



Statement on behalf of the European Union and its Member States

by

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Counsellor

Delegation of the European Union to the United Nations

at the Sixth Committee

on the Agenda item 79:

Cluster III: Report of the ILC on the work of its 75th session

Chp VI (Prevention and Repression of Piracy and Armed Robbery at Sea)

United Nations

New York

29 October 2024

– CHECK AGAINST DELIVERY –

Mr. Chairperson,

I have the honour to speak on behalf of the European Union and its Member States, on the topic of the prevention and repression of piracy and armed robbery at sea, which was considered by the International Law Commission (ILC) and which is discussed in Chapter VI of its report.

The Candidate Countries Montenegro*, Serbia*, Albania*, Ukraine, the Republic of Moldova, Bosnia and Herzegovina* and Georgia, align themselves with this statement.

We thank the previous Special Rapporteur, Mr. Yacouba Cissé, for his work on that important topic and we congratulate the new Special Rapporteur, Mr. Louis Savadogo, for his appointment.

The ILC report thoroughly addresses the second report of the Special Rapporteur, which provides a description and analysis of the practice of international organisations involved in combatting piracy and armed robbery at sea, and also reviews the regional and subregional approaches to that effect, as well as the practice of States in concluding bilateral agreements.

In his second report, the Special Rapporteur proposes four new draft articles, in addition to the three articles provisionally adopted by the Commission, together with commentaries thereto, in June and July 2023. Those four new draft articles concern respectively general obligations, the obligation of prevention, criminalisation under national law, and the establishment of national jurisdiction.

* Montenegro, Serbia, Albania and Bosnia and Herzegovina continue to be part of the Stabilisation and Association Process.

The European Union and its Member States consider that the debate that took place at the ILC on those four new draft Articles was timely and fruitful. As noted in the ILC report, that debate was an opportunity for Commission members to recall certain elements, including that the United Nations Convention on the Law of the Sea (UNCLOS) constitutes the starting point for the analysis of the topic, the desirability of not duplicating existing frameworks, the importance of linking the substantive issues discussed in the second report of the Special Rapporteur and the proposed draft articles, as well as the importance of continuing to distinguish between piracy and armed robbery at sea.

According to the second report, the final form of the outcome of the work of the Commission on that topic still needs to be determined, and that some discussions took place among Commission members regarding what should be the content of the future third report of the Special Rapporteur.

The European Union and its Member States welcome that the Special Rapporteur has continued to consider their practice in his second report. The European Union, on its part, is actively contributing to the fight against piracy and armed robbery at sea. As identified in the European Union Strategic Compass of March 2022 and its Maritime Security Strategy, as revised in October 2023, criminal activities such as piracy undermine maritime security. Piracy and armed robbery at sea constitute evolving security threats, which require actions guided by a cross-sectoral approach, respect for international rules – international law, human rights and democracy and full compliance with UNCLOS – and maritime multilateralism.

As referred to by the Special Rapporteur in his second report, in 25 January 2021, the European Union launched the first pilot of the Coordinated Maritime Presences concept in the Gulf of Guinea off the coast of West Africa, thereby strengthening its role as a global maritime security provider, in close cooperation

with our African partners of the organisation of the Yaoundé Architecture, supporting their objective to tackle piracy and criminal activity at sea. The European Union then decided on 21 February 2022 to establish a second maritime area of interest in the North-Western Indian Ocean, thereby extending the implementation of the concept of Coordinated Maritime Presences.

The second report of the Special Rapporteur also recalls the achievements of the EU Naval Operation EUNAVFOR ATALANTA in suppressing piracy and protecting ships transiting off the coast of Somalia. That second report also refers to EU support to countries through capacity-building programmes. In that regard, the EU Capacity Building Mission in Somalia continues to assist Somalia in strengthening its maritime security capacity, in order to enable it to enforce maritime law more effectively. Likewise, the European Union supports the development of regional judicial and law enforcement capacity to investigate, arrest, and prosecute suspected pirates and to incarcerate convicted pirates consistent with applicable international human rights law.

The transfer agreements concluded between the European Union and regional States eager to contribute to the fight against piracy, namely Kenya, the Republic of Seychelles, the Republic of Mauritius and the United Republic of Tanzania were instrumental in that regard. We also commend regional initiatives under the African Union, the East African Community, the Southern Africa Development Community, the Djibouti Code of Conduct and the Regional Maritime Security and anti-piracy Strategy adopted in Mauritius in 2010.

Finally, the second report of the Special Rapporteur highlights the important role of the EU in sharing information to combat piracy, through the European Maritime Safety Agency, the MARSUR maritime surveillance network, and the Maritime Security Centre – Horn of Africa attached to Operation ATALANTA.

Mr. Chairperson,

In conclusion, we thank the ILC for the continuation of its work on a matter of high importance for the whole international community and future generations. The European Union and its Member States look forward to the next steps of that work, and stands ready to continue to contribute to that work, notably by engaging in further debates in the Sixth Committee.

Thank you for your attention.



Statement on behalf of the European Union*

by

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Delegation of the European Union to the United Nations

at the Sixth Committee

on the Agenda item 79:

Cluster III: Report of the ILC on the work of its 75th session

Chp VII (Non-legally binding international agreements)

United Nations

New York

29 October 2024

– CHECK AGAINST DELIVERY –

*In accordance with Resolution 65/276 (Participation of the European Union in the work of the United Nations).

Mr. Chairperson,

It is an honor for me to address the 6th Committee, on behalf of the European Union, on this important topic under the consideration before the International Law Commission (ILC) presented in Chapter VIII of the 2024 ILC Report.

The Candidate Countries Montenegro*, Serbia*, Albania*, Ukraine, the Republic of Moldova, Bosnia and Herzegovina* and Georgia, align themselves with this statement.

In this regard, I would like to congratulate the ILC and specially the Special Rapporteur, Mr. Mathias Forteau, on his excellent work and for the elaboration of the first report on the topic.

In the view of the European Union, the considerable growth in the practice of non-legally binding instruments at international level justifies including this topic into the programme of the ILC.

The European Union would like to present the following comments on conclusions appearing in the first report as these comments may be of relevance to the future work of the Commission on this topic.

Firstly, the European Union supports the generally agreed conclusion that non-legally binding international instruments are not, as such, governed by the law of treaties. States and international organisations are nevertheless still bound by rules of international law when concluding such instruments, including the peremptory norms of general international law (*jus cogens*).

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Secondly, concerning the use of the term “*agreement*”, the European Union takes note of the position of the Special Rapporteur explaining the reasons why this term should be preferred to other suggested terms, such as “*instruments*” or “*arrangements*”. The European Union understands that the term “*agreement*” is mainly referring to a meeting of the will (mutual consent) of the parties. The European Union would nevertheless point out that EU law¹ reserves the term “*agreement*” for legally binding instruments. Therefore, from the perspective of EU law, it might be preferable to draw a distinction between non-binding instruments on one side and international legally binding agreements concluded by the European Union, on the other side. Moreover, as regards non-legally binding international instruments, the EU institutions have established a practice using the very term “*non-binding instrument*”. The European Union would thus express a preference for the use of the term “*non-legally binding international instruments*”.

The European Union welcomes the addition of the words “*non-legally binding*”, as it helps to avoid possible confusion with treaties, which are legally binding under international law, within the meaning of Article 2(1)(a) of the Vienna Convention on the Law of Treaties.

The European Union would add that the title of an instrument alone should not be the decisive factor for determining its nature as non-legally binding.

Thirdly, the European Union supports the views expressed by several members of the International Law Commission that the scope of the topic should cover only non-legally binding international instruments, and should include instruments between States, between States and international organizations, and

¹ Title V of the Treaty on the Functioning of the European Union

between international organizations. This should also cover bilateral, regional and multilateral instruments, including exchanges of letters. By contrast, the European Union agrees with the Special Rapporteur that unwritten instruments should be excluded from the work of the International Law Commission on this topic. The same would apply for instruments with private persons which should be considered as falling outside the scope of the topic. In relation to the resolutions adopted by international organisations, the European Union would plead in favour of excluding them from the scope of the work of the International Law Commission, as resolutions may be considered as unilateral acts and certain of their effects depend on the internal rules of the international organisation at stake.

Fourthly, The European Union further agrees that an important criterion in distinguishing between legally and non-legally binding instruments should be the intention of the parties as it appears from the text of the instruments. A holistic approach, taking into account both objective and subjective criteria, may be considered for the further work of the Commission. The objective criteria may include the wording used in the text, the form and the circumstances surrounding an instrument's formation. In the European Union's view, the assessment on the nature of an instrument should be carried out on a case-by-case basis and all criteria should be considered and weighed together.

Fifthly, the European Union shares the view that a clear distinction should be made between "*legally binding*" international instruments or instruments having "*legally binding force*" on the one hand, and agreements "*having legal effects*", on the other hand. The European Union notes that the potential legal effects of non-binding international instruments will be subject of further examination carried out by the Special Rapporteur.

Finally, the European Union would express its support to the proposal of the Special Rapporteur to request information on the practice of States, international organizations and, also access to the work carried out on the subject in the context of the Council of Europe's Committee of Legal Advisers on Public International Law (CAHDI). The European Union – as a regional international organisation - is ready to provide the International Law Commission with information regarding its extensive practice concerning non-legally binding international instruments.

Mr. Chairperson,

In conclusion, the European Union wishes to express its appreciation once again for the work done so far by the ILC on this important topic and is looking forward to continuing and contributing further to the debates on this matter in the 6th Committee.

Thank you for your attention.