

Chapter X

Prevention and repression of piracy and armed robbery at sea

A. Introduction

400. The Commission, at its seventy-third session (2022), decided to include the topic “Prevention and repression of piracy and armed robbery at sea” in its programme of work¹⁸³ and appointed Mr. Yacouba Cissé as Special Rapporteur for the topic. Also at its seventy-third session,¹⁸⁴ the Commission requested the Secretariat to prepare a memorandum concerning the topic, addressing in particular elements in the previous work of the Commission that could be particularly relevant for its future work on the topic and the views expressed by States. The memorandum would also concern writings relevant to the definitions of piracy and of armed robbery at sea and resolutions adopted by the Security Council and by the General Assembly relevant to the topic. The Commission also approved the Special Rapporteur’s recommendation that the Secretariat contact States and relevant international organizations in order to obtain information and views concerning the topic.¹⁸⁵

401. The General Assembly, in paragraph 7 of its resolution 77/103 of 7 December 2022, subsequently took note of the decision of the Commission to include the topic in its programme of work.

402. At its seventy-fourth session (2023), the Commission considered the first report of the Special Rapporteur (A/CN.4/758), which addressed the historical, socioeconomic and legal aspects of the topic, including an analysis of the international law applicable to piracy and armed robbery at sea, and the shortcomings thereof. In that report, the Special Rapporteur reviewed the national legislation and judicial practice of States concerning the definition of piracy and the implementation of conventional and customary international law. The Commission also had before it the memorandum prepared by the Secretariat concerning the topic (A/CN.4/757), providing elements in the previous work of the Commission that could be particularly relevant for its future work on the topic and the views expressed by States, as well as information on resolutions adopted by the Security Council and by the General Assembly relevant to the topic. Following the debate in plenary, the Commission decided to refer draft articles 1 to 3, as contained in the Special Rapporteur’s first report, to the Drafting Committee.¹⁸⁶ The Commission provisionally adopted draft articles 1 to 3, together with commentaries thereto.¹⁸⁷

403. At its seventy-fifth session (2024), the Commission considered the second report of the Special Rapporteur (A/CN.4/770) and a second memorandum prepared by the Secretariat concerning the topic (A/CN.4/767), providing information on: the treatment of the provision containing the definition of piracy in the 1956 draft articles concerning the law of the sea; views expressed by States at the First United Nations Conference on the Law of the Sea, which resulted in the adoption of the Convention on the High Seas,¹⁸⁸ and at the Third United Nations Conference on the Law of the Sea, which resulted in the adoption of the United Nations Convention on the Law of the Sea;¹⁸⁹ and writings relevant to the definitions

¹⁸³ At its 3582nd meeting, on 17 May 2022 (*Official Records of the General Assembly, Seventy-seventh Session, Supplement No. 10 (A/77/10)*, para. 239). The topic had been included in the long-term programme of work of the Commission during its seventy-first session (2019), on the basis of the proposal contained in annex C to the report of the Commission (*Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 10 (A/74/10)*, para. 290 (b)).

¹⁸⁴ At its 3612th meeting, on 5 August 2022 (A/77/10, para. 243).

¹⁸⁵ At its 3612th meeting, on 5 August 2022 (*ibid.*, para. 244).

¹⁸⁶ At its 3625th meeting, on 16 May 2023 (A/78/10, para. 54).

¹⁸⁷ At its 3634th, 3649th and 3651st meetings, on 2 June, 27 July and 31 July 2023, respectively (*ibid.*, paras. 55–56).

¹⁸⁸ Convention on the High Seas (Geneva, 29 April 1958), United Nations, *Treaty Series*, vol. 450, No. 6465, p. 11.

¹⁸⁹ United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982), *ibid.*, vol. 1833, No. 31363, p. 3.

of piracy and of armed robbery at sea. Following the debate in plenary, the Commission decided to refer draft articles 4, 5, 6 and 7, as contained in the second report, to the Drafting Committee, taking into account the views expressed in the plenary debate. That included the understanding that the Committee would first hold a general discussion on the topic as a whole and its future direction. The Commission took note of draft article 4.¹⁹⁰

404. Also at its seventy-fifth session, the Commission was informed that Mr. Yacouba Cissé had resigned as Special Rapporteur for the topic.¹⁹¹ At its 3701st meeting, on 2 August 2024, the Commission appointed Mr. Louis Savadogo as Special Rapporteur for the topic.

B. Consideration of the topic at the present session

405. At the present session, the Commission had before it a note by the Special Rapporteur (A/CN.4/786). In his note, the Special Rapporteur identified points of law which, in his opinion, could constitute the major themes of the work of the Commission on the topic. He also outlined general areas of inquiry based on the main features of the topic and provided methodological guidance addressed to the members of the Commission to focus their work.

406. At its 3702nd meeting, on 28 April 2025, the Commission decided to establish a Working Group of the Whole on the topic, to consider the note by the Special Rapporteur, and appointed Mr. Louis Savadogo as Chair of the Working Group.

407. As a consequence of the reduction of the length of the present session, the Working Group held only one meeting, on 22 May 2025.

408. At its 3719th meeting, on 26 May 2025, the Commission took note of the oral report of the Chair of the Working Group. The report of the Working Group is reproduced in section C below.

C. Report of the Working Group

409. The Working Group had before it the note by the Special Rapporteur. At the beginning of the meeting of the Working Group, the Chair briefly introduced the note, focusing on its purpose and the methodology employed in its preparation. An exchange of views on the note and the schedule of the proposed future work of the Commission on the topic followed.

410. Members of the Working Group welcomed the note, including the annex containing references to international legal instruments: universal and regional agreements, laws and regulations of States, and international and national case law. Members also expressed gratitude for the work of the previous Special Rapporteur for the topic, Mr. Yacouba Cissé. Several members considered that the future reports of the Special Rapporteur should build on the reports of the previous Special Rapporteur. It was suggested that the Commission revisit the draft articles already provisionally adopted in light of the evolution of its study of the topic. It was requested that the Special Rapporteur identify the way forward regarding the examination of draft articles 6 and 7, as proposed in the second report of the previous Special Rapporteur.

411. A number of members of the Working Group recalled the discussions at the previous session on the subject of the relationship between the topic and the United Nations Convention on the Law of the Sea. It was highlighted that there was broad consensus within the Drafting Committee for an approach that built on the provisions of the Convention. Some members underscored the importance of preserving the freedom of the high seas, the principle of universal jurisdiction over the crime of piracy and the balance between the rights of flag and coastal States established in the Convention.

412. Several members of the Working Group welcomed the proposal of the Special Rapporteur to study emerging issues relating to the topic, including the carrying of armed

¹⁹⁰ A/CN.4/L.1000. See also the report of the Chair of the Drafting Committee, available at https://legal.un.org/ilc/guide/7_8.shtml.

¹⁹¹ See A/79/10, para. 82.

security personnel on board merchant ships, as well as legal questions linked to arbitrary seizures of ships under article 106 of the United Nations Convention on the Law of the Sea. Several members supported further clarification of the meaning of the terms “prevention” and “repression”. The examination of other legal questions, notably those addressing the use of new technologies, including uncrewed aerial vehicles, maritime autonomous vehicles and cyberattacks, was also considered useful.

413. Several members of the Working Group expressed their support for the proposal of the Special Rapporteur to discuss the matter of universal jurisdiction in relation to the repression of piracy. It was noted that it was important to examine both the peremptory (*jus cogens*) character of the crime of piracy and the question of the obligation to extradite or prosecute (*aut dedere aut judicare*). The importance of distinguishing between prescriptive, enforcement and adjudicatory jurisdiction was emphasized.

414. Members of the Working Group recalled the interest expressed by several States in the Sixth Committee in including the question of rescue of victims and humanitarian assistance to victims of piracy in the work of the Commission on the topic. The possibility of examining the jurisdictional complexities resulting from situations occurring across multiple maritime zones was also raised.

415. Members of the Working Group generally welcomed the methodology proposed in the note. Several members highlighted the richness of regional and subregional practice in the prevention and repression of piracy and armed robbery at sea. The need to take such practice into account was noted. It was also observed that some regional human rights courts had jurisprudence relevant to the topic. The relevance of the 2023 resolution of the Institute of International Law to the work of the Commission on the topic was also highlighted.

416. Several members of the Working Group expressed their support for the proposed schedule of work, as reflected in chapter III of the note. Other members suggested revising the schedule to consider the questions proposed for the second and third reports at the same time. The consideration of issues of general or structural importance before more thematic issues was also proposed.

417. Concerning the final form of the work of the Commission on the topic, several members of the Working Group supported the continued development of draft articles on the topic. Others expressed a preference for draft conclusions or draft guidelines.

418. The Chair of the Working Group expressed his gratitude to all the members for their active participation and constructive approach throughout the meeting of the Working Group. He indicated that he would take the views expressed carefully into account and welcome receiving further written comments on the note from members. He also thanked the secretariat for its valuable assistance.