CLUSTER III

Prevention and repression of piracy and armed robbery at sea (*Chapter VI*)

Mr. Chair,

On the topic "**Prevention and repression of piracy and armed robbery at sea**", Portugal would like to begin by thanking Mr. Yacouba Cissé on the comprehensive investigative work he carried out during his term and congratulating Mr. Louis Savadogo on his appointment as Special Rapporteur for this topic.

Portugal notes that the Commission had the opportunity to discuss the second report prepared by Mr. Cissé prior to his resignation dedicated to several issues of interest within this topic, including the general obligations of States regarding the prevention and repression of maritime piracy.

Given the appointment of a new Rapporteur, we find it appropriate at this stage to only deliver a few general observations on this very relevant topic.

Mr. Chair,

As mentioned last year, Portugal believes that the phenomena of piracy and armed robbery at sea is of great importance in today's geopolitical context and in the context of ocean governance. Our participation in several initiatives in the field of maritime security, including in the context of the Montreux Document, the Contact Group against Piracy off the Costa of Somalia (today, the Contact Group on Illicit Maritime Activities in the Western Indian Ocean) and the Gulf of Guinea in the framework of the Yaoundé Security Architecture and the G7++FoGG, is proof of this.

Furthermore, my delegation would like to emphasize once again that it is of the utmost importance to approach this issue not only from the point of view of repression, but also of prevention. Piracy and armed robbery at sea are, in fact, also the result of complex and sensitive economic and social conditions, including those of the perpetrators. Indeed, Portugal has always advocated for a holistic approach to these and other maritime security issues. Therefore, my delegation believes that any work on this topic should take this context into account as background.

Another legal issue of interest in this context is undoubtedly those, and I quote the Commission's report, "*relating to national jurisdiction and the universal jurisdiction of States in the pursuit and trial of suspected pirates, the transfer of suspected or convicted pirates, their extradition or prosecution, and the question of mutual legal assistance*".

In addition, my delegation would also add the legal relevance of how all these specific issues can be addressed from a human rights perspective. It would be useful to gather as much information as possible on existing and prevailing practices in this regard, even if there are no uniform international practices.

Finally, when analyzing and debating this issue, it must be recognized that the first line of repression of piracy and armed robbery at sea is often also carried out by private military and security companies.

In this context, Portugal considers that it is important to gather as much information as possible on the current normative practices regulating the activities of such companies. In this respect, Portugal notes that many organizations and platforms, including the Montreux Document Forum, have taken commendable initiatives whose contributions can be very valuable and used as a working basis for the future.

Non-legally binding international agreements (*Chapter VIII*)

Mr. Chair,

I will now turn to the topic on "**non-legally binding international agreements**".
We would like to begin by thanking the Special Rapporteur, Mr. Mathias Forteau, for having developed a first report on this important subject which allowed the Commission to have a general overview of the theme.

In fact, the considerable growth in the practice of non-legally binding agreements at international level fully justifies the inclusion of this topic into the programme of the ILC, which we welcome once more.

Mr. Chair,

My delegation considers this first report very well-structured, providing an interesting review of the Inter-American Juridical Committee's guidelines, State practice, jurisprudence, and relevant scholarship.

While the first discussions allowed to debate a wide range of questions, we believe the most important part of the ongoing study passes by the methodology for *distinguishing* between binding and non-binding texts. We agree that this is of great practical importance, confirmed by the fact that international courts and tribunals are regularly confronted with it.

Additionally, it seems to be an area in which the Commission should offer practical guidance to States and practitioners.

Mr. Chair,

Allow me to refer to Portuguese practice when it comes to that distinction – a matter which has implications right to the title of the current topic.

In fact, among us, the term "agreement" is reserved for international legally binding instruments, usually bilateral ones. Therefore, we consider that using the term "instruments" instead of "agreements" in the title would surpass that issue.
But the primary elements typically qualifying an international instrument as non-legally binding are its *signatories and contents*, not least the use of differentiated terminology and final clauses – while the form, modalities of conclusion and title of the instrument seem to play a more residual role in some cases.

Namely a clause noting that the instrument does not constitute a legally binding one and thus does not create new rights nor obligations under international law, and the absence of clauses that are typical of international legally binding instruments (such as provisions on the settlement of disputes and registration with the Secretariat of the United Nations).

When it comes to the use of differentiated terminology from that of international legally binding instruments we note, e.g.: "signatories" instead of "parties", "clause"/ "section" instead of "article", use of verbs such as "will" and "decide" instead of "shall" and "agree".

In that sense, we would define an "international non-legally binding instrument" as an international instrument which is concluded between entities who are not subjects of international law and which do not create any new international rights nor obligations for the Portuguese State – being merely politically and administratively binding on their signatories.

Nevertheless, we tend to consider that all said factors or criteria must be considered and weighed together on a case-by-case basis to determine whether a text constitutes a legally binding agreement or not.

Mr. Chair,

In conclusion, we believe that the Commission should continue carrying out its work focusing on the practical aspects of this subject. And we look very much forward to the Special Rapporteur's future reports and draft conclusions.

Succession of States in respect of State Responsibility (*Chapter IX*)

Mr. Chair,

Regarding the topic "**Succession of States in respect of State Responsibility**", Portugal notes that no substantive progression has been made since last year.

Portugal notes that most members of the working group set up specifically for this issue are in favor of a summary report describing the difficulties of the work without going into the substance. My delegation is aware of the many theoretical and methodological difficulties surrounding this topic. The fact that there are reasonable doubts as to whether existing State practice is wide and representative enough is indeed a significant challenge for the Commission to make meaningful progress.

In this context, Portugal believes that, when the Commission closes this topic, it should incorporate into the final report the outstanding and very useful work done so far, including that of the former Special Rapporteur Mr. Pavel Šturma.

I thank you, Mr. Chair.