



Statement by the Republic of Cyprus

**By Mr. Theodoulos Pittakis,
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at the Sixth Committee

**on agenda item 79:
Report of the International Law Commission
Chapter VIII: Non-legally binding international agreements
(Cluster 3)**

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Ms/Mr. Chairperson,

My delegation wishes to comment on Chapter VIII: Non-legally binding international agreements. Firstly, we would like to thank the Special Rapporteur, Mr. Mathias Forteau, for the preparation of the first report (A/CN.4/772), and his excellent work in highlighting the main issues of the topic at hand. Cyprus aligns itself with the statement made by the European Union and wishes to make the following points:

Cyprus appreciates the work of the ILC on this topic, which we consider to be of central practical importance in the context of international relations. We would like to share some initial views on the subject, highlighting matters which we believe should be addressed by the Commission, and share our experience as to the criteria for distinguishing between treaties and legally non-binding international instruments.

Regarding the choice of the term “international agreements” in this topic, we note the reference by the Special Rapporteur to the *travaux préparatoires* of the Vienna Convention on the Law of Treaties that all treaties are agreements but not all agreements are treaties, as well as his views that the alternative term “instruments” or “arrangements” could be misleading or have a more of an administrative or operational meaning, respectively.

In our practice and experience, the title of a document is certainly not the determining criterion of the nature of the document. The intention of the parties thereto, as reflected in the content and form, is the focus of such assessment. Cyprus, however, refrains from using the term “international agreements” to describe a document signed or adopted between States or States and international organisations or between international organisations, which is not intended to create any legal rights or obligations under international law. Cyprus believes that the terms “instruments” or “arrangements”, but also “memoranda of understanding or cooperation”, would be more appropriate to describe a document not intended to create any legal rights or obligations under international law. We strongly believe that the use of the term “agreements” either in the title or in the substance of such documents creates confusion and can be misleading as to the legal nature of the document. Cyprus would, therefore, like to express to the Commission its strong preference to use the term “instruments” rather than “agreements”.

Cyprus supports the suggestions of the Special Rapporteur that the scope of this topic should not include the reasons why States decided to use international instruments that are legally non-binding; that the work of the Commission should cover only written instruments; and that it should exclude non-binding provisions in treaties, resolutions of international organisations and unilateral acts.

Cyprus believes that the study should specifically be limited to instruments **that would otherwise qualify as treaties *but for the legally non-binding nature***, namely instruments adopted between States, between States and international organisations or between international organisations.

We agree with the Special Rapporteur that a legally non-binding international instrument could be politically binding without being legally binding. As a matter of practice, Cyprus carries out a careful legal scrutiny based on the international law of treaties to ascertain the nature of a legal document and the intention of the parties (or participants); a legal assessment of its specific substantive provisions and how these would be dealt with under international law and in accordance with the Republic of Cyprus' Constitution and national legislation; and, finally, a legal risk analysis on its legal effects for Cyprus in the international sphere as well as in its internal legal system.

We agree, therefore, that, as already reiterated, the intention of the parties (or participants) to an international instrument would be the primary criterion in the determination of its legal nature. We share the views of other States that, even if the text expressly states that the instrument is legally non-binding, a careful scrutiny of the substantive provisions in the document may lead to the conclusion that it is in fact legally binding.

Cyprus, like many other States, has published its own practical manual, which has been prepared by the Law Office of the Republic, on the basis of generally accepted jurisprudence and doctrine on the law of treaties, in order to assist the Government in negotiating and concluding treaties or legally non-binding international instruments. This manual explains that a legally non-binding instrument should not include provisions or language that create legally binding rights and obligations, using as prime examples provisions granting privileges and immunities, governing criminal or civil jurisdiction, or regulating claims for loss or damage.

Cyprus, therefore, believes that, at this stage, identifying best practices concerning legally non-binding international instruments would be very helpful for all States and

international organisations. We, thus, urge the Commission to bear this in mind in the preparation of its draft conclusions on the subject. We, accordingly, support the proposal of the Special Rapporteur to request information on the practice of States, international organizations and, also draw on the extensive work that is being carried out on the subject by the Council of Europe's Committee of Legal Advisers on Public International Law (CAHDI).

Finally, as per the suggestion of the Special Rapporteur, Cyprus considers that "draft conclusions" would be more appropriate, at this stage of the study, rather than "draft guidelines" which could be more prescriptive in nature.

We would like to conclude our intervention by congratulating the ILC and the Special Rapporteur for their excellent work so far. Cyprus looks forward to the second report of the Special Rapporteur and draft conclusions, on the basis of practice and relevant jurisprudence and doctrine, dealing with: the aim of the present topic; the scope; and the criteria for distinguishing between treaties and legally non-binding international instruments.

I thank you for your attention.