

## Topic: Prevention and Repression of Piracy and Armed Robbery at Sea

**Mr Bimal N. PATEL**

Member, International Law Commission

Tuesday, 16 May 2023

Ref.: 296/ILC/PRPAR/2023

---

The work of Special Rapporteur and Commission will be indeed useful to further clarify the law on piracy and armed robbery. I thank Mr Cisse for his commendable work once again.

1. The report on the topic by the Special Rapporteur provides one with wide understanding of the various regional and state practices on the prevention and repression of piracy and armed robbery at sea.
2. The ILC in its 2019 syllabus ([A/74/10, Annex C](#)) had mentioned about 'form of the outcome' - it was suggested that the objective of the topic could be to develop 'draft articles' or 'draft guidelines', in case it becomes apparent that the topic is best developed simply as guidance to States with respect to implementation of existing international obligations.
3. Paragraph 7 of Report mentions, "There is considerable international law relating to maritime piracy, beginning with State practice that over time developed extensive customary international law in this area".
4. Paragraph 11 states "The Commission's objective would not be to seek to alter any of the rules set forth in existing treaties, but would include whether and how States might best implement their treaty obligations". Can the SR assure that the scope does not alter or bring a different perspective than well settled?
5. As per paragraph 14 of the Report - The definition of piracy as set forth in the *1982 Law of the Sea Convention* might be analysed by the Commission to help States understand the meaning of "piracy" when establishing and exercising national criminal jurisdiction. Further, whether States have a duty to establish such jurisdiction under either conventional or customary international law could be assessed, as opposed to whether States are simply permitted under international law to establish such jurisdiction if they chose to do so. It appears that we are

moving away from the syllabus defined and the SR can consider commenting on the same.

6. The 1<sup>st</sup> report presents a clear overview of many State practices, it is therefore important to consider the flexibility and consideration that States will be comfortable with in case they are presented with the view of forming and becoming signatory of a new convention despite the presence of 1982 UNCLOS and International Maritime Organization.
7. Work of the ILC and Special Rapporteur can focus on more contemporary issues such as Mutual Legal Assistance for prosecution of pirates, definition of 'ships', legal provisions for private security guards on board ships and subsequent challenges and issues. Will the SR consider probably giving meaning of these terms and let the existing definition of piracy as defined and practiced remain untouched? These are not defined in the UNCLOS and our work can compliment the existing gaps.
8. If International Law Commission decides to proceed with draft articles -

#### **Observations on Draft article 1 -**

##### **9. Article 1 (Scope)**

The present draft articles apply to the prevention and repression of piracy and armed robbery at sea in view of international law, the legislative, judicial and executive practices of States, and regional and subregional practices.

##### **Proposed draft article -**

10. "The present draft articles apply to the prevention and repression of piracy and armed robbery at sea."

The 'Scope' should be brief, reference to legislative, judicial and executive practices of States, and regional and subregional practices, followed by its limitations, focus and other elements could be added to the commentaries, accompanying the topic.

11. A similar approach has been adopted by the ILC in some of its previous works on draft articles on -

- a. Protection of persons in the event of disasters (Mr Eduardo Valecia-Ospina)
  - i. “The present draft articles apply to the protection of persons in the event of disasters”
12. Prevention and punishment of crimes against humanity
  - i. “The present draft articles apply to the prevention and punishment of crimes against humanity” (Mr Sean Murphy)
13. There is clarity needed on the consideration of the wordings “international law, the legislative, judicial and executive practices of States, and regional and subregional practices” mentioned under draft article 1. As suggested Mr Grossman and other colleagues, in view of, etc. may pls be omitted.
  - a. ‘international law’ - What conventions has the Special Rapporteur considered - 1982 UNCLOS or 1958 Convention on the High Seas, or have both been considered for the purposes of consideration of ‘International Law’?
14. It is my understanding that draft articles which I just mentioned had also preambulatory language, is it the intention of the Special Rapporteur to consider possible preamble?