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Sixth Committee

“International Law Commission: Clustell”¹

Statement by Michelle Duin

Legal Officer in International Law from the Ministry of Foreign Affairs to the Kingdom of the Netherlands

NEW YORK, 23 October 2024

ChaptersVI (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.

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:

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

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

25.Thank you Chair.