



IRELAND

Sixth Committee

United Nations General Assembly 79th Session

Statement of Ireland on Agenda Item 79:

Report of the International Law Commission on the work of its seventy-fifth session

**Cluster III – Chapters VI (Prevention and repression of piracy and armed robbery at sea)
and VIII (Non-legally binding international agreements)**

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– CHECK AGAINST DELIVERY –

Prevention and repression of piracy and armed robbery at sea

Chair,

1. I will first address the topic 'Prevention and repression of piracy and armed robbery at sea'. Piracy and armed robbery at sea remain a scourge on our oceans and seas. As an island state, Ireland particularly appreciates the importance of maritime security. The consideration of this topic by the International Law Commission is therefore welcome.
2. Ireland expresses its gratitude to the former Special Rapporteur, Mr. Yacouba Cissé, for his work to date. Mr. Cissé's first report contains a thorough review of the historical, socioeconomic and legal aspects of the topic, including a very helpful analysis of the international law applicable to piracy and armed robbery at sea, together with relevant jurisprudence on the topic. His second report details regional and subregional practices and initiatives for combating piracy and armed robbery at sea, as well as a useful review of the resolutions of relevant international organizations.
3. I wish also to acknowledge and welcome the appointment of the new Special Rapporteur, Mr. Louis Savadogo.
4. As my delegation indicated during last year's debate on this topic, we remain to be convinced that draft articles on piracy and armed robbery at sea are the appropriate product of this work. Given the existing – and essential – role of the United Nations Convention on the Law of the Sea in this area and the possibility that legally binding articles may raise questions about – or even undermine – the role of UNCLOS in regulating all activities in, on and under the seas, careful consideration will be required on this question. Indeed, *'recommendations'*, *'conclusions'* or *'guidelines'* may be more appropriate products.
5. We note that the latest draft articles proposed by the Special Rapporteur – namely draft articles 4 to 7 – would oblige states to cooperate in the repression of piracy and armed robbery at sea, and to assert and exercise jurisdiction over these crimes in their domestic laws. While Ireland can agree with the objectives of these draft provisions,

we will continue to reflect on whether a binding or non-binding instrument is the most effective means of achieving them.

6. Ireland looks forward to further engaging on this important topic as the Commission's work develops.

Non-legally binding international agreements

Chair,

7. I will now turn to the topic 'Non-legally binding international agreements'. Ireland would like to thank the Commission for including this topic in its programme of work. We wish to thank in particular the Special Rapporteur, Mr Mathias Forteau, for his detailed First Report on this topical and practical issue.
8. Ireland agrees with the sentiment expressed by a number of Commission members, and indeed by the Special Rapporteur himself, that the Commission's work on this topic should not seek to be prescriptive. Rather, it should aim to clarify the nature, regime and potential legal effects of non-legally binding instruments, in particular by having regard to state practice. In that respect, it is vital that States interact with the Commission on this topic and Ireland is pleased to contribute in this forum. We also intend to submit information to the Commission in due course on Ireland's domestic practice with regard to non-legally binding instruments.
9. In the first instance, we would like to address the **title of this topic**, which is intrinsically linked to the **scope of the topic**. In Ireland's view, it would be preferable for the Commission to examine 'non-legally binding instruments', or 'non-legally binding international instruments' rather than 'non-legally binding international agreements' and we propose that the title of the topic reflect this. Our view is based on two main considerations.
10. First, the use of the term 'international agreement' is likely to cause confusion since 'international agreement' is widely understood to refer to an agreement that is legally binding in international law. This confusion may be compounded by prefacing the term 'international agreement' with the term 'non-legally binding.' Indeed, in state practice the word 'agreement' is generally avoided in these instruments.

11. Secondly, the term 'instrument' covers a broad range of non-binding forms including Memoranda of Understanding, communiqués, joint declarations, joint statements, resolutions and decisions, which might fall outside the scope of the Commission's study if the term 'international agreement' is used. To be of greater practical value to States, we believe the study should examine this broader range of non-binding forms of arrangements and understandings.
12. With regard to the **participants in non-legally binding international instruments** (or 'NBIs') - and this is again linked to the **scope of this topic** - Ireland agrees that the participants in such instruments will for the most part be States only. However, participation in NBIs concluded between Governments may also be open to non-state actors, such as political parties. Such NBIs played an important role in the Northern Ireland Peace Process, for instance. The Commission may therefore wish to consider instruments concluded between two or more States and non-state actors as part of its work on this topic.
13. Ireland welcomes the **schedule of work** as proposed by the Special Rapporteur, and in particular his intention to focus in his second report on **the criteria for distinguishing between treaties and NBIs**. Ireland agrees that this is a question of great practical significance. In Ireland's view, the intention of the participants is the primary consideration, although to determine that intention it may be necessary to consider both subjective and objective elements. It is our view that a clause in an NBI confirming the political or aspirational nature of the commitments entered into is useful but may not, on its own, be entirely determinative.
14. With respect to the **potential legal effects of NBIs**, Ireland also welcomes the Special Rapporteur's decision to dedicate further study to this important question. It is our view that NBIs are not capable of producing *direct* legal effects, since this is not the intention of the participants. However, NBIs can in certain circumstances produce *indirect* legal effects, including certain 'pre-law' effects.
15. Finally, Ireland agrees with the Special Rapporteur that draft conclusions would be the most appropriate **form for the final product on this topic**. One of the key benefits of NBIs is their flexibility and lack of formality. Accordingly, the Commission should

refrain from proposing a set of rigid rules that might have the effect of limiting this flexibility.

16. Ireland wishes again to thank the Commission and the Special Rapporteur for their work and we forward to further engagement on this important topic.