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REPORT OF THE WORKING GROUP ON UNILATERAL ACTS OF STATES

1. As a result of the discussion in the Commission's Plenary of the second report of the Special Rapporteur on the topic, the Commission, at its 2594th meeting on 25 June 1999, decided to reconvene the Working Group on Unilateral Acts of States. At its 2596th meeting, on 2 July 1999, the Commission decided to appoint the Special Rapporteur, Mr. Victor Rodriguez-Cedeño, as Chairman of the Working Group and to transmit to it his second report together with the comments made in Plenary.

2. The Working Group was composed as follows: Mr. Rodriguez-Cedeño (Chairman), (Special Rapporteur); Mr. H. Al Baharna, Mr. J.C. Baena-Soares, Mr. G. Gaja, Mr. G. Hafner, Mr. Q. He, Mr. P.C. Kabatsi, Mr. J.L. Kateka, Mr. I. Lukashuk, Mr. G. Pambou-Tchivounda, Mr. A. Pellet, Mr. P.S. Rao and Mr. R. Rosenstock (ex-officio).

3. The Working Group agreed that its task was not to repeat the debate which had already taken place in Plenary on the Special Rapporteur's second report, a summary of which would be included elsewhere in the relevant chapter of the Commission's report. Rather, its task was (a) to agree on the basic elements of a workable definition of unilateral acts as a starting point for further work on the topic as well as for gathering relevant State practice, (b) to set the general guidelines according to which the practice of States should be gathered and (c) to point the direction that the work of the Special Rapporteur should take in the future.

4. As regards the first point indicated in the paragraph above, doubts were expressed concerning some of the elements contained in the definition of unilateral acts provided by the Special Rapporteur in his second report.

5. The word "legal" qualifying the expression "unilateral act" was generally considered unnecessary to the extent that it would be clearly established in the definition that the unilateral acts under study by the Commission were those purporting to create "international legal effects" and not merely declarations of a political nature.

6. The adjective "unequivocal" applied to the unilateral act seemed to imply the requirement of an element of clarity in the formulation of the act; this was generally considered as unduly restricting the scope of the topic and as a source of potential problems. International practice showed that unilateral acts were often not a model of clarity but that did not necessarily mean that they were devoid of legal effects. The interpretation of unilateral acts was precisely one of the aspects which had to be tackled by the Commission in the context of the present topic.

7. The element of "publicity" as formulated in the Special Rapporteur's definition was also questioned. It was noted that this element, understood as the use of mass-media to make the act widely known to the international community, might be required in some very specific kind of unilateral acts such as those dealt with by the International Court of Justice in the Nuclear Tests cases, but not in all unilateral acts. It was felt that, as a general requirement in the definition of a unilateral act, "publicity" could only be understood in the sense that they should be notified or otherwise known to the addressee of the act.

8. The concept of "international community as a whole" as a possible addressee of unilateral acts, as contained in the Special Rapporteur's definition, was also questioned. Doubts were expressed as to whether "the international community as a whole" could be considered a subject of international law and, consequently, as susceptible of being a holder of international rights or obligations.

9. The element "with the intention of acquiring international legal obligations" contained in the Special Rapporteur's definition was also questioned as unduly restricting the topic. Unilateral acts could also purport to acquire or maintain rights. Some members suggested the inclusion of the words: "with the intention to create a new legal relationship". It

was noted, however, that the word "new" was not accurate since the purpose of some acts was to maintain certain rights rather than creating new ones (protest). Furthermore, the effect of certain acts could be the absence of a legal relationship. It was generally agreed that this element of the definition should be reformulated as "intention to produce legal effects on the international plane".

10. Divergent views were expressed on the element of "autonomy" of the act included in the Special Rapporteur's definition. Some members felt that the inclusion of this element, as understood by the Special Rapporteur, would reduce too much the topic's scope. All unilateral acts could be said to have their foundation either on conventional or general international law. Acts which could reasonably be excluded from the Commission's study were those connected with the conclusion and effects of treaties, such as reservations. Other members were sympathetic to the inclusion of this element of autonomy as an appropriate way of delimiting the topic in order to exclude unilateral acts which were subject to special treaty regimes. It was agreed that, at this stage, this element could be included between brackets in the definition and this could be one point on which governments could be consulted.

11. In the light of the preceding considerations, the Working Group agreed that the following concept could be taken as the basic focus for the Commission's study on the topic, and as a starting point for the gathering of State practice thereon:

"A unilateral [autonomous] statement by a State by which such State intends to produce legal effects in its relations to one or more States or international organizations and which is notified or otherwise made known to the State or organization concerned."

It was also noted in the Working Group that a unilateral statement could be made by one or more States jointly or in a concerted manner.

12. The Working Group also considered the second point indicated in paragraph 3 above, namely the setting of general guidelines according to which the practice of States should be gathered.

13. The suggestion was made that the Secretariat should prepare a typology or catalogue of the different kinds of unilateral acts to be found in State practice. It need not be exhaustive but sufficiently representative of the wide variety of that practice.

14. It was noted, however, that the present sources where such practice could be found were not representative enough, since only some States, and not necessarily from all regional groups or legal systems, possessed up-to-date digests of their international practice. It was suggested that one way of supplementing such sources was for members of the Commission to cooperate with the Special Rapporteur by providing him with materials sufficiently representative of the practice of their respective countries.

15. It was agreed that the Secretariat in consultation with the Special Rapporteur, should elaborate and send to governments, by October 1999, a questionnaire for possible reply within a reasonable deadline, requesting materials and inquiring about their practice in the area of unilateral acts as well as their position on certain aspects of the Commission's study of the topic.

16. The questionnaire should start from the concept of unilateral acts reproduced in paragraph 11 above. It should also refer to specific kinds of unilateral acts, such as promise, protest, recognition or waiver, concerning which materials and information would be sought. It should also further inquire about the practice of States concerning the following aspects of the act:

- who has the capacity to act on behalf of the State to commit the State internationally by means of an unilateral act;
- to what formalities are unilateral acts subjected: written statements, oral statements, context in which acts may be issued, individual or joint acts;
- possible contents of unilateral acts;
- legal effects which the acts purport to achieve;
- importance, usefulness and value each State attaches to its own and other's unilateral acts on the international plane;
- which rules of interpretation apply to unilateral acts;
- duration of unilateral acts;
- possible revocability of an act.

Furthermore, the questionnaire could also contain some questions concerning the general approach or scope of the topic, such as:

- to what extent does the government believe that the rules of the 1969 Vienna Convention on the Law of Treaties could be adapted mutatis mutandis to unilateral acts;

- does the government believe that the Commission should deal:
 - (a) exclusively with "autonomous" unilateral acts, namely those which do not imply a particularization or application of a pre-existing conventional norm, or (b) with all unilateral acts;
- does the government believe that, without prejudice to specific rules regulating non-autonomous unilateral acts, some common rules may apply to autonomous and non-autonomous unilateral acts. If so, which ones or in which areas.

17. It was agreed that the points listed in paragraph 16 are not exhaustive. The Secretariat, in consultation with the Special Rapporteur, could expand them or phrase them in a more appropriate manner.

18. The Working Group also was of the view that the presence of Legal Advisors of Foreign Ministries during the discussion of the Commission's report in the Sixth Committee could be utilized to draw their attention to the need for gathering State practice on this topic and the convenience that their respective governments respond to the above mentioned questionnaire as soon as possible. In this connection, the presence of the Special Rapporteur on the topic during the Sixth Committee discussion could prove useful.

19. As regards the future work of the Special Rapporteur on the topic, he should continue, taking into account the relevant State practice, with the formulation of draft articles, including the possible reformulation, in the light of the comments made in the Commission, of the draft articles submitted in his second report, as well as with the examination of the specific areas related to the topic, such as interpretation, effects and revocability of unilateral acts.
