



SIXTH COMMITTEE

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CHECK AGAINST DELIVERY

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Statement by

Adv. Lilach Ravid

Department of International Law, Israeli Ministry of Foreign Affairs

Report of the International Law Commission

on the work of its seventy-ninth session

Cluster III

79 Agenda Item

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Thank you, Mr. Chair,

Israel appreciates the opportunity to address the topic “Non-Legally Binding International Agreements” and “Prevention and repression of piracy and armed robbery at sea”. We extend our gratitude to the International Law Commission for its diligent efforts on both of these important topics and congratulate the Commission for the progress made this year.

Mr. Chair,

With regard to the topic “Non-Legally Binding International Agreements”, Israel welcomes the report by the Special Rapporteur, Mr. Mathias Forteau.

Regarding the title of the topic, international practice indicates that the term “Agreement” is usually reserved for the title of binding texts, and that others words, such as “Arrangements” or “Instruments” are used for non-legally binding international texts.

Reiterating this practice, according to the Report, in the course of discussions held on the topic in the UN General Assembly Sixth Committee, several Members suggested that the title of the topic should be changed from “Agreements” to “Instruments” or “Arrangements”, in order to avoid confusion and distinguish between non-legally binding texts and legally binding texts.

Using terms other than “Agreement” for non-legally binding texts is also consistent with the practice of the State of Israel in this respect. Using the term “Arrangement”, in particular, is in line with the Guidelines of the Attorney General of the State of Israel on Becoming a Party to International Agreements, as well as with Israeli Government and Parliament Regulations – which refer to non-legally binding texts that do not require ratification as “Implementation Arrangements”.

Furthermore, we concur with the stance expressed by the Special Rapporteur in the Report, that the term “Instrument” for this topic may unduly broaden it so as to include all types of documents of a non-legally binding nature. We therefore suggest that the title of the topic be changed to either “Arrangement” or “Instrument”, preferably “Arrangement”.

Mr. Chair,

Regarding the scope of the topic, according to the Report, non-legally binding texts that have ‘a normative component’ should be at the heart of the ILC’s work on this topic. We are of the opinion that non-legally binding texts, as such, and as a matter of principle, do not contain any normative component, in the sense that they don’t constitute or create any legally-binding norms or give rise to any legally-binding normative implications, effects or expectations.

An exception to this rests in cases where non-legally binding texts may potentially create indirect legal effects by means of an estoppel, only in cases of uncertainty and doubt as to the legal nature and (non-)binding effect of the text under international law, and insofar as it has been established after careful examination in a given case that all prerequisites of estoppel have been met.

More specifically, we regard non-legally binding texts as not allowing for the principle of ‘good faith’ or ‘*pacta sunt servanda*’ to be invoked; as not creating or giving rise to a legally-binding expectation or entitlement to a reliance in ‘good faith’; as not falling within the scope of ‘*pacta sunt servanda*’ and as not binding by virtue of ‘*pacta sunt servanda*’ or ‘good faith’. Furthermore, we consider that non-legally binding texts cannot form new rules of customary law and cannot be perceived or interpreted as such.

Mr. Chair,

Paragraph 138(c) of the Report states that ‘it may be worth considering whether the fact that a non-legally binding international agreement was entered into in a given field means that the field in question no longer falls under the exclusive national jurisdiction of the State in question.’ We believe that this question concerning national jurisdiction in the domestic internal sphere is beyond the purview of the present topic.

We agree with the Special Rapporteur's recommendation in paragraph 102 of the Report, that the topic should be limited to *written non-legally binding texts*.

We also support the Special Rapporteur's suggestion in paragraph 110 of the Report, that treaties that are not yet in force and model treaties should be excluded from the present topic.

Mr. Chair,

Israel's position is that in determining the legal status of non-binding legal texts, international tribunals and domestic courts should take into account the intention of the parties with regard to its non-binding character, as reflected and expressed in the text and in the practice of the parties. Moreover, in determining the legal status of the text, we believe that it would be normatively desirable for the focus to be on the intention of the parties that the text will not bind them legally, as it is demonstrated in the text and in the practice of the parties, rather than for it to be construed from other objective evidence.

Mr. Chair,

Concerning the final outcome of the ILC's work on this topic, our position is that it should take the form of a report or, if deemed necessary, recommendations. In our view, it would be best to avoid framing the outcome as draft conclusions, guidelines or model clauses on the topic.

Mr. Chair,

Regarding the topic "Prevention and repression of piracy and armed robbery at sea", Israel thanks the Special Rapporteur, Mr. Yacouba Cissé, and the Commission, for their work thus far on this important topic.

Regarding Article 2, which addresses the definition of piracy, Israel acknowledges the Commission's recognition that certain elements of the definition contained in Article 101 of the United Nations Convention on the Law of the Sea present challenges in interpretation and application, particularly in light of the evolving nature of modern piracy.

At this critical juncture, Israel believes it is imperative to reassess and expand the definition of piracy to effectively address the emerging maritime threats posed by non-State actors, such as the Houthis in Yemen. We believe that the definition of piracy should empower the international community to respond more decisively to these challenges, enhance maritime security, and safeguard the freedom of navigation that is fundamental to our interconnected global economy.

Mr. Chair,

With respect to the issue of national laws criminalizing piracy and armed robbery at sea, Israel advocates for extended deliberations within the Commission, with the aim of developing a more adaptable framework that can effectively accommodate the diverse legal systems and traditions of Member States. Israel strongly advocates for this approach, inter alia in light of views raised by some members of the Commission as described in the report. This is relevant, for instance, to the issue of statute of limitations.

Given the international nature of these illegal acts, we anticipate that further work of the Commission on this topic could, at a later stage, inform internal discussion and consideration on the national level across different jurisdictions. An adaptable framework will enable States to incorporate any provisions into their existing legal structures, thereby strengthening our collective global ability to combat piracy and armed robbery at sea.

Thank you