

Concluding remarks

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Dear colleagues,

As we bring this workshop to a close, I would like to take a moment to reflect on the rich discussions we have had today. Rest assured, I will not attempt to summarise everything discussed today in detail. However, I do want to highlight a few key points of our discussions.

We started the day with Professor Aust's excellent keynote address. Thank you once again, Professor, for giving us such a strong foundation to begin our meeting. One of the standout topics was the applicability — or rather, the non-applicability — of the Vienna Convention on the Law of Treaties to non-binding instruments. Yet, interestingly, we explored how analogies from the Vienna Convention could still inform interpretation. Professor Aust's words set the stage for the critical debates that followed, underscoring the increasing relevance of non-legally binding instruments in global governance. We also delved into the concept of constructive ambiguity, something that resonated with many of us, especially in the context of non-legally binding instruments. And we touched on the importance of considering both inter-institutional agreements and the role of sub-national actors in this landscape.

In *Panel 1*, we examined "'good' and 'bad' practices" in the field of non-legally binding instruments. The Panel featured a presentation by Mr. Hill, who walked us through specific provisions, terminology, and types of text used in these instruments. Terminology, unsurprisingly, played a critical role here. Mr. Hill advocated against using the term 'agreement' in this context. As we discussed with Professor Forteau, avoiding this term is very useful when crafting non-legally binding instruments. Mr. Hill's presentation provided a solid foundation for the subsequent panel discussion where four legal advisors shared their practical experiences in handling these instruments, gave an account of their daily work adjusting these provisions and provided us with several examples. We were also fortunate to hear observations from the Council of Europe's Office of the Commissioner for Human Rights, which added a crucial human rights dimension to our discussions. During the discussion, we explored the merits and drawbacks of national registers and the challenges of multilingualism, which can complicate these processes. This led us into an engaging discussion about *express exclusion clauses* and the potential advantages of publication mechanisms.

In *Panel 2*, we explored the "potential indirect legal effects of non-legally binding instruments." Professor Waibel outlined four compliance pathways through which non-binding instruments can still exert influence, even though express exclusion clauses may be in place. It was fascinating to see how non-binding instruments can contribute to the development of customary international law and their pre-law function, particularly with regard to the principle

of *good faith*. The insights provided by our colleagues from the Netherlands and Ireland, and our colleague from the UOV/UNODC gave us a diverse range of perspectives on how these

instruments can shape international practice. We heard compelling examples, including the situation in Northern Ireland and the Iron Rhine project, which underscored the real-world impact of non-legally binding instruments.

Professor Forteau then updated us on the progress of the International Law Commission's work on this topic, emphasising the importance of terminology and why he advocates for using the term 'agreement', albeit cautiously. This ongoing debate reminds us how crucial it is to make our positions clear, particularly in venues like the Sixth Committee. We don't want it to be said that only a few states raised this issue—this is fundamental to our practical work.

Our *third panel* tackled one of the more contentious aspects of non-legally binding instruments: the potential for these instruments to "circumvent" formal treaty procedures. We heard from Professor Hathaway, who discussed the reasons for choosing non-legally binding instruments over treaties. While there are many good reasons for this choice, we also considered the potential downsides, such as the risks of avoiding political and legal oversight. Her call for transparency concerning these instruments was compelling, and the panel raised many practical challenges, such as how to manage text revisions effectively. The legal advisors from Cyprus, Finland, and Greece shared their experiences and strategies for mitigating risks in this area. It is clear that while non-legally binding instruments offer flexibility, they also present challenges that require careful management.

Finally, our *concluding session* brought everything full circle with a discussion on the usefulness and appropriateness of a potential model text, guidelines, a compilation of good practices, or even a glossary for non-legally binding instruments. This provided us an insightful overview of possible future actions, some of which I have already sketched out today and which we will explore further tomorrow.

I want to thank all of our speakers, panelists, and participants for their contributions, and I hope that the discussions on the important topic of non-legally binding instruments will continue as we navigate through this evolving landscape. It is clear that the insights gained here will help guide us in the future. Thank you all once again, and I am looking forward to the decision the CAHDI might take on the way forward.

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