



S T A T E M E N T

by

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79th session of the United Nations General Assembly
Sixth Committee

*Report of the International Law Commission
on the work of its seventy-fifth session (item 79)
Cluster III*

New York, 30 October 2024

(check against delivery)

Madam Chair,

I will address Chapters VI, VIII and IX of this year's Report of the International Law Commission, namely the topics “**Prevention and repression of piracy and armed robbery at sea**”, “**Non-legally binding international agreements**” and “**Succession of States in respect of State responsibility**”.

Let me turn first to the topic of “**Prevention and repression of piracy and armed robbery at sea**”. We thank the former Special Rapporteur Mr. Yacouba Cissé for his second report and for his contribution to the Commission’s work on this topic. We appreciate the second memorandum prepared by the Secretariat. Our congratulations also go to Mr. Louis Savadogo for being appointed as a new Special Rapporteur and we wish him success in his role.

Slovakia agrees with the Commission’s view that the starting point for the analysis of the topic shall be the United Nations Convention on the Law of the Sea (UNCLOS). The second report of the Special Rapporteur provided useful analysis of practice of international organisations, regional approaches and bilateral practices with objective to clarify the content of the obligation of cooperation in the repression of piracy under Article 100 of the UNCLOS. We take note of the effort of the Special Rapporteur to reflect these findings in the proposal of draft Article 4 on “General obligations” and draft Article 5 on “Obligation of prevention”. We however share some of the Commission’s doubts about the content of these draft proposals. Draft Article 4 as provisionally adopted by the Drafting Committee more appropriately streamlines the original proposals of draft Articles 4 and 5.

Reacting to the second report of the Special Rapporteur, we stress the importance of distinguishing between the concepts of prevention and repression. We would call for caution in using these two terms interchangeably. In relation to armed robbery at sea, we would be wary of its qualification as international crime or about the applicability of universal jurisdiction regime to this crime.

In terms of the future work on this topic, we share the suggestion of some members of the Committee to consider proceeding with a theme-based rather source-based approach. This could help to grasp each aspect of the topic in its entirety. Consequently, we see no reason to rush in deciding on the final form of the outcome of the Commission’s work on the topic.

Madam Chair,

Moving to “**Non-legally binding international agreements**”, allow me to start by congratulating Mr. Mathias Forteau for his appointment as a Special Rapporteur for this topic and I wish him all the best in his future endeavours in this capacity. We appreciate his approach of initial discussion to define general direction of the Commission’s work in the particular context of this topic.

In general, we would advocate for caution instead of ambition for this topic. Non-legally binding international instruments are frequently and purposefully used in practice of States for their efficiency and flexibility. Emphasis should therefore be laid on avoiding undue limitations on the freedom of States to have recourse to such instruments. The Commission’s work should not, in any way aim to form basis for a new framework or regime regulating these instruments, but rather focus on practical aspects – their distinguishing features and potential legal implications.

Last year, we invited the Commission to consider changing the title to "non-legally binding international instruments". While we echo this invitation as well as comments made by the European Union in this regard, we also acknowledge a thorough study in the excellent first report of the Special Rapporteur. Eventually, what seems to be decisive is rather the limitation of the scope of the topic. Generally, we agree with the limitation of the scope of the topic as proposed by the Special Rapporteur in his first report, particularly in paragraphs 97-102, 110 and 112. Besides, we would like to offer a few additional considerations:

- In relation to acts adopted within the framework of intergovernmental conferences that do not have separate legal personality, we concur with the Special Rapporteur that these acts are often dependent on the specific institutional context in which they are adopted, and thus, we do not *a priori* favour their inclusion in the scope of the topic.
- Similarly, we do not support including within the scope non-binding declarations annexed to treaties as their integral part and final acts of intergovernmental conferences leading to the adoption of treaties. These instruments are closely linked to the specific treaty regimes, and as such, we do not see the need to provide further clarity about their distinctive criteria or legal effects.
- At this stage, Slovakia does not have strong views whether or not arrangements concluded between sub-State entities of different countries should be included in the scope.

Taking into account our approach towards the topic, provisionally, we can endorse the proposed form of draft conclusions. Last but not least, we would discourage the Special Rapporteur and the Commission to dwell into considerations related to *jus cogens* norms and the non-legally binding international instruments. Such considerations would be relevant only in cases of potential normative conflict. However, as the Special Rapporteur rightly points in paragraph 112 of his report, as long as an agreement contains at least one binding provision, it is a treaty. Extending the doctrine of *jus cogens* norms outside of legally binding agreements or acts might not be corresponding with the recent respective product of the Commission nor rooted in the practice of States.

Madam Chair,

Last part of my today's intervention will be focused on the topic of “**Succession of States in respect of State responsibility**”. Slovakia was disappointed with the last year's decision of the Commission to discontinue the standard process of the consideration of the topic just before the completion of first reading of draft guidelines and creating a Working Group with the purpose “*to consider the future of the work of the Commission on the topic, as the Special Rapporteur was no longer with the Commission*”.

The outcome of considerations in the Working Group during this year's session of the Commission raises even more serious concerns. The reasons invoked as a justification for the establishment and extension of the Working Group, particularly the purported insufficiency of States' practice, ought to be analyzed before the Commission recommended the inclusion of the topic on its program of its work. Consonance of the content of the ILC draft guidelines with the philosophy, major conclusions and directions provided in articles of the Resolution of the Institute of International Law on similar topic is in our view a manifestation of their sound basis. *Vis-à-vis* the form of the output of the Commission, we believe that the change from draft articles to draft guidelines met with significant support two years ago, while it is worth recalling that mine and some other delegations were supportive also of the initial form of draft articles. Yet these views of States seemed not be taken into account.

My delegation is also not convinced by the arguments related to the “difficulty in establishing the relationship between identified practice and rules of customary international law” or the

calls “to distinguish more clearly between instances of codification and progressive development”. Looking at previous products of the Commission, calls for clearer distinction between the progressive development and codification were hardly a reason to discontinue work on any of them. Similarly, some topics previously worked on or on the current programme of work of the Commission have not been anchored on robust State practice. At some instance, existing State practice might have hardly allowed even for progressive development. Eventually, Article 13 of the UN Charter refers to the “progressive development of the international law and its codification”, not the other way round.

To conclude, from among the options for further action presented by the Working Group, Slovakia supports those which are not indifferent to the efforts and resources vested in the work on this topic. Such is only the one reflected in paragraph 327.

I thank you.