# CZECH REPUBLIC

**Permanent Mission of the Czech Republic to the United Nations**

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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
Non-legally binding international agreements
Succession of States in respect of State responsibility

**Statement by**

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Madam / Mr. Chair,

We note the second report of the Special Rapporteur, Mr. Yacouba Cissé, on the **"Prevention and repression of piracy and armed robbery at sea"**. We welcome the second memorandum prepared by the Secretariat on the negotiations and writings relevant to the definitions of piracy and of armed robbery at sea. Having regard to the resignation of Mr. Yacouba Cissé from the position of the Special Rapporteur, we would like to acknowledge his work done on this topic. At the same time, we appreciate the appointment of Mr. Louis Savadago as the new Special Rapporteur for this topic and wish him all the best in this position. Due to the change in the position of the Special Rapporteur, we will limit our intervention to more general comments on the topic.

In general, we suggest that the Commission discuss more thoroughly its methodology in dealing with the topic and invite the Commission to elaborate on the intended character of the final outcome of its work on this topic. Last year, we agreed with the conclusion of the Commission that the work on the topic should not duplicate, or even alter, existing legal frameworks. Instead, it should aim at identifying and clarifying new issues of common concern, such as the expression "committed for private ends" in the definition of piracy or the scope of permissible exercise of jurisdiction over piracy and the duty to cooperate in the repression of piracy, taking into account existing State practice in this regard. We invite the Commission to follow this approach, build on previous work on the topic and clarify its "roadmap" for the discussions on the topic.

During this year's discussions of the Commission, it was reiterated that the basis and starting point for the discussions of the Commission on the topic is the UN Convention on the Law of the Sea [UNCLOS], which provides for the obligation of "all states to cooperate in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State". In this regard, we would like to stress that, besides the text of the Convention, the consideration of State practice based on the Convention is essential for appropriate dealing with the topic. During this year's discussions, it was also pointed out that other relevant conventions should be taken into account when considering the topic, including the 1979 International Convention against the Taking of Hostages, the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, or the 2000 United Nations Convention against Transnational Organized Crime. Other relevant instruments, including Security Council resolutions related to the topic, and non-binding documents such as regional codes of conducts representing the practice of States, were mentioned as well. We concur with those conclusions and suggestions and are looking forward to the forthcoming first report of the newly appointed Special Rapporteur and the outcomes of further discussions of the Commission on the topic.

Madam / Mr. Chair,

Let me turn to the topic **"Non-legally binding international agreements"**. The Czech Republic welcomes the first report of the Special Rapporteur Mr. Mathias Forteau and the proposed focus on practical aspects of the topic as well as the fact that the present topic is not meant to be prescriptive. Indeed, the area of focus represents a grey zone mainly due to the diversity of instruments and different reasons why States occasionally wish to shift from legally binding international agreements to a broad area of non-legally binding instruments. We want to stress the need, mentioned also by the Special

Rapporteur, to preserve flexibility in this area and avoid creating a legal regime of non-binding instruments.

The Czech Republic agrees with the Special Rapporteur on the proposed scope of work; this means, *inter alia*, to limit the scope of the topic to international instruments concluded outside a multilateral institutional framework, to exclude documents which are merely of operational nature, and to focus on written instruments only.

However, we do not support the Special Rapporteur's conclusion on the title of the topic with respect to the use of the word "agreement". We are of the view that the arguments put forward are not entirely persuasive. First, the definition of a "treaty" deriving from the 1969 Vienna Convention on the Law of Treaties, using the word "[international] agreement", reflects the fact that in order for an instrument to become a treaty, it must have a consensus of at least two parties. The 1969 Vienna Convention thus contains the concept and term "international agreement" as a fundamental building block of the definition of a [legally binding] treaty, and using the same term to designate instruments not governed by international law is confusing and must be avoided.

Second, we consider the practice of States as crucial and the very low frequency of the use of the term "agreement", usually omitting the adjective "international", for non-legally binding bilateral instruments, must be taken into account.

Third, arguing that the word "instrument" refers to the "container" and excludes the content, is purely academical, since examination of a "container" solely would not be useful at all. In our opinion, the word "instrument" or "consensual instrument" is an overarching expression that covers a rich variety of terms used for the instruments within the Commission's focus.

Finally, it is worth mentioning that the Committee of Legal Advisers on Public International Law of the Council of Europe (CAHDI), which took up work on the said topic already in March 2021, decided to replace the word "agreements" with "instruments", with the explanation that the latter would better reflect the legally non-binding nature.

The Czech Republic generally concurs with the conclusion on the use of expression "non-legally binding".

Considering the criteria for identification of non-legally binding instruments, we believe that the intention of States to create non-legally binding instrument, as opposed to a legally binding treaty, is the key criterion. This intention can be expressed, for example, by specific wording used in the instrument. While the report says that there is no hierarchy of criteria, we are convinced that the intention of States is the most important one and must prevail over other possible criteria. In other words, the objective criteria, as outlined by the Special Rapporteur, must never prevail over the subjective criterion, where the intention of States was clear.

Regarding final clauses contained in non-binding instruments, the reasoning included in paragraph 132 (c) of the report of the Special Rapporteur, admitting the existence of some legal effect of a final clause indicating that the instrument in question is not legally binding, is difficult to apprehend. Any statement of such content is merely declaratory, a piece of information, a statement of fact. As such, it has no legal effect. A similar conclusion should be drawn when considering whether the power of revocation is somehow limited. We firmly believe that there are no restrictions in this regard in case of non-legally binding instruments.

The above-mentioned issue is linked to the question presented in paragraph 133 of the report: determining the extent to which non-legally binding international instruments, or at least some of them, despite their non-binding nature, would produce or be attributed legal effects in international law. The assumption that a non-legally binding instrument produces or may be attributed some legal effect, creates unnecessary confusion, as by definition no legal effect may be generated. When States decide to use a non-legally binding instrument, it is on purpose. Whether the reasons are grounded in internal processes of States or whether the reasons are linked to the subject-matter, the result is the lack of legal effect.

At the same time, non-legally binding instruments may have some implications or consequences, for instance as a source used during the process of treaty interpretation, or as means contributing to the crystallization or consolidation of a rule of customary international law; however, even in such case the threshold of legal effects would not be reached.

The question whether the prohibition of the violation of *jus cogens* norms applies to non-legally binding instruments, is closely interlinked to the above-mentioned. States and international organisations are bound by this rule when concluding such instruments due to the fact of its general applicability to their behaviour. However, the provisions of Article 53 and 64 of the 1969 Vienna Convention regulate only the conflict of a treaty and a norm of *jus cogens*. It must be then read as a given that these articles do not regulate any conflict between *jus cogens* norm and a non-legally binding instrument, as there is no legal effect of such instrument. Using the words "termination" and "nullity" with respect to non-legally binding instruments in general is highly problematic as it is not properly reflecting the absence of their legal effect.

Madam / Mr. Chair,

Now I would like to comment on the topic **"Succession of States in respect of State responsibility"**. We note with concern that the Commission decided to bring its work on the topic to an end in 2025 on the basis of a report of a Working Group to be established at next year's session of the Commission. Our delegation is surprised and disappointed by this decision of the Commission. In our opinion, this approach represents departure from the usual practice of the Commission. The report mentions, in para. 321, "lack of State practice relevant to the topic". The question of sufficient State practice was also posed during an online meeting convened by the Chair of the Working Group in December 2023, as para. 312 of the report mentions. Yet, the question of whether there is sufficient State practice was considered by the Commission when it decided to include the topic in its programme of work in 2017. Then, the Commission had to consider the criteria for inclusion of topics on its programme of work and, judging by the outcome, the Commission clearly came to a conclusion that there was sufficient State practice. That State practice could hardly disappear over time. Therefore, we ask ourselves the question, whether the Commission was wrong then or whether it is wrong now.

In any case, the General Assembly took note of the decision of the Commission to include the topic in its programme of work in 2017 (resolution 72/116). And in the previous debates of the Sixth committee on this topic, number of States supported the continuation of the work on the draft guidelines, which have been thoroughly discussed by the Commission and the Sixth Committee, and are almost completed.

As a matter of general principle, the Commission should be guided in its work by the views of States and duly take into account the prevailing view of States on the way forward in respect of this and other topics. The members of the Commission often stress, and rightly so, that they are here, in the Sixth Committee, to listen to views of States. We are convinced that the prevailing view is clear – those delegations who intervene or in the past intervened on this topic, mostly support the finalization of the project, as originally planned. Therefore, we suggest that the Working Group and the Commission continue its work on the topic, finalize the first reading of the draft guidelines and submit them to the States for comments. We are convinced that the work on the draft guidelines could be finalized by the Working Group itself, just as it was done in the case of completion of the Articles on nationality in relation to succession of States, adopted by the Commission in 1999.

Thank you Madam / Mr. Chair.