

Statement by Mario Oyarzábal*

**on the First Report on the Prevention and Repression of Piracy and Armed Robbery at Sea
by Louis Savadogo, Special Rapporteur
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Thank you, Chair, and good morning to all.

My intervention today will be structured as follows. First, I will offer some general observations on the First Report presented by the Special Rapporteur (SR) and on the direction the topic appears to be taking. I will then make some non-exhaustive suggestions on the Draft Articles I consider most important at this stage, in the hope that they may contribute to the work ahead.

I congratulate and thank the SR for his First Report. His analysis addresses exhaustively many of the issues arising from the Commission's deliberations during its recent sessions and proposes Draft Articles that are both practical and carefully crafted — evidence of the considerable work he has invested in this project. The Report highlights the existing challenges in this area, and the discussions it describes will be of great importance to the Commission's work on this topic. It is, in my view, a rich and ambitious Report that offers a useful indication of the project's general direction, even if further draft Articles may follow.

That said, I believe that, perhaps as a consequence of this breadth, not all questions are explored to the same degree of detail. In that regard, future reports would benefit from further examination of State practice on several of the issues discussed. The Report identifies important and compelling developments, but the supporting practice may at times appear uneven or incomplete.

In this respect, I would recall that the Commission's work must continue to be grounded in the current state of international law, and only then should we venture to develop and complement it. As I have expressed in previous sessions, the United Nations Convention on the Law of the Sea (UNCLOS) and other relevant agreements remain, in my view, the necessary point of departure for our work, and we should be careful not to unsettle inadvertently the balance they establish.

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Second, this is a subject that calls for caution. The Commission must pay close attention to the distinctions between piracy and armed robbery at sea and must not hastily transpose regimes specific to the high seas into States' territorial waters. Similarly, while I commend the SR's recourse to instruments concerning transnational crimes, the transposition of provisions from those instruments should remain mindful of the specificities of the subject matter.

Mr. Chair,

After these general remarks, I would like to offer a few suggestions on some of the proposed draft Articles, insofar as time permits.

Before addressing their substance, let me make a preliminary observation of a drafting nature. While provisions of this degree of detail may not be common in the Commission's work, I do not regard that as an objection in itself. On the contrary, where relevant international treaties, regional instruments or national legislation rely on provisions of this type, it may be useful for the Commission to draw upon them, provided always that caution is exercised.

Still, this may entail considerable work in the Drafting Committee and require a strategic approach prior to addressing the specific draft articles.

Mr. Chair,

Regarding **draft Article 5**, I consider it important to note that the Report is at its strongest when it confronts the practical reality that piracy and armed robbery at sea are no longer limited to the classic paradigm of attacks by one ship upon another on the high seas. The Report addresses drones, cyber means and maritime autonomous vehicles — real issues that deserve serious examination. Although the Commission had already addressed these means in its commentary on draft Articles 2 and 3, I consider this a useful provision.

I welcome the inclusion of specific provisions that take into account the particularities of the subject matter and enhance the value of our work in relation to other instruments addressing transnational offences as well as UNCLOS. That said, their treatment in the Draft Articles must remain anchored in clear legal concepts. In that sense, it may be useful to clarify that their purpose is not to create a separate and autonomous regime, but rather to confirm that the existing definitions of the offences are broad enough to capture conduct committed through new means.

Mr. Chair,

As regards **draft Article 6**, the Report provides strong support for the inclusion of a provision on the exercise of police powers, together with a comprehensive overview of the rules governing coercion at sea and relevant practice. I agree with its inclusion.

Draft Article 6 is well-structured, and the Report appropriately stresses the significance of the principles of necessity and proportionality. In that regard, I wonder whether draft Article 6 should make explicit reference to those principles. In addition, given the exceptional character of the use of force, it may also be useful to consider defining concepts such as “physical force” or “targeted shots” in order to provide greater legal certainty.

Mr. Chair,

As regards **draft Article 7**, the matter of pursuit in territorial waters is increasingly relevant. The Report notes that incidents at sea are increasingly taking place in, or leading to pursuits within, territorial waters — a development that makes a provision on this matter particularly important. Given the sensitivity of the issue, the Report rightly emphasizes the importance of respecting the sovereignty of the coastal State through its consent. In that regard, draft Article 7, paragraph 1, may usefully clarify that the pursuing State may seize the vessel only with the consent of the coastal State, and that the coastal State should grant such consent in certain circumstances. On a practical note, the timing gap between a request for consent and the response thereto could also be explored in the next Report, in order to avoid a legal vacuum in this provision.

Concerning paragraph 2 of draft Article 7 on criminal jurisdiction, its content is reflected in draft Article 11(2)(c). I would therefore suggest centralizing criminal jurisdiction in draft Article 11 and removing it from draft Article 7.

Mr. Chair,

As regards **draft Article 8**, I consider that the *mutatis mutandis* application of Articles 105 and 106 of UNCLOS to the seizure of a pirate ship or aircraft may give rise to a number of difficulties as the Draft Articles currently stand. Those two provisions of UNCLOS contain elements already addressed in the draft Articles, and as drafted they create contradictions. For instance, Article 106 of UNCLOS entitles the State of nationality to compensation in cases of seizure without adequate grounds, whereas paragraph 3 of draft Article 7 entitles the owner of the vessel to compensation where the vessel is stopped or detained in territorial waters in circumstances that did not justify the exercise of pursuit. Both provisions thus confer entitlement to compensation upon different subjects under comparable circumstances. This illustrates my earlier point that the transposition of

provisions from instruments such as UNCLOS must be attentive to the specificities of the subject matter and must address any resulting contradictions.

Similarly, the second sentence of Article 105 of UNCLOS is a jurisdictional provision. Consistently with my earlier suggestion, I consider it preferable to centralize jurisdictional rules in draft Article 11. I would therefore suggest that the next report consider whether a general incorporation *mutatis mutandis* of Articles 105 and 106 of UNCLOS is desirable.

Mr. Chair,

As regards **draft Article 10**, I must express some general reservations. In my view, the Report does not yet fully explain the legal basis for this provision. In particular, the relationship between this provision and the broader question of domestic criminalization warrants further attention. If the Draft Articles are to establish mandatory jurisdictional bases, the question of whether States are also under an obligation to criminalize the relevant conduct should be addressed more expressly and consistently throughout the text. It is relevant to recall in this regard that the Commission previously noted the need to promote harmonization of national laws concerning the criminalization of piracy and armed robbery at sea, while also acknowledging that UNCLOS permits, but does not require, the characterization of piracy as a crime.

I also wonder whether the references to criminal organizations and conspiracy in paragraph 1 fully reflect the operational realities of piracy and armed robbery at sea, which are not always carried out through structured criminal groups in the sense understood in transnational criminal law instruments.

As regards paragraph 2 on minors, I would emphasize that it should be approached with caution and in close conformity with the relevant international standards on juvenile justice and human rights protection.

Mr. Chair,

Turning to **draft Article 11** on criminal jurisdiction, I consider this to be one of the central provisions of the project. The draft Article contains many useful elements, but its structure could benefit from further refinement.

In particular, it would be useful to distinguish more clearly between mandatory and optional bases of jurisdiction, and between piracy and armed robbery at sea. The Report itself recognizes that these two acts do not necessarily operate under the same jurisdictional logic, particularly given the specific relationship between piracy, the high seas and universal jurisdiction — a point that bears on paragraphs 4 and 5 in particular.

In this regard, I have some difficulty with the reference to offences committed “on the high seas” as an autonomous and mandatory basis of criminal jurisdiction. The high seas are a spatial criterion, not a jurisdictional one. As currently drafted, the provision may unintentionally suggest that all States are required to establish jurisdiction over all acts committed on the high seas.

More generally, I would suggest that the draft Article pay closer attention to the terminology employed in recent instruments, such as the Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crimes of Genocide, Crimes Against Humanity, War Crimes and Other International Crimes, and in the Commission’s recent work notably the Draft Articles on Crimes Against Humanity — particularly with regard to the distinction between adjudicative jurisdiction and enforcement powers. The current formulation appears at times to combine concepts derived from UNCLOS with language borrowed from transnational criminal law conventions, without always clarifying how they interact.

I would also encourage further reflection on the provisions dealing with jurisdiction arising from apprehension by merchant ships or from joint naval operations. These questions are undoubtedly important, but they appear to require additional grounding in State practice before the Commission settles on a definitive formulation.

Mr. Chair,

With respect to **draft Article 12**, the Commission should proceed carefully. The provision introduces a highly developed confiscation and asset-recovery regime, including detailed definitions and references to money laundering, banking secrecy and financial investigations. Yet, the Report does not yet contain sufficient analysis of practice specifically related to these issues in the context of piracy and armed robbery at sea.

Some parts of the provision appear to reflect the broader transnational criminal law framework — in particular Article 12 of the United Nations Convention against Transnational Organized Crime (UNTOC) — without a sufficiently clear connection to the particularities of the present topic. The question is not whether such mechanisms are appropriate in principle, but whether their inclusion is adequately supported by relevant practice and properly adapted to the existing law governing piracy and armed robbery at sea.

For instance, paragraph 2 requires States to adopt domestic measures to confiscate the proceeds and instrumentalities of piracy and armed robbery at sea, closely mirroring the mandatory formulation of Article 12(1) of UNTOC and Article 31 of the United Nations Convention against Corruption (UNCAC) (“shall adopt”). By contrast, Article 105 of UNCLOS, Article 5.4 of the Djibouti Code of Conduct, Article 6.2 of the Yaoundé Code of Conduct, and the 2023 Angers

Resolution on “Piracy, Present Problems” of the *Institut de Droit International*, all provide that the seizing State “may” confiscate property, leaving the matter to discretion. That divergence warrants explanation.

Mr. Chair,

Finally, as regards **draft Article 22** on the relationship with UNCLOS, I consider this to be one of the key interpretative provisions of the entire project.

The provision mirrors Article 5 of the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ Agreement) and largely reproduces its structure and language. In doing so, draft Article 22 goes beyond a traditional “without prejudice” clause by not only requiring that the instrument be interpreted consistently with UNCLOS and general international law, but also affirmatively mandating coordination with other legal regimes and competent international organizations. While such an approach is characteristic of implementing agreements under UNCLOS and contemporary environmental treaty practice, its transposition to the present context raises concerns.

The legal regime governing piracy and armed robbery at sea is comparatively concentrated and does not present the same degree of institutional fragmentation as the regimes for which such clauses were designed. A provision intended to manage systemic overlap may, in this context, instead operate as a constraint — limiting the Draft Articles’ capacity to depart from or develop beyond existing frameworks. This is particularly problematic given that the Draft Articles are intended, at least in part, to address the limitations of Articles 100 to 107 of UNCLOS.

I recognize that the appropriate balance is difficult to achieve. The SR has proposed this draft Article while at the same time proposing a number of important developments intended to address contemporary challenges that at times go beyond what UNCLOS establishes. I have also stressed that our work should not unintentionally alter the balance established by UNCLOS. Draft Article 22 should therefore make clear whether the Draft Articles are intended to complement UNCLOS, to facilitate its implementation, or to go beyond its current framework.

Mr. Chair,

In conclusion, I am deeply grateful to Mr. Savadogo for his dedicated work on a subject of such importance. My thanks are extended to you and to the members of the Commission for a debate that will surely prove rich and fruitful.

Thank you very much.