

General Assembly  
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Agenda item 79:  
Report of the International Law Commission on  
the work of its seventy-fifth session

Cluster III

Prevention and repression of piracy and armed robbery at sea (Chapter VI)  
Non-legally binding international agreements (Chapter VIII)  
Succession of States in respect of State responsibility (Chapter IX)

Statement by Finland on behalf of the Nordic countries

Mme./Mr. Chair,

At the outset, I would once again like to thank the International Law Commission for its important work.

I have the honour to deliver this statement on behalf of the five Nordic countries: Iceland, Denmark, Norway, Sweden, and my own country Finland.

Mr./Mme chair.

I will first turn to Chapter VI of the ILC report, concerning the **prevention and repression of piracy and armed robbery at sea.**

To begin with, we wish to express our great appreciation to the previous Special Rapporteur, Mr. Yacouba Cissé, for all his hard work.

Today we wish to comment on his second report, in which he makes us dive deeper into this significant subject-matter.

We are pleased to see that during his period as Special Rapporteur four draft articles have been adopted by the Drafting Committee, while three additional draft articles are being considered.

We similarly want to commend Mr. Louis Savadogo for taking over the role as the Special Rapporteur on this essential topic.

Now, turning to the draft articles.

Initially, we take note of the new draft article 4 that refers to a general obligation to prevent and repress piracy and armed robbery at sea through taking effective measures and through cooperation.

We specifically wish to address the first part of the obligation, which is concerned with the prevention of piracy.

We notice that the proposed obligation is not derived from the wording of article 100 of UNCLOS that establishes a general duty to cooperate in the repression of piracy, not the prevention of piracy.

As shown in the second report of the Special Rapporteur, international resolutions refer in many instances to calls for prevention of piracy. The Nordic countries fully support this endeavour.

And we agree with the fact that prevention in many instances is more effective than repression, which is why we back different preventive efforts in the Gulf of Guinea and at the Horn of Africa, on top of our patrolling efforts at sea.

Nevertheless, it is important that a reference by the Commission to a legally binding obligation within international law to prevent piracy and armed robbery at sea is sufficiently anchored in international law, presuming that the draft articles intend to reflect the law as it stands.

It would therefore be highly appreciated if a more detailed legal analysis of the content of this proposed obligation to prevent could be undertaken.

In respect to the obligation to repress piracy and armed robbery also found in draft article 4, the Nordic countries fully agree with the suggestion that States shall take effective legislative, administrative, judicial or other appropriate measures to achieve this goal.

Piracy and armed robbery at sea can only be eradicated when all States criminalize them under their national laws and apply the legislation to any relevant acts within their jurisdiction.

We also wish to briefly comment on draft article 7 that has been referred to the drafting committee, but not yet adopted. This draft article seems far-reaching by making it mandatory for a State to establish jurisdiction over the offences covered by piracy and armed robbery at sea, where possible.

Normally, a right of States to establish jurisdiction does not entail a duty to exercise jurisdiction. We would therefore also appreciate a more thorough elaboration of the content of and reasoning behind draft article 7.

Finally, let me emphasise that the Nordic countries condemn all acts of piracy and armed robbery at sea and support the Commission and the Special Rapporteur in their work.

The Nordic countries attach great importance to secure and open maritime routes. Without secure oceans, the global trade which relies heavily on sea transport will be significantly obstructed to the damage for all.

On behalf of the Nordic Countries, I look forward to continue the cooperation with both the Commission and the Special Rapporteur.

Mme./Mr. Chair,

Regarding the topic of Non-legally binding international agreements, the Nordic countries would like to thank the Special Rapporteur, Mr. Mathias Forteau, for his excellent first report on this topic, which is of great practical significance. The timeliness and practical relevance of the topic is highlighted by the increasing use of non-legally binding instruments in international cooperation, and by the fact that other international expert bodies – such as the Inter-American Juridical Committee and the Committee of Legal Advisers on Public International Law of the Council of Europe – have examined or are currently looking into this topic.

Since the work on the topic has only just begun, the Nordic countries would like to present some preliminary observations.

*First*, as regards **the term “agreement” in the title of the topic**, the Nordic countries would like to express our understanding for the Special Rapporteur’s reasoning behind the choice of the term. The Nordic countries consider it important that the final output of the Commission on the topic will clarify that the use of the term “agreement” is without prejudice to the legal nature of the agreements examined, and the terminological choices that States may make in their national practice.

*Second*, regarding **the proposed scope of the topic**, the Nordic countries support to limit the scope to agreements within the international sphere as well as to agreements in written form. The Nordic countries also support excluding unilateral acts of states and non-binding provisions of treaties from the scope of the topic.

As regards non-legally binding international agreements concluded within a multilateral institutional framework, the Nordic countries support the view taken by the Special Rapporteur in his first report that we should not take too categorical a decision as to their inclusion in or exclusion from the scope of the topic. For example, non-legally binding agreements in the form of global “pacts” or broad declarations concluded within multilateral institutional frameworks could, in our view, be explored.

The Nordic countries would like to express our support for further considering whether some categories of non-legally binding inter-institutional agreements, concluded for example between ministries and subnational territorial units, should fall under the scope of the topic. The main objective should be to capture and engage with the relevant practice of States. In this regard, the Nordic countries note that a significant number of non-legally binding agreements are made at a sub-State level, as between ministries of different states responsible for particular sectors. Such agreements make up a considerable part of current practice and should not be excluded from the Commission's work. Salient questions arise, for example, as to the possible consequences of such agreements concluded as between ministries, as compared to agreements concluded between states and signed by a head of state or minister of foreign affairs. The Commission's guidance on this and other questions relating to such agreements would, in the opinion of the Nordic countries, be of considerable practical value to States.

*Third*, the Nordic countries express our support for **the categories of questions to be examined under the topic**.

As regards the criteria for distinguishing treaties from non-legally binding international agreements, the Nordic countries support a holistic approach, taking into account both objective and subjective criteria. In our view, the intention of the parties as well as the text, the form, the terminology and the circumstances in which the instrument was concluded, should all be considered.

As to the regime of non-legally binding international agreements, the Nordic countries agree with the conclusion that these agreements are not, as such, governed by the provisions of treaty law applicable exclusively to treaties within the meaning of the Vienna Convention on the Law of Treaties. This does not mean, however, that non-legally binding agreements are completely unregulated by international law. As noted by the Special Rapporteur, certain rules of international law may limit, govern or apply to non-legally binding international agreements, and the fact that an agreement is concluded in a format non-legally binding does not exclude this text from potentially having legal consequences pursuant to international law. We share the view that the aim of the work is to determine whether such effects exist and, if they do exist, to identify them.

The Nordic countries are confident that the work of the Special Rapporteur and the Commission on this topic will offer helpful guidance for states with regards to potential legal effects of non-legally binding international agreements. The Nordic countries commend the approach taken by the Special Rapporteur in his first report, including in particular his open invitation to other members and states in framing the scope of the work on the topic.

*Finally*, as regards **the form of the final outcome of the work**, the Nordic countries support a non-prescriptive approach, while still emphasizing the importance of collecting and clarifying the existing practice. Draft conclusions could in our view serve this purpose.

On behalf of The Nordic countries, I would like to reiterate our appreciation for the work already done by Mr. Forteau and the ILC on this topic. The Nordic countries are looking forward to contributing to the discussions on this topic and are ready to share information to the Commission on our national practices.

Mr./Madam Chair,

Finally, I will turn to the topic of **Succession of States in respect of State responsibility**.

The Nordic countries have taken note of the decision of the Commission to establish a working group at its seventy-sixth session for the purpose of drafting a summary report that will bring to an end the work of the Commission on the topic. Although this outcome is of course not what was originally envisaged, the efforts of the Commission and especially those of the Special Rapporteur Pavel Šturma will nevertheless count as important contributions to this complicated area of law.

Thank you.