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INTERNATIONAL LAW COMMISSION REPORT (CLUSTER III)

Mr./Madam Chair,

The topic "**Prevention and repression of piracy and armed robbery at sea**" is closely linked to the safe global maritime affairs. Needless to say that maritime security challenges exist all around the globe, with piracy and armed robbery at sea being a significant issue. Hence, we commend the efforts of the ILC to tackle this both legally complex yet practically important matter.

Türkiye appreciates the work undertaken by the former Special Rapporteur Yacuba Cissé and conveys its support to Mr. Louis Savadogo, the new Special Rapporteur, for his future work.

The second report by the Special Rapporteur provides a comprehensive analysis of practice of international organisations involved in combating piracy and armed robbery at sea. It also reviewed regional and subregional approaches to this phenomenon and description of State practice on the basis of bilateral agreements. In this context, we would also like to express our appreciation to the Secretariat for the preparation of the memorandum on the writings relevant to the definitions of piracy and of armed robbery at sea.

With regard to draft Article 4, we share the preference expressed by the Members for the deletion of phrase in paragraph 2 that describes piracy and armed robbery at sea, as international crimes.

Likewise, we too are doubtful as to the appropriateness of the reference to armed conflict in the same paragraph.

Moving to the draft Article 5, this delegation finds the formulation of the last paragraph highly problematic. While the draft Article impose obligation on States for the prevention and repression without providing clarity of the differences of these two concepts, it does additionally envisage the obligation of cooperation with "competent" international organisations, leaving the question open how to decide on the "competence".
Moreover, the last paragraph of the Article extends the obligation of cooperation to "non-State actors". We share the view that the vagueness surrounded the concept and the lack of unified understanding of its meaning make it vulnerable to mis practices and exploitation by terrorist organisations. Thus, we strongly suggest reviewing the Article in light of the comments of States.

As put forward by the Members of the Commission, we too encourage the Special Rapporteur to examine the relevant legal instruments beyond the UN Convention on the Law of Sea that could provide legal basis for the topic. As highlighted on several occasions by this delegation[1], the latest being during our discussions on Cluster I last week, Türkiye is of the view UN Convention of the Law of Sea is not the only legal framework that regulates all activities in the oceans and seas. We do also not agree with the view that the Convention has a universal and unified character. I wish to refer to our well-known position on this subject and state that the references cannot be construed as change in our position. In this vein, it is suggested that this approach towards the UNCLOS as well as the suggestions by Members regarding the potential legal basis for the topic under other international legal instruments should be taken into consideration.

Türkiye looks forward to the future work of the International Law Commission on this important topic.

I will now turn to the agenda item "**Non-legally binding international agreements".**

[1] See, *inter alia,* A/68/PV.63, A/70/PV.82, A/71/PV.68, A/72/PV.64, A/73/PV.50, A/74/PV.43, A/76/PV.48, A/77/PV.56 (Resumption I), A/78/PV.44.

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My delegation appreciates the efforts of Special Rapporteur Mr. Mathias Forteau and took note with interest his first report.

Türkiye was among the States that expressed concern during the deliberations at the last session about the terminology used in the title. We carefully examined the factors indicated in the report by the Special Rapporteur regarding the preference for the term "agreement", yet we continue to suggest replacing it with another word, be it "arrangement", "instrument" or any other terminology that reflects the convergence of wills of States, for the following reasons.

First of all, from a practitioner's point of view, we would like to underline that in practice the term "agreement" is rarely used for the "non-legally binding international agreements".

As a matter of fact, it is observed that in additional to the intentional avoidance of the term "agreement" for "non-legally binding" texts, the word "agree" is deliberately and consistently not used in the operative parts of such instruments.

In this regard, the assertion as put forward in the report that the "alternative terms proposed seem to bring more confusion than clarity" is, in our view, not convincing. On the contrary, maintaining the term "agreement", despite the fact that it is the one of the least preferred term in practice for such documents, will cause perplexity.

At this point, it is worthy to recall that the CAHDI of the Council of Europe, which is currently conducting a thorough study on the same topic, had decided to replace the term "agreements" with the term "instruments", as to better reflect the non-legally binding nature of the relevant texts. In this regard, we wish to reiterate our suggestion as to observe and follow the developments in other fora before embarking upon further work on this subject. For, it is of importance that the outcome of the work concerning this topic at the international organisations, albeit not identical, be consistent as much as possible as to avoid any confusion.

Mr/Madam Chair,

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We concur with the view that the goal of the Commissions work on this topic should aim at giving States practical guidance on the considerations they should be aware of as they considered whether or not to conclude non-legally binding international agreements.

Türkiye also agrees with the suggestion regarding maintaining the flexibility of utilisation of such documents.

On the scope of the work, this delegation wishes to point out the vast practice of "non-legally binding agreements", in particular "cooperation agreements", by various State institutions, such as Ministries or other public authorities. If they were excluded, it is most likely that the examples of "non-binding international agreements" would be too limited.

As far as the scope is concerned, we call the Commission to refrain from the inclusion of arrangements concluded with "non-state actors", as suggested by some members.

We noted the divergence of views among the members with respect to criteria for distinguishing treaties from non-legally binding agreements. We are of the opinion that the primary criterion should be the intention of the States which is of key importance.

Moreover, we agree that the use of term "potential legal effects" should be reviewed. Alternative terms such as "implications" or "consequences" might better reflect the outcomes of the such documents, although it is understood that this exercise could be embarked upon once the exact scope of the work be agreed upon. In this regard, as also suggested by the members, it would useful to wait for the responses of the States to the questionnaire before conducting any consideration on the "potential legal effects".

As to the final form, we share the view that the work of the Commission should not be too prescriptive. Preparation of a list of specific vocabulary or model clauses, without prejudice to their own formulation of provisions or preference of terms to be reflected in the "non-legally binding agreements" by States, could have practical value.

As regards "**Succession of States in respect of State responsibility"** this delegation had voiced its concerns about the topic, as early as its inclusion in the work programme and thus favours the conclusion of the work by the ILC on the topic.

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I thank you, Mr/Madam Chair.