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Sixth Committee

“International Law Commission: Cluster III”

Statement by Michelle Duin

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

1. Chair, please allow me to start with the topic 'Prevention and repression of piracy and armed robbery at sea'.
2. The Kingdom of the Netherlands wishes to thank the previous Special Rapporteur for his work on this topic and congratulates the new Special Rapporteur on his appointment. My Government, furthermore, wishes to thank the International Law Commission for its work on this topic thus far.
3. My Government welcomes the decision of the Commission not to duplicate existing frameworks or academic studies, and strongly supports the decision of the Commission not to seek to alter any of the rules set forth in existing treaties, in particular the decision to preserve the integrity of the definition of piracy as contained in article 101 of the United Nations Convention on the Law of the Sea.
4. The Commission expressed many doubts, concerns and varying views regarding draft articles 4, 5, 6 and 7, as proposed by the Special Rapporteur. In general, the Kingdom of the Netherlands wishes to stress the importance of continuing to distinguish between piracy, on the one hand, and armed robbery at sea, on the other. My Government notes that the lack of distinction between piracy and armed robbery at sea runs throughout these draft articles.

5. Regarding the future programme of work, my Government considers it would be useful to examine if the diverse practices of states pose any problems in practice, and that it would be useful to focus on the doctrine in conjunction with state practice and case law. Of the themes considered by the Commission, the following would be of particular interest to the Kingdom of the Netherlands:
- Consequences of technological developments in the fight against piracy and armed robbery at sea;
 - Humanitarian aspects, including the assistance, compensation and repatriation of victims; and
 - The loss of flag.
6. As for the final form of the outcome of the work of the Commission on this topic, which still needs to be determined, the Kingdom of the Netherlands considers that the added value of draft articles has yet to be established. So far, no gaps or insufficiencies have been identified. If that remains the case, my Government would deem a report of the Commission, possibly with draft conclusions, but without any draft articles or draft guidelines, the most suitable outcome.

Chapter VIII (Non-legally binding international agreements)

7. Chair, let me now continue to the topic of non-legally binding international agreements.
8. My Government would like to thank the Special Rapporteur for his first report and takes note of the observations made by members of the International Law Commission.

9. The Kingdom of the Netherlands welcomes the approach taken by the Special Rapporteur to explore and clarify the nature, regime and potential legal effects of non-legally binding international agreements, and not to anticipate the possible outcome of the work.
10. My Government notes that some States have objected to the choice of title for the present topic. The Kingdom of the Netherlands understands that, in the practice of some States, the term "agreement" necessarily refers to a binding instrument and that these States therefore suggest to replace "agreement" with another term, such as "instrument" or "arrangement".
11. My Government considers that the term "agreement" may refer to binding texts. The term can, however, in our view, also refer to instruments *without* legal force. Whether the term is meant to refer to one, or the other type of document depends mostly on the context in which that term is used. One treaty may use the term "agreement" to refer exclusively to binding instruments. In another treaty, that same term may have been intended by the parties to encompass both binding instruments and other types of arrangements. The answer depends, then, on the context in which the terms appear and the circumstances surrounding the conclusion of a text. These are elements that thus help to ascertain the intention of its authors.
12. My Government can therefore accept the current choice of title, but could also accept a title that refers to "instruments" or "arrangements", as long as this choice does not prejudice the meaning to be given to these terms

in any particular treaty or other sort of document. This observation is relevant to substantive aspects of the study to be conducted on the present topic.

13. As regards the scope of the current topic, the Kingdom of the Netherlands agrees with the Special Rapporteur that agreements concluded with or between private parties should be excluded from the topic, as well as tacit or oral agreements. However, my Government does see merit in including in the scope of the topic non-legally binding international agreements concluded between substate entities of different countries. In Dutch practice, substate entities are frequently involved in the conclusion of such agreements and as such, they are internationally engaged.

14. It might also be useful to take instruments concluded within a multilateral institutional framework into account, such as resolutions and guidelines, since they may have effects under the rules of treaty interpretation as already identified by the Commission in its draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties. This aspect also merits close attention in the context of non-legally binding international agreements.

15. Chair, the Kingdom of the Netherlands welcomes the focus of the Special Rapporteur on three different areas of study, namely the criteria for distinguishing non-legally binding international agreements from treaties, the regime governing non-legally binding international agreements, and their legal effects.

16. With respect to the study of legal effects, the Kingdom of the Netherlands welcomes in particular the suggestion by the Special Rapporteur to review the effects which non-legally binding international agreements may have under the rules of treaty interpretation.
17. In this respect, my Government notes that the Commission has previously found that a non-legally binding agreement may qualify as an agreement between the parties, which bears on the interpretation of a treaty subsequent to its conclusion.
18. My Government invites the Special Rapporteur to also consider how a non-legally binding agreement may form part of the context of a treaty for the purpose of its interpretation where this agreement was made in close connection with the conclusion of the treaty.
19. Moreover, the Kingdom of the Netherlands suggests that non-legally binding agreements may serve as evidence of the ordinary meaning of a treaty provision, so that they can help to decide the ordinary meaning of a term as used in a treaty. Where a treaty refers to a non-legally binding agreement in its preamble, this agreement could also be relevant to establishing the object and purpose of that treaty.
20. At the same time, my Government stresses that the weight accorded to a non-legally binding agreement in this context depends on whether the agreement can be taken to reflect the intention of the parties when they concluded a treaty. A non-legally binding agreement may therefore not be used to bind States to treaty obligations which they did not intend to undertake. Such an agreement must therefore be weighed together with

all the other means of treaty interpretation relevant to establishing the intention of the parties.

Chapter IX (Succession of States in respect of State responsibility)

21. Chair, I would now like to turn to the topic on Succession of States in respect of State responsibility.

22. The Kingdom of the Netherlands has taken note of the decision of the Commission to establish a working group for the purpose of drafting a report that would bring the work of the Commission on this topic to an end at its next session. As previously expressed, my Government supports that decision as an appropriate outcome of the Commission's consideration of this topic.

23. My Government has also taken note of the discussions in the Commission concerning the elements to be included in the final report. The Kingdom of the Netherlands agrees with the approach that the report would describe the difficulties faced in the work on the topic, without going in their substance. In particular, it would be useful to reflect on the limited availability of State practice and its diverse and context-specific character, often treaty-based, where such practice exists, making it difficult to draw up clear-cut rules.

24. My Government also believes the report should highlight the importance of ensuring consistency with prior work of the Commission, in particular the work on the articles on the responsibility of States for internationally wrongful acts.

25.Thank you Chair.