

**Topic: Prevention and Repression of Piracy and Armed Robbery at Sea
(PRPARS)**

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Tuesday, 9 May, 2023

Ref.: 290/ILC/PRPARS/2023

1. Dear Members of the Commission, before beginning my statement on the present topic, I would like to take this opportunity to thank the Special Rapporteur for his first report on the topic 'Prevention and repression of piracy and armed robbery at sea'. It has been a matter of deep professional satisfaction for me for contributing to the Maritime Anti-Piracy Act of India, Antarctic Act of India as well as draft Deep Seabed Mining Act and Private Maritime Security Companies Regulations which have encouraged discussions in Asian, African and Indian Ocean countries for strengthening the legal and regulatory governance concerning anti-piracy that have implications for several areas of domestic and international law. Under the Colombo Security Conclave, the Rashtriya Raksha University of India, has been organizing Maritime Legal Workshops focusing on multiple maritime security challenges. Furthermore, as a lead academic adviser during the tenure of India as UN Security Council member for 2021 and 2022, I have felt sense of immense achievement to see that the Security Council for the first time addressed the issue of maritime security in the most comprehensive manner during the Presidency of India leading to the Presidential Statement in August 2021 which contained piracy among others as a most important challenge to the maritime security governance.

¹ I express appreciation to my research team - Mr Digvijay Rewatkar and Suraj Saikia for their research assistance.

2. It is in this context and therefore a journey continuum to sustainably contribute to this topic, now through, the mechanism of ILC. I sincerely hope to contribute national, regional and international perspective on the topic and strengthen the efforts of the Special Rapporteur and the Commission to achieve desired outcome. I wish to provide observations and pose questions on some of the issues, namely:
 - a. Clarification on the definitions of maritime piracy and armed robbery at sea;
 - b. Legality under international law on the presence of private security guards on board a merchant vessel for protection against pirates and armed robbers;
 - c. Characterization of the acts of piracy and armed robbery at sea, taking into account the partitioning of the marine environment into various maritime spaces;
 - d. Shortcomings in the definition of ‘piracy’ under 1982 UNCLOS in relation to acts committed for ‘private ends’

3. **Clarification on the definition of maritime piracy and armed robbery at sea**

Paragraph 38 of the Report mentions ‘...*that piracy can no longer be confined to defined geographical limits of the sea, since pirates are moving from the high seas to the coasts and are operating in the internal waters and in the territorial seas of coastal states, committing criminal acts that are in all respects similar to acts of maritime piracy as defined in Article 101 of the UNCLOS...*’. This is followed by an observation on the need for clarity on the definition of maritime piracy and for drawing its distinction from armed robbery at sea. The paragraph however, falls short on suggesting the context of such clarification and distinction between the two crimes, a literal interpretation of the text would suggest a need for such clarifications and distinction due to a rise in the number of piracy incidents which are accounted for globally.

4. As the facts and figures used in the report need to be updated and as data gathered by governmental as well as private organisations including merchant shipping and

insurance companies suggest that incidents of piracy are now seeing a decline in some of the most affected areas such as coast of Somalia, Gulf of Guinea, Singapore Straits, South America, to name a few, this need becomes imperative. For example, ICC International Maritime Bureau recorded the lowest level of reported global piracy and armed robbery incidents since 1993. Its 2023 report from the first quarter of the year has revealed 27 incidents,² 10 less than the previous year.³ Further, both criminal acts, i.e., piracy and armed robbery find their places defined under the 1982 UNCLOS and International Maritime Organization in its Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships. The UNCLOS has been ratified by 167 States, the IMO similarly has 175 states as its members, the figure is important as the same provides clarity on the number of States who have chosen to be part of both.

5. With respect to the issue pertaining to the clarification of the definitions of maritime piracy and armed robbery at sea, I believe the Special Rapporteur can guide us how his proposed work relates to the earlier works of the International Law Commission. For example, in its commentary on Article 39 of its 1956 draft articles⁴ the Commission stated, ‘Piracy cannot be committed within the territory of a State or its territorial sea’, the further verbatim used are as follows: *‘The Commission considers, despite certain dissenting opinions, that where the attack takes place within the territory of a State, including its territorial sea, the general rule should be applied that it is a matter for the State affected to take necessary measures for the repression of the acts committed within its territory.’*⁵

² ICC International Maritime Bureau Piracy Report 2023 (January - March), <https://icc-ccs.org/index.php/1329-imb-records-lowest-level-of-q1-piracy-since-1993-in-2023-report>

³ Also see 9198th Meeting of the UN Security Council and records on Piracy, Armed Robbery Declining in Gulf of Guinea (UNSC / 15113 of 22 November 2022)

⁴ Article 15, 1958 Convention on the High Seas

⁵ 101.7., Article 101, Part VII – High Seas (III), 1982 UNCLOS Commentary; Articles concerning the Law of the Sea with commentaries.

6. It can therefore be understood that the definition of armed robbery has been purposefully omitted by the Commission in the past, and I therefore see no reason as to why we should be venturing into the concerned issue of drawing a line for distinguishing between acts of piracy and armed robbery. The drafters of the United Nations Convention on the Law of the Sea had made a deliberate choice in defining 'piracy' and considered a few controversial points to form the essential features of piracy, some of their conclusions were, *first*, the intention to rob (*animus furandi*) is not required, *second*, the acts were to be committed for private ends, *third*, piracy could only be committed by private ships and not warships or other government ships.

7. While the Special Rapporteur states in his report in paragraph 38 that piracy "*can no longer be confined to defined geographical limits of the sea*", due to the movement of pirates between high seas and internal waters, I would like to place emphasis upon the fact that the Commission should stay committed to the definitions of UNCLOS and consider the acts of piracy and armed robbery at sea as two separate crimes, which should not be interlinked, as under any circumstances, the scene of piracy committed at the high seas remains unchanged, therefore pirates, if apprehended, will always be prosecuted under the crime of piracy. This caution emanates from the analysis of state practice, doctrine and precedents, besides case-laws of the last decade.

8. I would now like to present my comments on the second issue highlighted in the report on **the legality under international law on the presence of private security guards on board a merchant vessel for protection against pirates and armed robbers**. I would like to agree here on a point that the Special Rapporteur should examine new issues and trends such as those concerning the presence of private security guards on board merchant vessels for the protection

of the vessel, its cargo, and personnel against pirates and armed robbers, as there is silence observed on this point under international law. However, International Maritime Organization **‘Interim guidance to private maritime security companies providing privately contracted armed security personnel on board ships in the high-risk area’**⁶, provides inter-linking of the issues. IMO issued the guidance in view of the increase in the number of ship operators choosing to employ privately contracted armed security personnel for protection against attacks by Somali-pirates in the High Risk Areas. The interim guidance was not legally binding and was in itself a set of certifiable standards. Given the fact that to deal with the incidents of armed robbery and piracy, it is the private security personnel on board such ships that work as a deterrent for pirates and armed robbers, a positive reason for the increase in the number of Private Maritime Security Companies (PMSC), particularly in the Asia-pacific.

9. For example, the Government of India issued guidelines regarding deployment of armed guards on-board Indian Merchant Ships dating back to August 2011,⁷ when India was also contributing to anti-piracy operations in the Gulf of Aden. The reason for work on this issue is due to the fact that deployment of armed security guards on merchant ships also changes the very paradigm of a merchant ship which is granted a liberty to transit the territorial waters of any State under the concept of “innocent passage”. Further, a merchant ship arriving with weapons on board, in a commercial port of a coastal state, would also invoke concern for customs, police and other security agencies tasked with law enforcement and coastal security, not least to mention the peace, stability and good order concern of the coastal state. This was also the reason for the IMO to

⁶ International Maritime Organization – Interim Guidance to Private Maritime Security Companies providing privately contracted armed security personnel on board ships in the high risk areas, Vide MSC.1/Circ.1443, dt. 25 May 2012

⁷ Press Information Bureau, Ministry of Shipping, Government of India, dt. 29 August 2011, <https://pib.gov.in/newsite/PrintRelease.aspx?relid=75281>

leave the decision of implementing its interim guidance to the concerned flag states. Another issue of concern that the Special Rapporteur may consider involving in his second report is the international legal and governance framework concerning the Mutual Legal Assistance Treaty (MLAT) and extradition of pirates between States. As concerns regarding fair opportunity of prosecution and human rights aspects of trial are highlighted in the report, the Commission will be benefitted by specific analysis of this issue and what are the best practices that can be learnt from the ad hoc as well as more institutionalized mechanisms that have been functioning over the last decade. In this regard, the regime of

10. On the issue of **characterization of the acts of piracy and armed robbery at sea, taking into account the partitioning of the marine environment into various maritime spaces**, that has been termed as a shortcoming by the Special Rapporteur, I would like to reiterate the conclusions reached by the International Law Commission while it defined ‘piracy’ at the 1956 draft articles on the law of the sea. It stated *Piracy can be committed only on the high seas or in a place situated outside the territorial jurisdiction of any states, and cannot be committed within the territory of a State or in its territorial sea*⁸. As the 1982 UNCLOS defines ‘Piracy’ under Article 101⁹, and mentions the requirement for the commission of such acts on the ‘high seas’, the definition is also applicable to the acts committed in the exclusive economic zone. Though the Special Rapporteur has highlighted in paragraph 44 of his report on certain situations about the ways pirates escape and avoid hot pursuit, understanding this to be the previous case of Somalia, the Special Rapporteur can give representative State practices for a better comprehension of the issue, as for the time being, the statement lacks force of conviction to consider shortcomings in the maritime spaces highlighted within the definition of Article 101 of UNCLOS. I appreciate the efforts of the Special Rapporteur in presenting in his

⁸ Conclusion (iv) of the Commentary on the ILC’s 1956 draft articles on the law of the sea.

⁹ Article 101, 1982 United Nations Convention on the Law of the Sea

first report various case laws and State practices from Africa, Asia, the Caribbean, Europe and Oceania, and on highlighting the inconsistencies within these States on the domestic legislations pertaining to piracy and armed robbery, however, I would be eager to learn in his subsequent reports on how could consistency be derived within the legislations of these States using the 1982 UNCLOS as the reference point and not the other way around.

11. Finally on the issue of **shortcomings in the definition of piracy in relation to ‘private ends’** as mentioned in Article 101, as mentioned by the Special Rapporteur in paragraph 47 of his report, it is unclear on how it is difficult to distinguish between ‘political motive’ and ‘private motive’. For a better understanding of the distinction between the two, one could refer the previous two legislations that defined ‘piracy’, that is Article 15 of the 1958 Convention on the High Seas and another proposed definition of the aforementioned term at the 1971 session of the Sea-Bed Committee, Malta. In the latter’s provision, it was explained under paragraph (c) that the words ‘for private ends’ had been omitted from the 1958 text **‘in order to include within the definition...acts of violence or depredation committed for professed political ends.’**¹⁰ Further, referring back to the Commission’s discussions and observations, as highlighted in the commentary of the 1982 UNCLOS, it has been expressly stated that in order to limit the definition of acts committed for ‘private ends’, acts having political motives have been excluded¹¹. Following this discourse naturally leads me to conclude that there should not be ambiguity in understanding the term ‘for private ends’ under the definition of ‘piracy’.
12. These are some preliminary remarks and I hope these and other clarifications that will emerge in our debates will enable the Special Rapporteur and the Commission

¹⁰ 101.3., page 199, Article 101, Part VII – Article 86-120, 1982 UNCLOS Commentary

¹¹ Ibid, 101.8(a), page 200, Article 101, Part VII – Article 86-120, 1982 UNCLOS Commentary

to provide guidance to states, international organisations and indeed the international community as a whole, with the existing state of law.

13. May I also sound a word of caution at this stage to remain focused on key priority issues and if needed, refine the scope of work, to ensure tangible outcome.
14. In conclusion, I thank the Special Rapporteur, for his first report and look forward to contribute to his efforts, not just as an ILC member but also as a representative from the regions which witnessed the menace of piracy and armed robbery and have been successfully contributing to overcome the same in the spirit of international cooperation and assistance.