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UNILATERAL ACTS OF STATES

Report of the Working Group

1. The General Assembly, in resolution 52/156 of 15 December 1997, endorsed the decision of the International Law Commission to include in its agenda the topic "Unilateral Acts of States".
2. At its fiftieth session, the Commission had before it the first report of its Special Rapporteur, Mr. Víctor Rodríguez-Cedeño, contained in document A/CN.4/486, and considered it at its 2534th to 2527th meetings, on 5 to 8 May 1998.
3. As a result of its discussion, the Commission, at its 2527th meeting, decided to reconvene the Working Group on Unilateral Acts of States. 1/
4. The Group held two meetings on 18 and 19 May 1998.
5. As regards the scope of the topic, there was general endorsement of the approach taken by the Special Rapporteur in his report, which concurred with the outline adopted by the Commission at its previous session, and which limited the topic to unilateral acts of States issued for the purpose of producing international legal effects. This excluded from the topic's scope

1/ For the composition of the Working Group, see above, chapter I, Introduction.

acts of States of a purely non-legal nature, unilateral acts of the State which are linked to a specific legal regime and acts of other subjects of international law, such as acts of international organizations.

6. Opinions differed as to whether the scope to the topic extended to unilateral acts of States issued in respect of subjects of international law other than States or erga omnes, and on whether, under the present topic, the effects of unilateral acts issued in respect of States could also be extended to other subjects of international law. It was felt, however, that at this stage, work could proceed without making a final decision on the matter, subject to further examination of this question by the Special Rapporteur and the Commission in Plenary and its further clarification in due course.

7. As to the form which the work of the Commission on the topic should adopt, it was generally felt that the elaboration of possible draft articles with commentaries on the matter was the most appropriate way to proceed. This would ensure the advantages of conciseness, clarity, compactness and systematization of a codification exercise, without necessarily prejudging on the final legal status which might be reserved for such draft articles, namely, a convention, guidelines, restatement or any other outcome.

8. Taking into account the discussion in Plenary as well as in the Working Group it was felt that the Special Rapporteur might already be in a position to produce a number of draft articles. One, on scope, stating that the draft articles would apply to unilateral acts of States. Another draft article, on use of terms, stating that a unilateral act [declaration] is an autonomous [unequivocal] and notorious expression of the will of a State, issued for the purpose of producing international legal effects. And another draft article, laying down that the fact that the draft articles did not apply to unilateral acts of the State which are linked to a pre-existing international agreement, such as, for instance, acts governed by the Law of Treaties, by the Law of the Sea, by the law of international arbitral or judicial procedure or by other specific legal regimes, neither to acts of subjects of international law other than the State, was without prejudice to the application to them of any of the rules set forth in the draft articles to which they would be subject under international law, independently of the draft articles.

9. It was also generally agreed in the Working Group that the elaboration of aspects related to the element of the above definition consisting in the "purpose of producing legal effects" was well within the topic but pertained

also to some other section of the draft articles, such as the effects of unilateral acts. This would cover the study of possible effects of the act, such as the creation of international obligations for the State issuing the act, (namely, promise) the renunciation of its rights, and the declaration of opposability or not opposability to it of the claim of another State or of a particular legal situation (namely, recognition or protest). It would also cover the question whether it would be necessary or not, in order for the act to produce legal effects, for the addressee to accept it or subsequently behave in such a way as to signify such acceptance.

10. It was also felt that, taken into account the views expressed in Plenary, the question of estoppel and the question of silence should be examined by the Special Rapporteur, at the appropriate time, with a view to determining what rules, if any, could be formulated in this respect, in the context of the unilateral acts of States.

11. As regards the future work of the Special Rapporteur, the Working Group recommends that the Commission could request the Special Rapporteur, when preparing his second report, to submit draft articles on the definition of unilateral acts and the scope of the draft articles, taking as a basis the considerations contained in the present report of the Working Group. He could also proceed further with the examination of the topic, focusing on aspects concerning the elaboration and conditions of validity of the unilateral acts [declarations] of States. 2/

2/ The Working Group also considered whether the topic should be confined to the study of unilateral declarations of States. While some members were in favour of limiting the scope of the topic to declarations, as proposed by the Special Rapporteur in his first report, others were of the view that the scope of the topic was broader than declarations and should encompass other unilateral expressions of the will of the State under the general label of unilateral acts.