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Summary record of the 2595th meeting

Topic:
Unilateral acts of States

Extract from the Yearbook of the International Law Commission:-
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codification, whereas he himself had no doubt whatsoever on the matter.

80. The decision to re-establish the working group was a very good thing and he announced that, apart from himself, the Working Group on unilateral acts of States would be made up of the following members: Mr. Baena Soares, Mr. Gaja, Mr. Hafner, Mr. Lukashuk, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Rosenstock and Mr. Simma. Needless to say, any other members of the Commission who wished to join were welcome.

81. In its task of defining unilateral acts of States, the Working Group should focus in particular on what had been called "dual autonomy" in view of the fact that, first, if a State acquired a right by means of a unilateral act, in so doing, it imposed an obligation on other States and, secondly, it might be necessary at some stage to tie unilateral acts in with the existing norms of customary international law or with treaty rules.

The meeting rose at 1.05 p.m.

2595th MEETING

Tuesday, 29 June 1999, at 10 a.m.

Chairman: Mr. Zdzislaw GALICKI

Present: Mr. Addo, Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Baena Soares, Mr. Candiotti, Mr. Crawford, Mr. Dugard, Mr. Goco, Mr. Hafner, Mr. He, Mr. Kabatsi, Mr. Kateka, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Pambou-Tchivounda, Mr. Sreenivasa Rao, Mr. Rosenstock, Mr. Simma, Mr. Yamada.

Unilateral acts of States (*continued*) (A/CN.4/496, sect. C, A/CN.4/500 and Add.1,¹ A/CN.4/L.588)

[Agenda item 8]

SECOND REPORT OF THE SPECIAL RAPPORTEUR (*continued*)

1. Mr. GOCO said that the law of treaties did not contain strict requirements as to form. In fact, in the *Legal Status of Eastern Greenland* case, PCIJ had held to be valid and binding the oral statement by the Norwegian Minister for Foreign Affairs on Norway's acceptance of Denmark's claim to the whole of Greenland. There were also other kinds of "transactions" which were acts of con-

duct of Governments that might not be directed towards the formation of agreements and yet were capable of creating legal effects. They included unilateral acts of States. In preparing his second report on the topic (A/CN.4/500 and Add.1), the Special Rapporteur had taken into account the many comments of representatives of States in the Sixth Committee. While not ruling out in the future legal acts which States might formulate within the framework of international organizations, draft article 1 (Scope of the present draft articles) clearly stipulated that the draft applied only to unilateral acts formulated by States.

2. By speaking of unilateral acts, the draft article underscored the fact that the draft was not meant to cover political acts which did not produce international legal effects, or other acts which, although legal, might be considered to fall within the treaty sphere. He wondered, however, whether draft article 1 in its present form could totally eliminate declarations by heads of State which, in reality, were acts of States and had their underpinning and obligatory nature in morality and politics.

3. Draft article 1 was modelled on article 1 of the 1969 Vienna Convention, which expressly provided that the Convention applied only to treaties between States. In the same way, draft article 1 referred exclusively to unilateral acts of States, no doubt in order to exclude other unilateral acts from its scope. He suggested that the following should be added to the article: "It is understood that the present draft articles shall not apply to other subjects of international law or international organizations. Acts of a political character and other acts, although unilateral, do not produce international effects." It would then be clear what was not included in the draft.

4. Admittedly, there was little State practice in regard to unilateral acts of States. The report acknowledged that, in order to ascertain the nature of such State acts, it was fundamental to determine the intention of the State formulating them. In other words, to be bound as a consequence of a unilateral act would to a large extent depend on the specific facts and, more importantly, the subsequent assessment. For example, in the *Nuclear Tests* cases, ICJ had held that France was legally bound by its declaration to cease conducting nuclear tests in the atmosphere. The Court had cited France's public declaration to abide by that obligation. In the *North Sea Continental Shelf* cases, however, the Court had held that unilateral assumption of the obligation by conduct was not likely to be presumed and that a very consistent course of conduct was required in such a situation. In the *Nuclear Tests* cases, the Court had found that the criteria were the State's intention to be bound by the terms of its declaration and that the undertaking be given publicly. There was no requirement of a *quid pro quo* or other subsequent acceptance. In any event, the principle recognized by the Court in the *Nuclear Tests* cases had been applied in the *Military and Paramilitary Activities in and against Nicaragua* case and also by one chamber of the Court in the *Frontier Dispute* case.

5. The question whether a particular unilateral act would have the consequence of blurring the international obligation of the declarant State would depend on the specific facts of each case, notwithstanding the definition of the scope in draft article 1.

¹ Reproduced in *Yearbook ... 1999*, vol. II (Part One).

6. The formulation of draft article 2 (Unilateral legal acts of States) should be simplified. For example, a head of State could be assumed not to make equivocal or ambiguous statements, and it was therefore unnecessary to speak of “unequivocal” expressions of will. Once made, the declaration could not fail to be autonomous, meaning that it was couched independently. Furthermore, with the modern media, a declaration by a head of State was invariably publicized, especially when made at the time of a significant international event, for example the statement made by the President of the United States of America, Mr. Clinton, on 25 June 1999² that no aid would be forthcoming to Yugoslavia as long as President Milosovic remained in office and that US\$ 5 million were being offered for the latter’s ouster. Those were unilateral declarations which could be regarded as binding because they could be relied upon by other States.

7. Nor was it prudent automatically to label a unilateral act “legal”, because that was presumptive. It was enough to speak of a unilateral act. It would also be better to say “incurring” international obligations rather than “acquiring”.

8. Draft article 2 could be reformulated to read:

“For the purposes of the present draft articles, unilateral act means an expression of intent, made publicly by one or more States in relation to one or more other States, the international community or an international organization, with the objective of making an engagement at international level.”

9. He was not opposed to draft article 3 (Capacity of States) or to draft article 4 (Representatives of a State for the purpose of formulating unilateral acts), although paragraph 2 of draft article 4 again pertained to intentions based on the practice of the States concerned. Perhaps the principle of estoppel might apply, by allowing the person to represent the State, assuming no objection was raised.

10. As to draft article 5 (Subsequent confirmation of a unilateral act formulated without authorization), according to paragraph 107 of the second report, confirmation guaranteed the real intention of the State that formulated the act, since it was tantamount to a treaty. However, which was the proper ratifying body when confirmation was required? Should the officials be of the same or of a higher rank?

11. In draft article 6 (Expression of consent), the word “acquire” should simply be replaced by “incur” or “assume”. He had misgivings about draft article 7 (Invalidity of unilateral acts). Subparagraph (a) implied recklessness on the part of the State concerned by acknowledging an error and inexperience on the part of the executive officials who committed the error. Subparagraph (b) was also ambiguous and subparagraphs (c) and (d) suggested that a State had allowed its own representatives to be corrupted and coerced.

12. Lastly, the very nature of unilateral acts was their different treatment, devoid of the rigidity and solemnity of treaties. A declaration did not even require acceptance

by the addressee or any conduct that might signify acceptance. Even verbal declarations could be allowed.

13. Mr. HE said that, given the difficulties involved and for reasons of practical relevance and manageability, it was appropriate to limit the scope of the draft articles to unilateral acts of States for the purpose of producing legal effects, thus excluding acts of a non-legal nature as well as other unilateral expressions of the will of States. Such limitation of the scope of the topic would simplify the work and ensure that it was brought to a successful conclusion.

14. Notwithstanding that practical approach, some issues still warranted further analysis. The present draft articles were intended to apply to unilateral legal acts formulated by States, whether individually or collectively, thus excluding acts of a political nature. But in practice, it would be a complex matter to ascertain the extent of the legal effectiveness of such acts. The unilateral declarations made by nuclear-weapon States providing guarantees to non-nuclear-weapon States was an interesting example. Such a case showed the need to establish clear rules to regulate the operation of unilateral acts of States. The problem was whether the definition in the draft together with the other articles addressing the various legal aspects of unilateral acts of States, would be sufficient to eliminate the ambiguities and doubts about the legal effects of the unilateral acts and guarantees he had mentioned.

15. The views on the definition of unilateral legal acts differed, but the autonomous elements of such acts might be regarded as essential in the sense that the acts were capable in themselves of producing legal effects under international law and did not depend on the performance of another act by other States or on failure to act. Meanwhile, the basis of the binding nature of a unilateral act must also depend on other elements and principles. On that point, it had been noted that the obligatory nature of such an act was also based on the intention of the State that performed it, rather than another State’s legal interest in compliance with the obligations which it created.

16. It was also important to stress the criteria for a unilateral act that must produce legal effects for States which had not participated in its performance and must generate legal consequences independently of the manifestation of the will of other States. In that respect, such acts were strictly unilateral and considerations were restricted to existing principles of good faith, estoppel and international custom and practice. All those elements needed to be further explored so as to help define the issue properly.

17. The topic was to a great extent related to the law of treaties, but by no means did the draft articles have to follow all the relevant provisions of the 1969 Vienna Convention. For instance, on the issue of the addressee of unilateral acts of States, a broader approach was clearly preferable. In view of the dynamic development of the international legal system, unilateral acts of States should be extended to cover both States and international organizations. On the other hand, with the exception of the problem of the invalidity of unilateral legal acts, many procedural and other relevant matters were not addressed in the present draft. For those cases, it would seem neces-

² *Los Angeles Times*, 27 June 1999.

sary to follow the provisions of the law of treaties and consider such matters as rules of interpretation, modification, suspension, termination, etc. so as to make the draft more comprehensive. He fully endorsed the suggestion to refer all the draft articles to the Drafting Committee for detailed consideration.

18. Mr. DUGARD said one of the difficulties facing the Commission was that there was little State practice and few judicial decisions on the subject. He suspected that there might be more evidence of State practice in the archives of States, since it was not unlikely that many unilateral declarations had been made privately in the same way as the Ihlen declaration³ and that other statements might also come to light. Perhaps the Special Rapporteur could attempt to find more State practice on the subject.

19. Paragraph 28 of the second report stated that unilateral acts could be addressed to another State, several States, the international community as a whole or any other subject of international law. It was a very broad statement, particularly the reference to the international community as a whole, which was repeated in paragraph 57. He wondered whether it was a concept that covered what was increasingly being described as “international civil society”. The Commission should be aware of the increasingly important role played by non-governmental organizations in international affairs, as evidenced by their impact on, for example, the Ottawa International Strategy Conference: “Towards a Global Ban on Anti-Personnel Mines”, held from 3 to 5 October 1996, that had led to the adoption of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction; and the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, held at Rome from 15 June to 17 July 1998, that had led to the establishment of the International Criminal Court.⁴

20. The Special Rapporteur stressed in paragraph 54 of the report that the unilateral act must be made publicly. Some members had taken issue with that view, which was difficult to reconcile with, for example, the Ihlen declaration which had been made in private. He suspected that many unilateral declarations were formulated behind closed doors and due regard should be paid to them. According to paragraph 54, the question would be addressed in detail at a later stage. Perhaps the Special Rapporteur would confirm his intention to give greater attention to the issue, possibly in his third report.

21. Some members had criticized the draft articles for adhering too closely to the format of the 1969 Vienna Convention. He was inclined to disagree because he thought the Convention could serve as a helpful guideline. Indeed, his own complaint was that the report did not follow it closely enough.

22. Draft article 7, subparagraph (c), said that such an act would be invalid if the expression of a State’s consent to be bound had been procured through the corruption of its representative by another State. It was an interesting

addition to existing international law, one in which he detected the influence of Latin American jurisprudence, Latin America having taken the lead in adopting international measures to prohibit corruption. It was a necessary provision, but it needed to be explained in greater detail in the article itself and in the commentary. Draft article 7, subparagraph (g), stipulated that the invalidity of a unilateral act could be invoked if the expression of a State’s consent to be bound had been in clear violation of a norm of fundamental importance to its domestic law. As the commentary indicated, that provision was designed to reflect the principle contained in article 46 of the 1969 Vienna Convention, but it actually went beyond article 46, which specified that a State could invoke the violation of a domestic norm as invalidating its consent only where that violation was manifest and concerned a rule of its internal law of fundamental importance. The rule must thus be manifest and known to the other party. Accordingly, draft article 7, subparagraph (g), should be modelled more closely on article 46 of the Convention. Subparagraph (f) correctly drew attention to the conflict with a peremptory norm of international law. In that connection, the Special Rapporteur should take into account any reformulation of the term “peremptory norm” in the context of the draft articles on State responsibility.⁵

23. The Commission had looked at the question of coercion of a State representative in its discussion about circumstances precluding wrongfulness in the draft on State responsibility, but had not considered whether the corruption of the representative of a State could preclude wrongfulness. He urged the Special Rapporteur on unilateral acts of States to follow developments in that discussion to ensure that the draft articles were consistent.

24. Again, draft article 7 should include Security Council resolutions among the factors that could be invoked to invalidate a unilateral act. For example, if a State made a declaration that conflicted with a Council resolution, particularly under Chapter VII of the Charter of the United Nations, that called on Members not to recognize a particular entity as a State, it could be argued that such a unilateral act was invalid.

25. The Special Rapporteur had embarked on a difficult and ambitious task. He wished him every success and supported the suggestion to refer the draft articles to a working group.

26. Mr. HAFNER thanked the Special Rapporteur for a wide-ranging report that clearly pinpointed the main issues needing to be addressed. He associated himself with most of the points that had already been raised, especially by Mr. Pellet (2594th meeting).

27. However, he disagreed with Mr. Simma, who saw no need to codify rules on unilateral acts. On the contrary, such acts were the most common means of conducting day-to-day diplomacy and there was uncertainty, both in the literature and in practice, regarding the legal regime that was applicable to them. As it was the function of international law to ensure stability and predictability in international relations, some regime was needed in order

³ See 2594th meeting, para. 20.

⁴ See 2575th meeting, footnote 10.

⁵ For the text of the draft articles provisionally adopted by the Commission on first reading, see *Yearbook ... 1996*, vol. II (Part Two), p. 58, document A/51/10, chap. III, sect. D.

to prevent unilateral acts from becoming a source of disputes or even conflicts.

28. There was a vast quantity of unilateral acts by States. Examples were the statements made at pledging conferences, expressions of willingness to pay financial arrears to the United Nations, declarations on military exclusion zones, protests, declarations of recognition, declarations of war and declarations of cessation of hostilities. The example given in the footnote on State practice in paragraph 23 of the report should therefore be incorporated in the text together with other examples of unilateral acts. Moreover, any effort to categorize them should be based on an inductive rather than a deductive approach, with a view to reaching general conclusions.

29. On the question of what should be regulated—different forms of transactions (*negotia*) or declarations, the content or form of unilateral acts—he would personally opt for the form. However, the Commission was under pressure to take account of the possible content of declarations, and that could be done when they were categorized.

30. Draft article 1 should be brought into line with draft article 2 by the Drafting Committee or the working group. The commentary to draft article 1 said that the other articles followed the 1969 Vienna Convention. He did not share Mr. Dugard's sympathy with that approach because of the major differences between treaties and unilateral acts. A treaty was an expression of common will by at least two States and was usually the result of a compromise. A unilateral act, however, involved only one State. That alone warranted separation from the treaty regime. The outline for the study of unilateral acts of States discussed at the forty-ninth and fiftieth sessions had also differed markedly from the Vienna Convention regime.

31. He had doubts regarding the statement made in paragraph 33 of the report. It was not always the highest-ranking administrative officer of an international organization who was authorized to sign a treaty. For example, under article 24 of the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, such authority was vested in the President of the Council of Ministers, who was usually the Minister for Foreign Affairs of the member State that held the presidency of the Union. The officer who was entitled to conclude treaties thus depended on the statutes of individual organizations.

32. Draft article 2 posed drafting problems, especially when compared with the significantly different definition that had formed the basis of the Working Group's discussion at the fiftieth session of the Commission. The new version greatly restricted the scope of the draft articles since the last part of it implied that only promises were to be taken into account. He doubted whether that had been the intention of the General Assembly.

33. It was, of course, necessary to scrutinize the relationship of unilateral acts with international law, which endowed such acts with certain effects. But international law could be general, universal, regional, customary or treaty law, all of which presented different conditions for unilateral acts. In fact, it was not inconceivable that a State could acquire rights through a unilateral act if the

particular legal regime governing it so provided. For example, a State was entitled to declare a blockade under international law and acquired certain rights in the process. The same applied to a declaration of neutrality, which must be respected by other States pursuant to the regime governing such declarations. Admittedly, a problem did arise when it came to separating that category of unilateral acts from reservations, which were perhaps merely a specific type of unilateral declaration. Indeed, he wondered whether the discussion of reservations might provide useful pointers for the discussion of unilateral acts.

34. He had doubts about the correctness of draft article 4. In the view of some States, article 7 of the 1969 Vienna Convention, which had served as a model, did not establish a clear-cut rule but only a presumption, a *presumptio juris* rather than a *presumptio juris ac de jure*. That presumption was rebuttable through article 46 of the Convention. He agreed with Mr. Dugard that article 7, subparagraph (g), of the present draft established a different regime from the Convention, but it also seemed to contradict draft article 4. Again, he was hesitant about draft article 4, paragraph 3. Negative security guarantees, for example, had been issued by ministers for foreign affairs, regardless of whether they were heads of delegations. And if a head of delegation was not a minister for foreign affairs, his or her declaration might have no legal effect. At the Third United Nations Conference on the Law of the Sea, the head of the United States delegation had declared that he could accept the solution that had been negotiated,⁶ yet following elections in the United States the new administration had decided it was unable to go along with the solution and fresh negotiations had proved necessary. The declaration by the head of delegation had thus had no binding effect on the United States. During the United Nations Conference on the Law of Treaties, a proposal to expand article 18 of the 1969 Vienna Convention to cover the negotiation phase had been rejected.⁷ That was a further reason why heads of delegations did not necessarily possess full powers. Different kinds of full powers were given to delegations: power to negotiate, to adopt texts, to sign a final act and perhaps even a treaty. But which of those full powers authorized the delegation to make a binding unilateral declaration? It was questionable whether any of them did. The issue must therefore be examined more closely.

35. Draft article 7 should be approached with the utmost care and viewed in the light of the full context of the draft articles. It was too early to assess its full implications and he reserved his position on its content.

36. He fully supported the proposal by the Special Rapporteur to establish a working group to address the extremely difficult issues raised by the study.

⁶ See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XIII (United Nations publication, Sales No. E.81.V.5), 128th plenary meeting, pp. 43-44; and *ibid.*, vol. XVII (United Nations publication, Sales No. E.84.V.3), 192nd plenary meeting, pp. 116-117.

⁷ See *Official Records of the United Nations Conference on the Law of Treaties, First and Second Sessions, Vienna, 26 March-24 May 1968 and 9 April-22 May 1969, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/14, p. 138.

37. Mr. AL-BAHARNA congratulated the Special Rapporteur on the skill he had displayed in addressing the issue of unilateral acts of States. The Special Rapporteur was also convinced that sufficient useful material for the study existed in State practice, jurisprudence and literature.

38. There seemed to be broad agreement in the Commission and in the Sixth Committee that the study should be confined to unilateral acts of States. Unilateral acts by other subjects of international law, such as international organizations, would be excluded. It was a view he supported for the time being in order to avoid adding a further layer of complexity to the topic. He also supported the view that, although international organizations were capable of formulating genuine unilateral acts, their special character and purpose required that separate rules should be applicable to such acts. As stated in paragraph 34 of the report, the lack of a legal regime common to international organizations presented difficulties. He agreed, however, that their exclusion from the study did not affect contemporary practice according to which unilateral acts of States were addressed to States and international organizations without distinction. For the purpose of the study, therefore, while unilateral acts of States could be addressed to international organizations, the capacity of the organizations to formulate such acts was not recognized.

39. As to the relationship with the topic of State responsibility, like others, he thought that, in line with the principal objective of the topic of unilateral acts, which was to provide a strictly limited definition of what was meant by unilateral acts of States, it was necessary to exclude those unilateral acts that gave rise to international responsibility. Such a limited approach would also help the Commission to avoid any possible duplication of the work done on State responsibility. State responsibility dealt with internationally wrongful acts of States that engaged their international responsibility, whereas the present topic was essentially concerned with the regime of autonomous unilateral acts formulated by States with the intention of creating obligations for the declarant States. The Special Rapporteur admitted, in paragraph 6 of his second report, that there was a certain relationship between the unilateral acts by which States engaged their international responsibility and the unilateral acts that were the subject of the current study.

40. Moreover, unilateral acts of States were autonomous and completely independent of any treaty regime. Unlike treaties, they did not require notification or acceptance by the States or other subjects of international law to which they were addressed. The study should deal exclusively with those autonomous unilateral acts of States which were formulated with the intention of creating, by themselves, international legal effects or international obligations for the declarant State. It was generally agreed that unilateral acts whose characteristics and effects were governed by the law of treaties and acts whose normative effect arose from the performance or existence of some other act or treaty should be excluded from the topic.

41. The fourth general point was estoppel. It was doubtful that estoppel arising from a unilateral statement made

by an agent of a State during the proceedings of an international court could be considered a unilateral act. It was argued that the characteristic element of estoppel was not the conduct of the State in question but the reliance of another State on that conduct. While a unilateral act of the State produced a positive result with a clear intention on the part of the State to be bound by it, the unilateral statement creating the estoppel produced a negative result which was basically not intended by the author, although the other interested party could seize the opportunity to benefit from it by using the plea of estoppel. Consequently, one aspect of the definition of an autonomous unilateral act of a State, namely the intention of the State to produce international legal effects, was missing in the unilateral statements that gave rise to the plea of estoppel. As stated in paragraph 14 of the second report, in estoppel there was no creation of rights or obligations; rather, it became impossible to avail oneself of already existing rights and obligations in the context of a given proceeding.

42. Paragraph 23 of the second report pointed to the difficulties involved in defining the scope of the topic. Draft article 1 was intended to limit the scope to unilateral acts of States, thus excluding international organizations, and to unilateral legal acts, to the exclusion of other acts which, although unilateral and legal in character, did not produce international legal effects. The wording of the article did not, however, reflect all the elements he had just described. The words "international effects" were qualified by neither "autonomous", "intention" nor "legal", but they were essential aspects of the definition of the scope of the unilateral acts. He would therefore suggest a more comprehensive version of draft article 1 reading: "The present draft articles apply to autonomous unilateral acts of States formulated with the intention of creating international legal effects."

43. The Special Rapporteur tended to justify his proposed definition in draft article 2, which he admitted was incomplete and non-comprehensive, by referring to article 2, on the use of terms, in the 1969 Vienna Convention. The Special Rapporteur also claimed that the definition contained a specific provision which clarified the meaning of the term "unilateral acts" without being an actual definition of it, by analogy with article 2, paragraph 1 (a) of the Convention, which was not a definition of the term "treaty". Personally, he did not agree with that analysis. If the Commission followed the practice applied in similar instruments, a comprehensive definition of the topic was essential. It was also necessary to have a clear and definite definition of what was meant by "unilateral acts" in the body of the future instrument. With a view to incorporating one, he proposed the following reformulation of draft article 2:

"For the purposes of the present draft articles, a 'unilateral legal act' means an unequivocal and autonomous expression of will, formulated unilaterally and publicly by one or more States in relation to one or more States or an international organization or the international community as a whole, with the intention of creating international legal effects."

44. For the purposes of draft article 2, the word "[declaration]" might not have to be used if the Special Rapporteur

teur could mention in the commentary that the expression “unilateral act” was the general term used for the autonomous expression of will by a State in the form of a declaration, statement, communiqué or otherwise, it being understood that the form which the unilateral act should take was not an essential matter.

45. Since it was generally recognized that not only States but other subjects of international law such as international organizations had the capacity to formulate unilateral legal acts, it seemed advisable to add, at the beginning of draft article 3, the phrase “For the purposes of the present draft articles ...”. By so doing, the Special Rapporteur would be in a better position to explain in the commentary the reason for excluding international organizations.

46. As to draft article 4, paragraph 1 appeared to be the most important, because heads of State, heads of Government and ministers for foreign affairs were the only State officials who were recognized in international practice as being able to commit the State they represented to international obligations and engagements without having to produce an instrument of full powers. Since the eligibility of the categories of State officials mentioned in paragraphs 2 and 3 to formulate unilateral acts on behalf of the State was subject to numerous difficulties, he would suggest that paragraphs 2 and 3 should be deleted.

47. The title of draft article 5 was “Subsequent confirmation of a unilateral act formulated without authorization”, but the English text referred to article 7* as it related to a person authorized to represent a State. Draft article 7 dealt with many other matters, including the consent of a State, the invalidity of a unilateral act when formulated on the basis of an error of fact, fraudulent conduct, corruption, coercion, and so on. It was draft article 4, rather than draft article 7, that referred mainly to authorized persons. Perhaps the formulation of those articles should be reviewed in order to remove any confusion between authorization and invalidity.

48. It had been suggested that draft article 6 should be deleted, on the grounds that it was unnecessary. That might be true, except that the article described how consent operated in respect of a treaty as compared with a unilateral act. Consent to a treaty was given by signature, ratification, accession or acceptance by the State concerned, whereas consent to a unilateral act was expressed by the State at the time the act was formulated. The commentary on draft articles 6 and 7, in the second report, should be separated to address each article individually and should be made more consistent with the 1969 Vienna Convention.

49. Lastly, he favoured the re-establishment of the Working Group on unilateral acts of States as suggested earlier and again wished to thank the Special Rapporteur for coping with a rather complex topic.

50. Mr. GOCO, referring to Mr. Al-Baharna’s comments on draft article 5, said it was his understanding that when a unilateral act was confirmed, that meant the declaration, although made by an authorized person, was valid, whereas prior to such confirmation, the declaration did not produce legal effects. What happened from the

standpoint of repudiation, however? If there were no legal effects prior to confirmation of the declaration, could the declaration also be repudiated during that period on the grounds that the person making the declaration was an unauthorized representative? Article 5 should not limit the scope merely to subsequent confirmation, but should cover repudiation as well. Lack of confirmation might become grounds for estoppel if another State had already relied on the first State’s declaration before it had been confirmed. If the declaration was subsequently acknowledged as a treaty, the way the consenting Government was structured would determine whether ratification was required.

51. Mr. Sreenivasa RAO, referring to Mr. Goco’s comments, said that draft article 5 referred to a unilateral act which was not considered to have a legal effect in the light of draft article 7. The latter article indicated that the person who formulated the unilateral act might be authorized to do so at the time it was made, but that the act could not have legal effect because of certain conditions. Those conditions—corruption, coercion, etc.—had nothing to do with the status of the person formulating the unilateral act, but related rather to the legal effect of the act. If an act had no legal effect, it could neither be confirmed nor repudiated: it was invalid *ab initio*. He would like to hear the views of the Special Rapporteur and Mr. Al-Baharna on how draft article 7 meshed with draft article 5 in a situation requiring subsequent confirmation of an act because the person making it lacked authorization to do so.

52. Mr. AL-BAHARNA said that Mr. Goco was right: draft article 7 carried some elements of authorization, but not all of them. It presumed that the official had been authorized to perform the act but that other elements such as error, conduct or corruption had vitiated the whole procedure. It was draft article 4 that addressed authorization most directly. His suggestion was to review all the relevant draft articles, 4, 5 and 7, with a view to delineating their respective roles in relation to authorization, confirmation, corruption, and so forth.

53. Mr. KABATSI said it was important to point out that it was not necessary that a State should be entitled to confirm a unilateral act formulated without authorization on the grounds of one or another of the factors listed in draft article 7. For example, in respect of subparagraph (f), a State would be incapable of confirming a unilateral act. Other situations, too, might make that impossible for a State, even if it wished to do so.

54. Mr. GOCO, responding to the comments by Mr. Sreenivasa Rao, said that draft article 7 introduced new elements—corruption, coercion and so on—whereas draft article 5, which followed draft article 4 concerning those who had authorization, simply spoke of a representative who made a declaration. The declaration had to be confirmed, because the person who had made it was not the proper party, but it had nevertheless been valid to all intents and purposes: it had simply produced no legal effect.

The meeting rose at 11.40 a.m.

* Typographical error in the English text, “article 7” should read “article 4” (see 2593rd meeting, paragraph 24, text of article 5).