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UNILATERAL ACTS OF STATES
REPORT OF THE WORKING GROUP
CONCLUSIONS OF THE INTERNATIONAL LAW COMMISSION
RELATING TO UNILATERAL ACTS OF STATES

Introductory note

1. Since 1996 the International Law Commission has been engaged in the codification and progressive development of the topic entitled “Unilateral Acts of States”, for which it appointed Mr. Víctor Rodríguez Cedeño as Special Rapporteur.
2. Having examined the nine reports submitted by the Special Rapporteur and after extensive debates, the Commission believes it necessary to come to some conclusions on a topic, the difficulties and the value of which have both become apparent. Clearly, it is important for States to be in a position to judge with reasonable certainty whether and to what extent their unilateral behaviour may legally bind them on the international plane.
3. The Commission is aware, however, that the concept of a unilateral act is not uniform. On the one hand, certain unilateral acts are formulated in the framework and on the basis of an

express authorization under international law,¹ whereas others are formulated by States in exercise of their freedom to act on the international plane; in accordance with the Commission's previous decisions, only the latter have been examined by the Commission and its Special Rapporteur.² On the other hand, in this second case, there exists a very wide spectrum of behaviours covered by the designation "unilateral acts", and the differences among legal cultures partly account for the misunderstandings to which this topic has given rise as, for some, the concept of a juridical act necessarily implies an express manifestation of a will to be bound on the part of the author State, whereas for others any unilateral behaviour by the State producing legal effects on the international plane may be categorized as a unilateral act.

4. As was decided at its fifty-sixth session,³ the Commission and its Special Rapporteur have accorded priority to the study of unilateral acts in the first of these senses, while bearing in mind that a State may be bound by behaviours other than formal declarations.

5. In the light of these comments, the Commission therefore adopts the following "Guiding principles" applicable to unilateral declarations of States capable of creating legal obligations.⁴

**Guiding Principles applicable to unilateral declarations of States
capable of creating legal obligations**

The International Law Commission,

*Noting that States may find themselves bound by their unilateral behaviour on the
international plane,*

¹ Cf. the laws establishing the extent of the territorial sea or reservations to treaties, which are unilateral acts closely circumscribed by specific rules of international law.

² See *Yearbook ... 1997*, vol. II (Part Two), pp. 64-65, paras. 198-208.

³ *Official Records of the General Assembly, Sixtieth Session, Supplement 10 (A/60/10)*, para. 293.

⁴ *Nuclear Tests* case, Judgment of 20 December 1974, *I.C.J. Reports 1974*, p. 267, para. 43, and p. 472, para. 46.

Noting that behaviours capable of legally binding States may take the form of formal declarations or mere informal conduct including, in certain situations, silence, on which other States may reasonably rely,

Noting also that the question whether a unilateral behaviour by the State binds it in a given situation depends on the circumstances of the case,

Noting also that in practice, it is often difficult to establish whether the legal effects stemming from the unilateral behaviour of a State are the consequence of the intent that it has expressed or depend on the expectations that its conduct has raised among other subjects of international law,

Adopts the following guiding principles which relate only to unilateral acts *stricto sensu*, i.e. those taking the form of formal declarations formulated by a State with the intent to produce obligations under international law,

1. Declarations publicly made and manifesting the will to be bound may have the effect of creating legal obligations. When the conditions for this are met, the binding character of such declarations is based on good faith; interested States may then take them into consideration and rely on them; such States are entitled to require that such obligations be respected.

2. Any State possesses capacity to undertake legal obligations through unilateral declarations.

3. To determine the legal effects of such declarations, it is necessary to take account of their content, of all the factual circumstances in which they were made, and of the reactions to which they gave rise.

4. A unilateral declaration binds the State internationally only if it is made by an authority vested with the power to do so. By virtue of their functions, heads of State, heads of Government and ministers for foreign affairs have the capacity to formulate such declarations. Other persons representing the State in specified areas may be authorized to bind it, through their declarations, in areas falling within their competence.

5. Unilateral declarations may be formulated orally or in writing.

6. Unilateral declarations may be addressed to the international community as a whole, to one or several States or to other entities.

7. A unilateral declaration entails obligations for the formulating State only if it is stated in clear and specific terms. In the case of doubt as to the scope of the obligations resulting from such a declaration, such obligations must be interpreted in a restrictive manner. In interpreting the content of such obligations, weight shall be given first and foremost to the text of the declaration, together with the context and the circumstances in which it was formulated.

8. A unilateral declaration which is in conflict with a peremptory norm of general international law is void.

9. No obligation may result for other States from the unilateral declaration of a State. However, the other State or States concerned may incur obligations in relation to such a unilateral declaration to the extent that they clearly accepted such a declaration.

10. A unilateral declaration that has created legal obligations for the State making the declaration cannot be revoked arbitrarily. In assessing whether a revocation would be arbitrary, consideration should be given to:

- (i) Any specific terms of the declaration relating to revocation;
- (ii) The extent to which those to whom the obligations are owed have relied on such obligations;
- (iii) The extent to which there has been a fundamental change in the circumstances.
