "Piracy, Present Problems", the Institute of International Law had concluded that a State should in principle be under an obligation to prevent and repress acts of piracy, but only "if it is in a reasonable and practicable position to do so". The Commission should further analyse the most appropriate wording for draft article 4 (2).

In the instruments referred to in the Special Rapporteur's second report, relevant provisions contained obligations to implement those instruments or to cooperate qualified with references to national law and national priorities. For example, article 2 of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia, which had been the first regional intergovernmental agreement related to the topic at hand, provided that the parties were obliged, "in accordance with their respective national laws and regulations and subject to their available resources or capabilities", to implement the Agreement "to the fullest extent possible". Article 2 of the Djibouti Code of Conduct, meanwhile, expressed the intention of States to cooperate in a manner "[c]onsistent with their available resources and related priorities". Turning back to draft article 4 (2), he said he agreed with other members that the phrase "whether or not committed in time of armed conflict" was unjustified and should be deleted.

He would be grateful to know the Special Rapporteur's rationale for draft article 4 (3).

In draft article 5, consideration should be given to including a subparagraph on information-sharing. The obligation to share information was a highly useful area of cooperation between States in preventing and repressing piracy and armed robbery at sea. An interesting provision in that regard was article 14 of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome Convention), according to which "[a]ny State Party having reason to believe that an offence … will be committed shall, in accordance with its national law, furnish as promptly as possible any relevant information in its possession to those States which it believes would be the States having established jurisdiction".

Paragraphs 4 and 5 of draft article 6 required further revision. An act could not be classified as piracy if it was committed pursuant to an order of a Government or by a person performing an official function. In addition, the two paragraphs might conflict with rules of customary international law on the immunity of State officials from foreign criminal jurisdiction and even with draft article 7, which went beyond customary international law, of the draft articles on immunity of State officials from foreign criminal jurisdiction provisionally adopted by the Commission.

Draft article 6 (2) could contribute to the progressive development of international law on piracy and armed robbery at sea. However, there was a need to further analyse the international legal instruments dealing with the criminalization of those offences under

national law. In addition, it should be clarified how the implementation of the provision in practice would relate to the implementation of the international legal regime against piracy and armed robbery at sea in various maritime spaces, within which the jurisdiction of States to enforce national law differed.

At the previous session, members had expressed a range of views on the Rome Convention. Some had held that it had already solved the problem of the criminalization of piracy, while others had contended that it related more to terrorism than to piracy. It had also been argued that piracy might be a form of terrorism and that the relationship between the 1982 United Nations Convention on the Law of the Sea and the Rome Convention was not straightforward, since the latter did not contain requirements concerning "two ships" or "private ends" and did not provide for universal jurisdiction. It had been proposed that the Commission should examine the relationship between the two instruments and the subsequent practice of their application from the perspective of regulating the fight against piracy and armed robbery at sea. The obligations established in the two instruments and in other international treaties had been addressed by States in the Sixth Committee, notably Canada and Malaysia. In his view, the matter deserved careful consideration. In particular, it should be noted that, in the final part of paragraph 15 of its resolution 1846 (2008), the Security Council had called on States to fully implement their obligations under the Rome Convention in order to successfully prosecute persons suspected of piracy and armed robbery at sea off the coast of Somalia. Security Council resolutions 1851 (2008), 1897 (2009), 2020 (2011) and 2383 (2017) referred to the fulfilment of obligations under the Rome Convention in the context of measures taken consistent with the 1982 Convention. Some IMO documents referred to the Rome Convention as a "relevant treaty" for the purposes of repressing piracy that "complemented" the provisions of the 1982 Convention relating to piracy. Should the Commission ultimately decide to include a provision along the lines of draft article 6 (2), the Rome Convention and the relevant practice should be used as a source of inspiration, as indicated by the Special Rapporteur in paragraph 24 of his report. Account should equally be taken of the United Nations Convention against Transnational Organized Crime and the International Convention against the Taking of Hostages, which also obliged their parties to criminalize certain acts.

Future work should involve examining the inclusion in the draft articles of saving clauses on non-contradiction with the principle of sovereignty, the immunities of warships and the interpretation of the draft articles in accordance with the 1982 Convention. For example, article 4 (2) of the United Nations Convention against Transnational Organized Crime specified that nothing in the Convention entitled a State party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that were reserved exclusively for the authorities of that other State by its domestic law. Some useful exclusionary language that might be considered could be found in article 2 (2) to (6) of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia. Lastly, he welcomed the Special Rapporteur's stated intention to address, in his third report, issues relating to domestic jurisdiction and the universal jurisdiction of States with regard to the prosecution and trial of suspected pirates and the issue of enforcement measures.

**Mr. Paparinskis** said that he was grateful to the Special Rapporteur for his second report and to the secretariat for its memorandum. He wished to reiterate his suggestion that the secretariat should introduce its memorandums at plenary meetings after Special Rapporteurs had introduced their reports and his belief that the work of the Institute of International Law was of a quality that warranted serious engagement with it by the Commission, on substance as well as for drafting inspiration.

In the light of developments since the adoption of draft articles 1 to 3 and the commentaries thereto in 2023, he wished to raise four points. First, paragraphs (1) and (3) of the commentary to draft article 2, taken together, confirmed that the definition of piracy in article 101 of the 1982 United Nations Convention on the Law of the Sea was "regarded as reflecting customary international law" and that its "integrity … should be preserved". As noted in paragraph 44 of the topical summary of the discussion held in the Sixth Committee of the General Assembly during its seventy-eighth session (A/CN.4/763), several delegations had "stated that the aforementioned definition reflected customary

international law". Similarly, it was observed, in paragraph 60 of the memorandum by the secretariat (A/CN.4/767), that most authors writing in recent decades considered that "article 101 of the United Nations Convention on the Law of the Sea reflects customary international law", a point further underlined in article 1 (2) of the 2023 resolution on piracy adopted by the Institute of International Law. The strong support expressed both for viewing the provisions of the 1982 Convention as reflective of custom and for the commitment of the Commission not to alter the relevant provisions should inform the Commission's drafting approach insofar as it touched upon other provisions of the Convention related to piracy, which had been suggested by the Institute of International Law to be generally reflective of custom. In short, he agreed with other members who had cautioned against needlessly departing from the Convention.

Second, the position taken by the Commission in paragraph (6) of the commentary to draft article 2 with regard to the expression "committed for private ends" was not without ambiguity. At the previous session (A/CN.4/SR.3623), he had said that the ambiguity of the reference to "private ends" in the definition of piracy could be read in terms of the dichotomy between private and public or between the personal and the political and that, in his view, the classic international law distinction between private and public was the better reading of relevant practice. Consequently, the last sentence of paragraph (6) – "[s]ome scholars have contended that any maritime violence lacking public authority can be regarded as violence 'for private ends'" – while unduly cautious, was a correct statement of the law and indeed the only proposition in the entire paragraph explicitly supported by practice and scholarship. Such a reading was in line with the position of States, as illustrated in paragraph 45 of the topical summary; the position of scholars, as noted in paragraph 89 of the memorandum; and article 3 (2) of the 2023 Institute of International Law resolution. When it finalized the commentaries, the Commission should take those reactions into account by expressing the statement in the last sentence of paragraph (6) as correct and not merely plausible. That proposition would be important in the discussion of the issues addressed in proposed draft articles 4 and 6.

Third, at the previous session, he had also raised the question of whether conduct ancillary to piracy was already subject to universal prescriptive jurisdiction, even if committed on land, as might be suggested by paragraphs 13 to 15 of Security Council resolution 1976 (2011). Paragraph (15) of the commentary to draft article 2 was consistent with a positive answer, and article 3 (5) of the Institute of International Law resolution stated unambiguously that "acts of participation, incitement or intentional facilitation do not need to be committed on the high seas or in a place outside the jurisdiction of any State". That proposition would be important in the discussion of the issues addressed in proposed draft articles 6 and 7.

Fourth, there were several points on which the 2023 resolution placed a somewhat different emphasis from the commentaries. Article 3 (4) of the resolution made the important point that "[w]hether the acts are committed by or against an autonomous or remotely-operated craft does not, *mutatis mutandis*, affect the application of Article 101" of the 1982 Convention. That statement seemed correct and was partly in line with paragraph (10) of the commentary to draft article 2. He also wished to point out the difference in wording between the definitions of "armed robbery at sea" in draft article 3, on the one hand, and article 8 (1) of the 2023 resolution, on the other.

In sum, two elements explained the generally positive reception of the Commission's output in 2023: first, the meticulous attention paid to the wording and substance of the relevant rules laid down in universal instruments when preparing the draft articles; and second, the use of commentaries to identify questions raised by the application of those rules, together with the best examples thereof. It might be advisable for the Commission to approach the discussion of the second report and the drafting exercise in a similar fashion.

Regarding the substance of the second report, the Special Rapporteur was to be congratulated for his impressively thorough research on regional approaches, which complemented the first report's detailed coverage of practice by particular States, and for building on the richness of all regional practices, rather than unduly prioritizing some, to

identify common rules and the better examples of their application. He wished to make three points.

First, the starting point for any discussion of regional practice must be the universal duty to cooperate in the repression of piracy, as expressed in article 100 of the 1982 Convention. The Special Rapporteur appeared to have doubts about the added value of the provision, as indicated in paragraphs 5, 7, 22 and 37 of his second report and in his introductory remarks. The Special Rapporteur was right that article 100 "does not stipulate the forms or modalities of cooperation States shall undertake in order to fulfil their duty to cooperate in the repression of piracy", to quote from paragraph 722 of the 2020 arbitral award in *The "Enrica Lexie" Incident*, but might be overstating the case against the added value of the provision. His own view, as he had argued at the previous session, was that addressing regional and subregional practices and initiatives would be instrumental for evaluating best practices in countries' compliance with the relevant obligations.

Second, if the idea that article 100 was inextricably linked to the evaluation of regional practice was accepted, it would be important to reflect on what could be said about its meaning and on examples of application that would comply or not comply with the obligation laid down in that article. Paragraph 723 of the *Enrica Lexie* award was one important authority, but was not the only one. It was stated in the preparatory materials for the 2023 Institute of International Law resolution that it seemed "too reductive to limit the obligation" provided for in article 100 of the 1982 Convention to legal cooperation "leading to the conclusion of appropriate agreements for mutual assistance in the repression of piracy and to the implementation of such treaties". Article 2 of the resolution spelled out in considerable detail the conduct required by article 100, while the 2009 Naples Declaration on Piracy also contained some important suggestions. He did not intend to argue the relative merits of the *Enrica Lexie* award and the resolution but wished to use the granularity of both sources to suggest that article 100, far from "not provid[ing] any substantive content", as stated in paragraph 5 of the second report, was the central element in the discussion.

Third, it would be helpful if the Special Rapporteur could elaborate on the legal characterization of the practice summarized in paragraph 99 of his report, which suggested that different regions had adopted different approaches to implementing article 100, and on what he had meant by the assertion in his introductory statement that regional practices had given content, meaning and legal scope to the obligation to cooperate. Attention should be paid to the nuanced language of paragraph (1) of the commentary to draft article 2, which explained that the definition of piracy in the 1982 Convention "is regarded as reflecting customary international law and has been reproduced in several regional legal instruments", leaving open different possible legal rationales. In short, the Commission should proceed with caution on the important point of characterization, on which Mr. Sall had made insightful observations.

Concerning the draft articles proposed in the second report, he would focus on draft articles 4 and 5 and make only general observations on draft articles 6 and 7. Other members had noted that the Special Rapporteur appeared to have drawn on the Commission's 2019 draft articles on prevention and punishment of crimes against humanity for drafting inspiration. Unlike some of them, he was not averse to the idea of relying on the sound proposals developed by the Commission under related topics. However, it was also important to take into account the particularities of the topic at hand and to recall the strong support expressed by States for the approach adopted in 2023 of not departing from established rules of treaty and customary international law. In short, he was strongly supportive of language that drew on law of the sea instruments, such as the 1982 Convention and the 2023 resolution, and was somewhat ambivalent regarding reliance on international criminal law unrelated to the law of the sea, which should be considered on a case-by-case basis. Another helpful reference was the United Nations Office on Drugs and Crime publication *Maritime Crime: A Manual for Criminal Justice Practitioners*, which addressed the maritime crime of piracy in chapter 9.

In relation to draft article 4, he was strongly in favour of the substance of paragraph 1. He would prefer not to change the operative phrase of article 100 of the 1982 Convention, "All States shall cooperate to the fullest possible extent". Bearing in mind the

title of the topic and draft article 1, as explained in paragraph (4) of the commentary thereto and in article 2 (b) and (e) of the 2023 resolution, he could consider the proposed departure from article 100 through the addition of a reference to "prevention" as well as "repression". His preference, however, would be to fully follow the wording of article 100 and to address prevention separately in the paragraphs that followed.

He also invited the Special Rapporteur to consider three adjustments to paragraph 1. First, he wondered whether the phrase "on the high seas or in any other place outside the jurisdiction of a State" should be adjusted in the light of draft article 2 (2). If such a change would prove too cumbersome, the matter could be addressed in a separate paragraph or in the commentary.

Second, he wished to know whether the substance of the second report supported spelling out in greater detail either the content of the article 100 obligation or the better examples of its application, perhaps drawing on the language of article 2 of the 2023 resolution or the 2009 Naples Declaration.

Third, he wondered whether the obligation in draft article 4 (1) could be expressed in the same terms as being applicable to armed robbery at sea by way of an exercise in progressive development, bearing in mind the acceptance, in paragraph (2) of the commentary to draft article 3, that "[t]here is not necessarily any substantive difference between piracy and armed robbery at sea as far as the conduct itself is concerned". He noted, however, the point correctly made by other members about the important differences between piracy and armed robbery at sea and the fact that article 8 (2) and (3) of the 2023 resolution expressed the obligation regarding armed robbery at sea in less stringent terms, in line with the understandable caution of States regarding binding obligations for conduct in the territorial sea.

Draft article 4 (2) and (3) appeared to have been inspired by draft article 3 (2) and (3) of the draft articles on crimes against humanity. He shared the reservations voiced by other members about the relevance of paragraph 3 to the topic and the legal justification for it. He could support a shortened version of paragraph 2, which would read: "Each State undertakes to prevent and to repress piracy and armed robbery at sea." The second half of the paragraph as currently proposed was partly not relevant and partly obscured the particularity of piracy and was of questionable correctness regarding armed robbery at sea. At the previous session he had discussed the important differences between the structure of piracy law and international criminal law more generally, concluding that the prohibition of piracy was arguably more akin to a rule expanding national jurisdiction over certain criminal conduct than a rule of international criminal law in the modern sense. The title of draft article 4 should be inspired not by the draft articles on crimes against humanity but by article 100 of the 1982 Convention.

Draft article 5 appeared to have been inspired by draft article 4 of the draft articles on crimes against humanity. He supported the Special Rapporteur's overall approach but would suggest that article 2 of the 2023 resolution should be considered as pertinent drafting inspiration. He also associated himself with Mr. Reinisch's proposal to replace the term "intergovernmental organizations" with "international organizations" in subparagraph (b) in the interests of terminological consistency.

Draft articles 6 and 7 appeared to have been inspired by draft articles 6 and 7 of the draft articles on crimes against humanity. He was not persuaded that the two sets of draft articles addressed comparable issues, in the light of the special jurisdictional regime for piracy. In particular, paragraphs 4 to 6 of draft article 6 seemed incompatible with article 101 of the 1982 Convention, which referred only to acts other than public acts, and article 102, which assimilated acts of piracy committed by government ships or aircraft to acts committed by a private ship or aircraft only in cases of mutiny. He would therefore prefer to delete those paragraphs.

On the issue of jurisdiction, he wished to reiterate the view he had expressed at the previous session that, when discussing solutions, the Commission should take care to clearly distinguish between the categories of jurisdiction applicable in different spaces, particularly jurisdiction to prescribe, jurisdiction to enforce and, in some cases, jurisdiction to adjudicate. He encouraged the Special Rapporteur to consider article 105 of the

1982 Convention, article 4 of the 2023 resolution and relevant Security Council resolutions discussed in the memorandum prepared by the secretariat in 2023 (A/CN.4/757) as drafting inspiration. He noted the Special Rapporteur's intention, in his future work, to conduct a detailed study of the doctrine on different issues relating to the prevention and repression of piracy and armed robbery at sea. While he could support the referral of draft articles 6 and 7 to the Drafting Committee, it might be worth considering the merits of retaining them there pending the submission of future reports directly related to the relevant issues, including articles 105 to 107 and 110 of the 1982 Convention.

In conclusion, he supported the proposed future programme of work. However, the Special Rapporteur might wish to reflect on the helpful suggestions made by Ms. Mangklatanakul in that regard. In terms of next steps, he could support any of the suggestions made by other members, including any course of action and format, whether formal or informal, or a combination of various courses of action. The key, in his view, was that those steps, which might include referring the proposed draft articles to the Drafting Committee, should be suggested by the Special Rapporteur himself in his summing-up.

*The meeting rose at noon.*