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**Summary record of the 2886th meeting**

Topic:  
**Unilateral acts of States**

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## SUMMARY RECORDS OF THE SECOND PART OF THE FIFTY-EIGHTH SESSION

*Held at Geneva from 3 July to 11 August 2006*

### 2886th MEETING

*Monday, 3 July 2006, at 3 p.m.*

*Chairperson:* Mr. Guillaume PAMBOU-TCHIVOUNDA

*Present:* Mr. Addo, Mr. Candioti, Mr. Chee, Mr. Dugard, Mr. Economides, Ms. Escameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Kateka, Mr. Kemicha, Mr. Koskeniemi, Mr. Mansfield, Mr. Matheson, Mr. Momtaz, Mr. Niehaus, Mr. Opertti Badan, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Valencia-Ospina, Mr. Yamada.

#### **Unilateral acts of States (A/CN.4/560, sect. F, A/CN.4/569 and Add.1,<sup>178</sup> A/CN.4/L.703)**

[Agenda item 6]

#### NINTH REPORT OF THE SPECIAL RAPPORTEUR

1. The CHAIRPERSON, after welcoming the participants of the International Law Seminar, invited the Special Rapporteur, Mr. Rodríguez Cedeño, to introduce his ninth report on unilateral acts of States (A/CN.4/569 and Add.1).

2. Mr. RODRÍGUEZ CEDEÑO (Special Rapporteur) said that the topic of unilateral acts was as complex as it was important. Unilateral legal acts were a reality that was part of States' relations with other subjects of international law. Some of those acts were legal and fell outside a treaty relationship. They could produce legal effects in the absence of any acceptance, consent or another reaction by the addressee, which was perhaps one of their main characteristics.

3. The enormous difficulties which the topic had raised had greatly influenced the final form which the product of his work had taken. He had initially thought, optimistically, that he could codify—without, however, precluding any progressive development—the basic rules governing the functioning of unilateral acts. However, as work on the

study had progressed and he had compiled elements of doctrine, case law and international practice, he had realized that doctrine, although abundant, was not unanimous and that practice, although highly relevant, was not clear or sound enough to support the work of codification and progressive development, although it was not the first time that the Commission had found itself in such a position. With regard to case law, which was also considerable, the 1974 judgments in the *Nuclear Tests* cases had been an important reference. Years later, however, when the ICJ had considered the application submitted by the Democratic Republic of the Congo against Rwanda in *Armed Activities on the Territory of the Congo* and had ruled in 2006 on its jurisdiction, it had taken into account an act that was domestic in origin and unilateral as to form (a decree) and a declaration formulated by a person who in principle had not been authorized to act but had nevertheless been able to do so and to enter into legal commitments on the State's behalf in its international relations.

4. Since being assigned the topic in 1997, he had presented conclusions on unilateral acts, treaty-based acts and the relations between subjects of international law in the context of treaty law and in a unilateral context, as well as views on formal unilateral acts, material unilateral acts<sup>179</sup> and, in particular, at the Commission's request, acts of recognition.<sup>180</sup> At that stage of his work he had had to clarify a number of points, but some uncertainty remained, since the notion of a unilateral act had a number of aspects that were difficult to define, owing to differing legal conceptions. In the view of most members of the Commission, classification of the act was not crucial: an act could be termed recognition, promise or waiver, yet such labels were not even of relative utility, since it was the legal effects that such acts produced that had to be taken into account. Those difficulties, which of course also arose in connection with other topics currently on the Commission's agenda, had led him to go beyond codification in the strict sense and to present a series of draft principles or guidelines (or draft guiding principles, as they were called in the ninth report) that could be very useful to States when they elaborated specific rules governing the functioning of unilateral acts.

<sup>179</sup> See the preliminary report of the Special Rapporteur, *Yearbook ... 1998*, vol. II (Part One), document A/CN.4/486, p. 325.

<sup>180</sup> See the sixth report of the Special Rapporteur, *Yearbook ... 2003*, vol. II (Part One), document A/CN.4/534.

<sup>178</sup> Reproduced in *Yearbook ... 2006*, vol. II (Part One).

5. The discussions in the Sixth Committee had revealed considerable differences of opinion as to the utility of the Commission's work on the topic and the form the final product should take. Some representatives had continued, at the previous session, to draw attention to the need to adopt a set of draft guidelines or principles that would define the notion of unilateral acts and at least put States on the right track. Others, however, had not believed that the Commission's work should necessarily aim for that objective, which was, moreover, virtually unattainable. In any event, the Commission needed to take a decision on the matter. He himself had followed the path set out for him, particularly at the 2003 session, by the members of the Working Group, whom he thanked warmly and whose differing positions he had always sought to reconcile.<sup>181</sup>

6. In preparing the ninth report, he had taken account of the opinions expressed by the members of the Commission at the past nine sessions on the need to address the question of unilateral acts as well as the conclusions of the Working Groups. The views of the representatives of the Sixth Committee had also been very useful.

7. In response to the concerns expressed by the members of the Commission, and with a view to facilitating the consideration of the topic, he had divided his report into two parts. Part One referred to the grounds for invalidity of unilateral acts and the modification and suspension of such acts, together with other related concepts. While those issues had arisen in the course of previous years' deliberations, they had not been formally presented in his reports. Part Two dealt with topics that had been considered previously, from a structural standpoint, in the Commission and in the Working Group established in 2004<sup>182</sup> and 2005:<sup>183</sup> the definition of unilateral acts in a way that distinguished them from other acts which, although apparently unilateral, actually constituted a treaty relationship and were therefore subject to the regime established by the 1969 Vienna Convention (paras. 126–139 of the report). In turn, such acts, as manifestations of will in the strict sense, were distinguished from unilateral conduct that might produce similar legal effects. On that same subject, reference was made to the addressee or addressees of a unilateral act, although that did not affect the fact that the topic was limited to unilateral acts formulated by States. In that regard, the report presented two options for principle 1 (paras. 137–139) that could form part of the definition of such acts and could determine the scope of the draft guiding principles; second, it presented proposed language related to the formulation of the act: capacity of the State (para. 140), persons authorized to act and to enter into legal commitments on the State's behalf in its international relations (paras. 142–150), and the subsequent confirmation of an act formulated without authorization; third, proposed language was suggested in relation to the basis for the binding nature of unilateral acts (paras. 153–156); and lastly, a draft guiding principle was presented in relation to the interpretation of unilateral acts (paras. 157–160). The Special Rapporteur also presented a list of all the guiding principles being proposed, including those concerning the invalidity (paras. 11–78), termination and suspension of unilateral acts (paras. 79–124),

a text that could serve as the basis for the deliberations of the Working Group that was to be reconstituted at the current session.

8. He had sought to accommodate the expectations of the members of the Commission as expressed at the 2005 session by recapitulating the work accomplished to date, conducting a study on a matter that had been addressed when the topic had first been considered, namely conditions of validity and termination of unilateral acts, and proposing a set of guiding principles setting out criteria that States could utilize in the context of their international relations.<sup>184</sup>

9. In Part One of the document, which dealt with the validity and duration of unilateral acts, he addressed the grounds for invalidity, following the structure of the 1969 Vienna Convention while introducing the requisite nuances: invalidity on the ground that the representative lacked competence (paras. 18–34), grounds for invalidity related to the expression of consent (paras. 35–66), and invalidity of a unilateral act on the ground that it was contrary to a peremptory norm of international law or a norm of *jus cogens* (paras. 67–78). With regard to norms applicable to treaties and their relationship to the norms most likely applicable to unilateral acts, he said he had always thought that even if they could not be applied *mutatis mutandis*, a reference to them must be made. He was fully aware that unilateral acts were very different from treaty-based acts and that their particularities must be taken into account when codifying existing rules or elaborating principles or guidelines relating to them. Part One also considered in detail the termination and suspension of unilateral acts and other related concepts.

10. In Part Two he had endeavoured to recapitulate the work accomplished thus far and to explain the draft guiding principles he had presented, always relying on the Commission's deliberations and the views expressed by States in the Sixth Committee as well as on doctrine, practice and case law.

11. Addressing all those questions in a single document had been a difficult if not virtually impossible task. He had done his best in the time available to him and had taken into account the views of members of the Commission. He suggested that members should consider Part One of the ninth report on the validity and duration, and the termination and suspension of unilateral acts in plenary meeting, and leave Part Two on the definition, formulation, basis for the binding nature and interpretation of unilateral acts to the Working Group so as to expedite consideration of the topic at the current session.

*The meeting rose at 4.10 p.m.*

## 2887th MEETING

*Tuesday, 4 July 2006, at 10 a.m.*

*Chairperson:* Mr. Guillaume PAMBOU-TCHIVOUNDA

<sup>181</sup> *Ibid.*, vol. II (Part Two), p. 57, paras. 304–306.

<sup>182</sup> *Yearbook ... 2004*, vol. II (Part Two), p. 96, paras. 245–247.

<sup>183</sup> *Yearbook ... 2005*, vol. II (Part Two), p. 62, paras. 327–332.

<sup>184</sup> *Ibid.*, pp. 60–62, paras. 301–316.