



**Statement on behalf of
the Republic of South Africa**

by

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Chair

My delegation wishes to thank the Special Rapporteur for his first report on the topic of non-legally binding international agreements and the Commission for its work on this topic.

South Africa has, in its own experience, noticed that the number of legally non-binding arrangements signed with other States (at varying levels) and international organisations has been increasing over time and thus considers this topic to be appropriate and timely.

In determining the binding nature of an international agreement or arrangement, South Africa places much emphasis on the phrase “governed by international law” in the definition of a treaty as provided for by the Vienna Convention on the Law of Treaties. It is ultimately the intention of the parties that determines whether an instrument constitutes a treaty that establishes rights and obligations under international law. Notwithstanding, certain terms are used to convey this intention implicitly. Therefore, whilst the determining factor will always be the intention, it is my country’s practice to use specific terms, which it regards as non-binding.

In this regard, my delegation appreciates the exchange that took place in relation to the use of certain terms, in particular, replacing the word “agreement” with another term. Whilst the Special Rapporteur has indicated that the term “agreement” does not necessarily imply a treaty, it is South Africa’s preference that an alternative term be used, such as “arrangement”. South Africa’s practice is to use the term “agree” in relation to binding treaties and thus avoids using such terms in its legally non-binding arrangements.

South Africa does use “non-legally binding” and “legally non-binding” to some extent interchangeably, and has a degree of flexibility in relation to which term ought to be used, although we do have a slight preference for “legally non-binding”.

In terms of the arrangements that are to be included in the scope of this topic, it would be preferable to consider arrangements between States and international

organisations which have international legal personality. This is to be distinguished from arrangements between or amongst subjects that do not have international legal personality and could thus in any event not conclude a treaty. Consideration of arrangements amongst and between other subjects could perhaps be considered at a later stage. In particular, arrangements between States and non-State armed groups, et cetera, may have particular nuances, which ought not to be considered under this broader topic.

My delegation is grateful to the Special Rapporteur for his willingness to reconsider the use of the term “regime” and “potential legal effects”. From our perspective, these would not be appropriate in the context of legally non-binding arrangements.

South Africa supports the view that the Commission should not seek to create new rules that may limit the flexibility and utility of less formal agreements. Ultimately, States opt for signing arrangements that are legally non-binding for various reasons, including for purposes of avoiding lengthy procedures required by national laws. As such, it would not be desirable to formalise rules and in doing so establish limitations that would hamper States.

In relation to the topic of succession of states in respect of state responsibility, South Africa supports the establishment of a Working Group with a view to preparing a report that would bring the work of the Commission on the topic to an end.

Whilst South Africa considers this topic an important one, which has the potential to provide clarity on legal issues in relation to state succession, it acknowledges the challenges raised by the Working Group, which informed the decision of the Commission to establish a Working Group with the purpose of drafting a report to conclude the work of the Commission on this topic.

I thank you.