



Ministero degli Affari Esteri
e della Cooperazione Internazionale

Sixth Committee
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Agenda item n. 79 – Report of the International Law Commission
Cluster III
Statement of Italy

Thank you Mr Chair,

I will now address the topic of “**Prevention and repression of piracy and armed robbery at sea**”.

First of all, we thank the Commission for continuing its analysis of the subject, in light of the paramount importance of strengthening international cooperation to counter piracy. We commend the work and dedication of the former Special Rapporteur for his thorough survey of State practice, both at the international and the regional level. We encourage the new Special Rapporteur to pursue the same path.

In particular, Italy appreciates the special focus dedicated to the practice of regional organizations and the importance for such practice abiding by the framework defined by the UN over time. From this point of view, it is worth recalling the role of international counter-piracy operations authorized by the UN Security Council and carried out by both the European Union and NATO, in which Italy has taken part.

It is also in this perspective that we welcome the drawing up of four new Draft Articles, articulating the efforts to give substance to the general obligation of cooperation set forth in article 100 of UNCLOS. In this regard, we share the view expressed on the need to better clarify the extent of such obligation, both as regards the possible consideration of a duty to prevent along with that to repress, and the specific areas covered by such obligations. Special attention should be dedicated to investigating the inherent nature of the obligation in question – be it of due diligence, means or result.

At the same time, we agree on the need to better clarify the differences between piracy and armed robbery at sea, in line with State practice and opinion. International law provisions should also be reflected in other draft provisions, such as the premise that both



**Ministero degli Affari Esteri
e della Cooperazione Internazionale**

crimes are committed for private ends and that they are normally subject to statute of limitations.

In conclusion, Italy supports the efforts to articulate and clarify the international framework pertaining to cooperation against piracy and armed robbery at sea, also in view of facilitating the harmonisation of national provisions.

Mr Chair, I will now address the topic of **“Non-legally binding international agreements”**.

At the outset, Italy would like to express its appreciation to the Special Rapporteur for producing the first report on this issue.

Italy supports the Commission’s goal of providing a practical guidance in this field, with particular focus on State practice, in order to clarify what aspects could be taken into consideration by States when considering the conclusion of non-binding rather than binding agreements.

Concerning the specific scope of the topic, Italy wishes to make the following comments.

Firstly, while acknowledging the complexities associated with terminological choices, we would like to recall Italy’s practice of not using the term “agreement” when referring to non-binding instruments, resorting instead to terms such as “Memorandum of Understanding”, “instrument”, or other similar alternatives.

Second, we appreciate the consideration given to the possible inclusion of inter-institutional agreements within the scope of the topic, as they constitute the majority of non-binding instruments in the Italian practice. In this regard, we express the view that it would be advisable for the Commission to define them with particular care.

As for the questions to be examined, concerning in particular the criteria for distinguishing treaties from non-legally binding agreements, Italy agrees with the possibility to give precedence, as the first indicator, to the intention of the Parties as stated in each instrument, especially in the event of political agreements between States.

Regarding the potential legal effects of non-legally binding agreements, I would like to recall that Italy considers agreements concluded between administrations of different



**Ministero degli Affari Esteri
e della Cooperazione Internazionale**

States as not capable of producing any legal effects at either the national or international level. Instead, these agreements are understood to create commitments at a technical level only.

Finally, Italy looks forward to the continuation of discussions on this increasingly relevant topic within the International Law Commission and welcomes the suggestion of possibly gathering information on this issue from States through a dedicated questionnaire.

Let me now turn to the topic "**Succession of States in respect of State Responsibility**".

First, Italy would like to commend the Working Group for the work carried out to identify a possible way forward for the topic under consideration. In this perspective, we thank the Chairman, Prof. August Reinisch, for leading such work, also by promoting and facilitating a dialogue with interested members of the Commission.

In light of the outcome of such discussions, Italy appreciates the difficulties the Commission would face in further considering the topic and aligning any possible outcome with its previous work. In this regard, may I recall the comments of our delegation in previous occasions noting the scarcity and inconsistency of State practice on this subject-matter.

While highly valuing the work carried out so far, in the context of such practical challenges, Italy supports the Commission's decision to re-establish a Working Group at its seventy-sixth session for the purpose of concluding the work on the topic.

More specifically, Italy supports the decision to prepare a summary report that would describe the difficulties faced in the work on the topic and would give due account of the reasons for its discontinuance.

Before concluding our statement, let me briefly express Italy's support for the two new topics included in the **long-term program of work of the Commission**. Both topics are of practical relevance to States, and we believe that a thorough study by the Commission would be timely and valuable.

Before concluding our statement, I would like to briefly refer to the Commission's decision to recommend the inclusion of two new topics – "Due diligence in international law" and "Compensation for the damage caused by internationally wrongful acts" – in the long-term



**Ministero degli Affari Esteri
e della Cooperazione Internazionale**

program of work of the Commission. Italy takes note of such decision, covering areas of practical interest for States and will assess thoroughly the outcomes of these studies.

As for the topic of “Due diligence in international law”, we note the role played by due diligence in several areas of contemporary international law, in particular as regards the environment, the sea and cyberspace. In the light of the close connection with the matter of international responsibility, we believe that, when approaching the topic of due diligence, it would be essential for the ILC to take into full account the extensive body of analysis produced over decades, including under Special Rapporteurs Roberto Ago and Gaetano Arangio-Ruiz. Finally, we would see value in the ILC exploring the possibility of a study group along the same model adopted for sea-level rise.

Moving to the topic of “Compensation for the damage caused by internationally wrongful acts”, we believe that it is a prudent approach to build upon the previous work of the Commission on State responsibility, at the same time examining the impressive body of international practice that emerged after 2001. The relevance of this topic is highlighted by the current discussions on the establishment of claims commissions with regard to illegal actions undermining the rule of law of international relations.

Thank you.