



SLOVENIA

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STATEMENT

BY

**Ms Nataša Šebenik, Minister Plenipotentiary, Legal Adviser at the Permanent Mission
of the Republic of Slovenia to the United Nations on**

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

Cluster III:

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

**79th Session of the General Assembly
Sixth Committee**

New York, 29 October 2024

Mr Chairman,

I have the honour to address the Sixth Committee in relation to the work of the International Law Commission on Cluster III, namely Chapter VI: Prevention and repression of piracy and armed robbery at sea, Chapter VIII: Non-legally binding international agreements, and Chapter IX: Succession of States in respect of State responsibility.

With regard to the topic "Prevention and repression of piracy and armed robbery at sea", it is my pleasure to address the Sixth Committee in relation to the work of the International Law Commission on this issue. Slovenia aligns itself with the EU statement and would like to add the following in its national capacity:

We would like to thank the former Special Rapporteur, Mr Yacouba Cissé, for his report and congratulate the new Special Rapporteur, Mr Louis Savadogo, on his appointment. Slovenia also welcomes the work of the ILC and the accompanying commentaries on the draft articles.

Mr Chairman,

Freedom of the high seas is one of the core principles of international law of the sea and should be protected. However, this freedom is threatened by the rise of piracy and armed robbery. In this regard, it is important to distinguish between the unique challenges that each presents. The best way to do this is to have separate provisions for each. Such a tailored approach can lead to more effective enforcement and prosecution and facilitate the development of targeted preventive measures.

As the Special Rapporteur recalled in his report, State practice is not general, constant or uniform. Slovenia agrees that the way forward is one of progressive development in areas where the provisions of the United Nations Convention on the Law of the Sea

may not fully address all the complexities of these crimes. UNCLOS should be the starting point for the analysis of the topic, taking into account other existing legal frameworks without duplication.

Mr Chairman,

With regard to "Non-legally binding international agreements", I would like to reiterate that also on this topic, Slovenia aligns itself with the EU statement and would like to add the following in its national capacity:

We would like to thank the Special Rapporteur, Mr Mathias Forteau, for the first report, in which he outlined the topic, along with his views and proposals on how to proceed with the analysis and what the potential outcome of such an analysis could be.

First, we welcome the general intention of the Special Rapporteur, widely supported by the Members of the Commission, to address the topic from a practical perspective, as this approach is likely to yield the most relevant results for States.

Second, in this regard, we believe that the Commission could provide useful guidance for the practice of States on two key issues: what these agreements are and their effects.

With regard to the identification of such agreements, I would first like to say that, from a practitioners' point of view, we would prefer not to use the term "agreements". However, since we are aware of the difficulty in finding a suitable alternative, we could accept the Special Rapporteur's proposal to use the term "agreements", provided that it is understood that this term refers exclusively to what certain legal dictionaries define as a "meeting of the minds, even without legal obligation". In this regard, it may also be important to take into account that the International Court of Justice, in the case of the Maritime Delimitation and Territorial Questions between Qatar and Bahrain, ruled

that the term "agree" is decisive in determining whether an agreement is a treaty or not.

Mr Chairman,

We also believe that the scope of the topic should not be unduly broadened and should focus on written legal agreements, as opposed to political ones, concluded between two or more States, as this reflects the practical use of such instruments by States. In this context, we hope that the Commission could provide guidance, particularly on how States can distinguish these agreements from treaties, where we believe that objective and subjective criteria should be applied.

In terms of their effects, the Commission should consider the alternatives to such agreements having no legally binding effect. Does this imply that States must act in good faith concerning the provisions in these instruments? Are they precluded from acting contrary to these provisions or in a manner that would hinder their implementation? These are just two of several possible solutions that the Commission could discuss.

As to the form of the final outcome, we are open to different solutions, but we tend to prefer "guidelines" in the softer sense of "lignes directrices", as suggested by the Special Rapporteur, which is also in line with the objective of this topic, i.e. to provide States with useful guidelines for their practice.

In conclusion, Slovenia looks forward to the work of the Commission on this topic and is ready to contribute actively to its work.

Mr Chairman,

With regard to the topic "Succession of States in respect of State responsibility", Slovenia would like to address certain challenges to the work of the Commission. First, there is a lack of sufficiently widespread State practice across different regions, making it difficult to identify the rules of customary international law. However, even the identified practice remains inconsistent and is usually represented by treaties between the States concerned, from which it is difficult to determine whether and how they relate to the rules of customary international law.

Second, many substantive aspects of the topic still require further discussion. For example: whether it is the responsibility or the rights and obligations arising therefrom that would be transferred upon the succession of States; whether it is appropriate to draw a parallel with cases of State debt succession; the relationship between this topic and the law of unjust enrichment; and the rules governing the legal consequences of internationally wrongful acts. A clearer distinction between cases of codification and progressive development would also merit further discussion.

Mr Chairman,

There are several options for the way forward. On the one hand, the Commission could set up a working group to continue substantive work on this topic. In this case, it would be essential to have an additional in-depth examination of the widest possible range of States' practices. Alternatively, work on this topic could be concluded. To this end, a working group could be established with the intention of preparing a procedural report to conclude the work of the Commission. The report would summarize the work on the topic to date and explain why the Commission is bringing it to a close.

Slovenia would like to encourage the Commission and other States to adopt a cautious approach when considering whether to continue work on this topic.

Thank you.