



United Nations General Assembly | Sixth Committee

Report of the International Law Commission

(Agenda item 79)

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(check against delivery)

Mr./Madam Chair,

All protocol observed,

Regarding chapter VI of the International Law Commission's report, on the "Prevention and repression of piracy and armed robbery at sea" Brazil emphasizes the centrality of the United Convention on the Law of the Sea.

The Commission's work on this topic should be consistent with the Convention.

We also recall the recent evolution of the concept of “res communis”, under the Agreement on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction.

The BBNJ Agreement is governed by the principle of the common heritage of humankind.

This principle should also be considered with regard to activities in areas beyond national jurisdiction, such as the high seas.

It is important to distinguish between piracy and armed robbery at sea, as they fall under different legal regimes.

Brazil also echoes concerns about the proposal to establish universal jurisdiction over armed robbery at sea, which is not provided for in the 1982 Convention.

On draft Article 4, provisionally adopted by the Drafting Committee, Brazil would appreciate further clarification from the Commission on the meaning of “competent international organizations”.

The second report by the former Special Rapporteur was inaccurate in dedicating an item to the North Atlantic Treaty Organization, with

its limited and localized membership, under Chapter II, on the practice of international organizations, on an equal footing with the United Nations and the International Maritime Organization.

It would be more appropriate to consider NATO's practice under Chapter III, on regional and sub-regional approaches.

Furthermore, regarding regional cooperation, Brazil urges the Commission to consider the role of ZOPACAS, a group dedicated to promoting cooperation and peace in the South Atlantic.

We regret that ZOPACAS was not mentioned in the Commission's report, despite being established by a General Assembly resolution.

The General Assembly, in resolution 41/11, declared the Atlantic Ocean between Africa and South America to be a "Zone of Peace and Cooperation of the South Atlantic."

Furthermore, ZOPACAS included an item on cooperation in the field of piracy prevention and repression in its most recent action plan—the 2023 Mindelo Action Plan.

Brazil expects that the new Special Rapporteur and the Commission will carefully consider the practice of ZOPACAS in the next report.

It may also be worth reflecting on the most appropriate format for the Commission's output. Brazil encourages the Commission to focus on codifying existing rules, based on general State practice.

As potential topics for consideration in the first report of the new Special Rapporteur, Brazil suggests police cooperation and mutual legal assistance; the need to address the root causes of piracy and armed robbery at sea as an important aspect of prevention and cooperation; and issues related to technology transfer, financing, capacity-building, and data-sharing as part of efforts to prevent and repress these crimes.

Mr./Madam Chair,

Turning to chapter VIII of the report, on “Non-legally binding international agreements”, Brazil affirms that these instruments are not governed by the law of treaties.

Therefore, an act inconsistent with a non-legally binding agreement does not entail international responsibility, and cannot give rise to the so-called countermeasures.

At the same time, it is worth noting that current international practice has shown that provisions from the law of treaties can be useful in the drafting, conclusion, and implementation of non-binding agreements, providing guidance and assistance in a non-prescriptive manner.

The essential criteria for determining the binding nature of an instrument are both the intent of the parties, as reflected in the language of the agreement, and the form of the instrument.

There should be consistency between the form of the agreement and the intent to assume - or not assume - obligations. This would allow clear identification of non-binding instruments.

Brazil sees merit in including inter-institutional agreements within the scope of the product to be developed by the Commission, as we believe this inclusion would hold practical relevance for States.

Regarding the final form to be given to the product, Brazil agrees on the need to balance States' freedom in relation to non-legally binding agreements with the need for legal certainty.

In this context, the Commission's work should not be prescriptive.

Therefore, Brazil believes that the Commission should draft guidelines or preferably conclusions.

Last but not least, Brazil reiterates the importance of the Guidelines of the Inter-American Juridical Committee on Binding and Non-Binding Agreements, which should serve as a key reference in the Commission's work.

Mr./Madam Chair,

Finally, on the topic of "Succession of States in respect to State responsibility", Brazil takes note of the discussions undertaken in the working group.

We recognize the complexity of this topic, which intersects with other areas yet to be codified, such as State responsibility.

We take note of the Commission's intention to conclude the work on the topic in its next session.

I thank you.