

Chapter IX

UNILATERAL ACTS OF STATES

A. Introduction

160. In the report of the Commission to the General Assembly on the work of its forty-eighth session (1996), the Commission proposed to the General Assembly that the law of unilateral acts of States should be included as a topic appropriate for the codification and progressive development of international law.⁸⁵⁶

161. The General Assembly, in paragraph 13 of resolution 51/160 of 16 December 1996, *inter alia*, invited the Commission to further examine the topic “Unilateral acts of States” and to indicate its scope and content.

162. At its forty-ninth session (1997), the Commission established an open-ended working group on the topic which reported to the Commission on the admissibility and feasibility of a study on the topic, its possible scope and content and an outline for a study on the topic. At the same session, the Commission considered and endorsed the report of the Working Group.⁸⁵⁷

163. Also at its forty-ninth session, the Commission appointed Mr. Víctor Rodríguez Cedeño, Special Rapporteur on the topic.⁸⁵⁸

164. The General Assembly, in paragraph 8 of its resolution 52/156 of 15 December 1997, endorsed the Commission’s decision to include the topic in its work programme.

165. From its fiftieth session (1998) to its fifty-seventh session (2005), the Commission received and considered eight reports from the Special Rapporteur.⁸⁵⁹

166. The Commission also reconvened the Working Group on unilateral acts of States from its fiftieth session (1998) to its fifty-third session (2001) and from its fifty-fifth session (2003) to its fifty-seventh session (2005). The Working Group in its report at the fifty-sixth session (2004) established a grid which would permit it to use uniform analytical

tools.⁸⁶⁰ Individual members of the Working Group took up a number of studies, which were carried out in accordance with the established grid. These studies were transmitted to the Special Rapporteur for the preparation of his eighth report. The Commission requested the Working Group at the fifty-seventh session (2005) to consider the points on which there was general agreement and which might form the basis for preliminary conclusions or proposals on the topic.

B. Consideration of the topic at the present session

167. At the present session, the Commission had before it the Special Rapporteur’s ninth report (A/CN.4/569 and Add.1) which it considered at its 2886th, 2887th and 2888th meetings on 3, 4 and 5 July 2006.

168. The ninth report of the Special Rapporteur comprised two parts. The first part related to the causes of invalidity,⁸⁶¹

⁸⁶⁰ The grid included the following elements: date; author/organ; competence of author/organ; form; content; context and circumstances; aim; addressees; reactions of addressees; reactions of third parties; basis; implementation; modification; termination/revocation; legal scope; decision of a judge or an arbitrator; comments; literature, *Yearbook ... 2004*, vol. II (Part Two), p. 96, para. 247 and footnote 516.

⁸⁶¹ “Principle 5.

“Invalidity of an act formulated by a person not qualified to do so

“A unilateral act formulated by a person not authorized or qualified to do so may be declared invalid, without prejudice to the possibility that the State from which the act was issued may confirm it in accordance with guiding principle 4.”

“Principle 6.

“Invalidity of a unilateral act that conflicts with a norm of fundamental importance to the domestic law of the State formulating it

“A State that has formulated a unilateral act may not invoke as grounds for invalidity the fact that the act conflicts with its domestic law, unless it conflicts with a norm of fundamental importance to its domestic law and the contradiction is manifest.”

“Principle 7.

“Invalidity of unilateral acts

“1. (a) A State that is the author of a unilateral act may not invoke error as grounds for declaring the act invalid, unless the act was formulated on the basis of an error of fact or a situation that was assumed by the State to exist at the time when the act was formulated and that fact or that situation formed an essential basis of its consent to be bound by the unilateral act.

“(b) The foregoing shall not apply if the author State contributed by its own conduct to the error or if the circumstances were such as to put that State on notice of the possibility of such an error.

“2. Fraud may be invoked as grounds for declaring a unilateral act invalid if the author State was induced to formulate the act by the fraudulent conduct of another State.

“3. Corruption of the representative of the State may be invoked as grounds for declaring a unilateral act invalid if the act was formulated owing to the corruption of the person formulating it.

“4. Coercion of the person who formulated a unilateral act may be invoked as grounds for declaring its invalidity if that person formulated it as a result of acts or threats directed against him or her.

“5. Any unilateral act formulated as a result of the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations is invalid.

“6. Any unilateral act which at the time of its formulation is contrary to (or conflicts with) a peremptory norm of general international law (*jus cogens*) is invalid.”

⁸⁵⁶ *Yearbook ... 1996*, vol. II (Part Two), document A/51/10, pp. 97–98, para. 248, and Annex II, p. 133.

⁸⁵⁷ *Yearbook ... 1997*, vol. II (Part Two), A/52/10, pp. 64–65, paras. 194 and 196–210.

⁸⁵⁸ *Ibid.*, pp. 66 and 71, paras. 212 and 234.

⁸⁵⁹ First report: *Yearbook ... 1998*, vol. II (Part One), document A/CN.4/486; second report: *Yearbook ... 1999*, vol. II (Part One), document A/CN.4/500 and Add.1; third report: *Yearbook ... 2000*, vol. II (Part One), document A/CN.4/505; fourth report: *Yearbook ... 2001*, vol. II (Part One), document A/CN.4/519; fifth report: *Yearbook ... 2002*, vol. II (Part One), document A/CN.4/525 and Add.1–2; sixth report: *Yearbook ... 2003*, vol. II (Part One), document A/CN.4/534; seventh report: *Yearbook ... 2004*, vol. II (Part One), document A/CN.4/542; and eighth report: *Yearbook ... 2005*, vol. II (Part One), document A/CN.4/557.

and termination⁸⁶² of unilateral acts. The second part dealt with definition,⁸⁶³ the capacity of a State to formulate a unilateral act,⁸⁶⁴ the competence to formulate unilateral acts on behalf of the State,⁸⁶⁵ the subsequent confirmation of an act formulated by a person without authorization,⁸⁶⁶ the basis for the binding nature of the unilateral acts,⁸⁶⁷ and the interpretation of unilateral acts.⁸⁶⁸

862

“Principle 8.

“*Termination of unilateral acts*

“A unilateral act may be terminated or revoked by the formulating State:

“(a) If a specific time limit for termination of the act was set at the time of its formulation (or if termination was implicit following the performance of one or more acts);

“(b) If the act was subject to a resolutive condition at the time of its formulation;

“(c) If the subject matter of the unilateral act has ceased to exist;

“(d) If there has been a fundamental change in the circumstances that prompted the formulation of the act (*rebus sic stantibus*) which renders its fulfilment impossible;

“(e) If a peremptory norm of international law has emerged following its formulation which conflicts with the act.”

863

“Principle 1.

“*Definition of a unilateral act*

“A unilateral act of a State means a unilateral declaration formulated by a State with the intent of producing certain legal effects under international law.”

Addressees of unilateral acts of States

Option A

A unilateral act may be addressed to one or more States, the international community as a whole, one or more international organizations or any other entity subject to international law.

Option B

A unilateral act formulated in accordance with international law will produce legal effects, regardless of whom it was addressed to.

864

“Principle 2.

“*Capacity of States to formulate unilateral acts*

“Every State possesses capacity to formulate unilateral acts in accordance with international law.

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“Principle 3.

“*Competence to formulate unilateral acts on behalf of the State*

“1. By virtue of their office, Heads of State, Heads of Government and Ministers for Foreign Affairs are considered to represent their State and to have the capacity to formulate unilateral acts on its behalf.

“2. In addition to the persons mentioned in the previous paragraph, other persons may be considered able to formulate unilateral acts on behalf of the State if that may be inferred from the practice followed in that regard by the formulating State and from the circumstances in which the act was formulated.”

866

“Principle 4.

“*Subsequent confirmation of an act formulated by a person without authorization (or not qualified to do so)*

“A unilateral act formulated by a person not authorized (or qualified) to act on behalf of the State, in accordance with the previous guiding principles, may be confirmed subsequently by the State either expressly or through conclusive acts from which such confirmation can be clearly inferred.”

867

“Principle 10.

“*Basis for the binding nature of unilateral acts*

“The binding nature of the unilateral acts of States is based on the principle of good faith and the intent to be bound of the State that formulated the act.”

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“Principle 11.

“*Interpretation of unilateral acts*

“The context in which a unilateral act was formulated by a State, together with the clarity and precision of its terms, shall be given weight in interpreting it.”

169. On 5 July 2006 the Commission decided to re-establish the open-ended Working Group under the chairpersonship of Mr. Alain Pellet. The Working Group was requested to prepare conclusions of the Commission on the topic “Unilateral acts of States” taking into consideration the various views expressed, the draft guiding principles of the Special Rapporteur and its previous work on the topic.

170. The Commission, at its 2906th meeting on 4 August 2006, considered the report of the Working Group. Following its consideration of the report of the Working Group, the Commission adopted a set of 10 “guiding principles” together with commentaries applicable to unilateral declarations of States capable of creating legal obligations (section D below)⁸⁶⁹ and commended the guiding principles to the attention of the General Assembly.

C. Tribute to the Special Rapporteur

171. At its 2913th meeting, on 11 August 2006, the Commission, after adopting the text of the guiding principles, adopted the following resolution by acclamation:

The International Law Commission,

Having adopted the guiding principles applicable to unilateral declarations of States capable of creating legal obligations and commentaries thereto,

Expresses its deep appreciation and warm congratulations to the Special Rapporteur, Mr. Víctor Rodríguez Cedeño, for the outstanding contribution he has made, through his devoted work and tireless efforts, to the preparation of the guiding principles applicable to unilateral declarations of States capable of creating legal obligations and for the results he has achieved in the elaboration of the said principles.

172. The Commission also expressed its deep appreciation to the Working Group on unilateral acts of States under the chairpersonship of Mr. Alain Pellet for its untiring efforts and contribution to the work on the topic.

D. Text of the guiding principles applicable to unilateral declarations of States capable of creating legal obligations adopted by the Commission

Introductory note

173. 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 conduct may legally bind them on the international plane.

174. 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,⁸⁷⁰ whereas others are formulated by States in

⁸⁶⁹ See the *Nuclear Tests* cases (*Australia v. France*) and (*New Zealand v. France*), *Judgments of 20 December 1974*, *I.C.J. Reports* 1974, pp. 253 and 457, at p. 267, para. 43, and p. 472, para. 46.

⁸⁷⁰ See 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.

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.⁸⁷¹ On the other hand, in this second case, there exists a very wide spectrum of conduct 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 conduct by the State producing legal effects on the international plane may be categorized as a unilateral act.

175. As was decided at its fifty-sixth session, in 2004,⁸⁷² 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 conduct other than formal declarations.

1. TEXT OF THE GUIDING PRINCIPLES

176. The text of the guiding principles adopted by the Commission is reproduced below.

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,

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; States concerned 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 are competent 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:

(a) any specific terms of the declaration relating to revocation;

(b) the extent to which those to whom the obligations are owed have relied on such obligations;

(c) the extent to which there has been a fundamental change in the circumstances.

2. TEXT OF THE GUIDING PRINCIPLES WITH COMMENTARIES THERETO ADOPTED BY THE COMMISSION AT ITS FIFTY-EIGHTH SESSION

177. The text of the guiding principles together with commentaries⁸⁷³ thereto adopted by the Commission at its fifty-eighth session is reproduced below.

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,

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,

⁸⁷¹ See *Yearbook ... 1997*, vol. II (Part Two), pp. 64–65, paras. 198–208.

⁸⁷² *Yearbook ... 2004*, vol. II (Part Two), p. 96, paras. 245–247. See also *Yearbook ... 2005*, vol. II (Part Two), para. 293.

⁸⁷³ These commentaries are explanatory notes reviewing the jurisprudence of the ICJ and pertinent State practice analysed by several members of the Working Group and the Special Rapporteur and summarized in the eighth report of the Special Rapporteur, *Yearbook ... 2005*, vol. II (Part One), document A/CN.4/557.

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 laws.*

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; States concerned may then take them into consideration and rely on them; such States are entitled to require that such obligations be respected.

Commentary

(1) The wording of guiding principle 1, which seeks both to define unilateral acts in the strict sense and to indicate what they are based on, is very directly inspired by the *dicta* in the judgments handed down by the ICJ on 20 December 1974 in the *Nuclear Tests* case.⁸⁷⁴ In the case concerning the *Frontier Dispute (Burkina Faso/Republic of Mali)*, the Court was careful to point out that “it all depends on the intention of the State in question”.⁸⁷⁵

(2) Most of the cases studied illustrate this principle. Besides the declarations made by France in 1974 on the cessation of nuclear tests in the atmosphere,⁸⁷⁶ the public nature of the declaration made by Egypt on 24 April 1957 on the Suez Canal⁸⁷⁷ and Jordan’s waiver of claims to the West Bank territories⁸⁷⁸ represent an important indication of their authors’ intention to commit themselves. The Ihlen Declaration, made during a purely bilateral meeting between the Minister for Foreign Affairs of Denmark and the Norwegian Ambassador to Copenhagen,⁸⁷⁹ and the Colombian diplomatic note addressed solely to the Venezuelan authorities⁸⁸⁰ are not counter-examples: they relate only to bilateral relations between the two States concerned.⁸⁸¹

⁸⁷⁴ *Nuclear Tests (Australia v. France)* and *(New Zealand v. France)* (see footnote 869 above), pp. 267–268, paras. 43 and 46, and pp. 472–473, paras. 46 and 49.

⁸⁷⁵ *Frontier Dispute (Burkina Faso/Republic of Mali)*, Judgment, I.C.J. Reports 1986, p. 573, para. 39.

⁸⁷⁶ See the *Nuclear Tests* cases (*Australia v. France*) and (*New Zealand v. France*) (footnote 869 above), pp. 265–266, paras. 34 and 37, and pp. 469 and 471, paras. 35 and 40.

⁸⁷⁷ United Nations, *Treaty Series*, vol. 265, No. 3821, p. 299. This declaration was examined by the Special Rapporteur in his eighth report, *Yearbook ... 2005*, vol. II (Part One), document A/CN.4/557, paras. 55–58; see also paras. 62–63.

⁸⁷⁸ ILM, vol. 27 (1988), p. 1638. See also the eighth report of the Special Rapporteur (see footnote 877 above), paras. 44–45.

⁸⁷⁹ See the decision of the PCIJ in *Legal Status of Eastern Greenland*, Judgment of 5 April 1933, P.C.I.J., Series A/B, No. 53, p. 22, at pp. 70–71. See also the eighth report of the Special Rapporteur, *Yearbook ... 2005*, vol. II (Part One), document A/CN.4/557, paras. 116–126. It should, however, be pointed out that whether this declaration constituted a unilateral act is controversial (*ibid.*, para. 122).

⁸⁸⁰ A. Vázquez Carrizosa, *Las relaciones de Colombia y Venezuela: La historia atormentada de dos naciones*, Bogotá, Ediciones Tercer Mundo, 1983, pp. 337–339.

⁸⁸¹ See guiding principle 6 below.

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

Commentary

Just as “[e]very State possesses capacity to conclude treaties”,⁸⁸² every State can commit itself through acts whereby it unilaterally undertakes legal obligations under the conditions indicated in these guiding principles. This capacity has been acknowledged by the ICJ.⁸⁸³

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.

Commentary

(1) The wording of guiding principle 3 is also inspired by a passage in the ICJ judgments in the *Nuclear Tests* cases;⁸⁸⁴ allusion is made to this jurisprudence in the judgments of 22 December 1986 in the *Frontier Dispute (Burkina Faso/Republic of Mali)* case⁸⁸⁵ and of 3 February 2006 in the *Armed Activities on the Territory of the Congo* case.⁸⁸⁶ In the *Military and Paramilitary Activities in and against Nicaragua* and *Frontier Dispute (Burkina Faso/Republic of Mali)* cases, the Court found nothing in the content of the declarations cited or the circumstances in which they were made “from which it [could] be inferred that any legal undertaking was intended to exist”.⁸⁸⁷

(2) Generally speaking, the cases studied by the Commission confirm the relevance of this principle. In the Commission’s view, it is particularly important to take account of the context and circumstances in which the declarations were made in the case of the Swiss statements concerning the privileges and immunities of United Nations staff,⁸⁸⁸ the Egyptian declaration of 1957⁸⁸⁹ and Jordan’s waiver of claims to the West Bank territories.⁸⁹⁰

⁸⁸² 1969 Vienna Convention, art. 6.

⁸⁸³ See the jurisprudence cited in support of guiding principles 1 and 3.

⁸⁸⁴ *Nuclear Tests (Australia v. France)* and *(New Zealand v. France)* (see footnote 869 above), pp. 269–270, para. 51, and pp. 474–475, para. 53.

⁸⁸⁵ *Frontier Dispute (Burkina Faso/Republic of Mali)* (see footnote 875 above), pp. 573–574, paras. 39–40.

⁸⁸⁶ *Armed Activities on the Territory of the Congo* (New Application: 2002) (see footnote 637 above), p. 28, para. 49.

⁸⁸⁷ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 14, at p. 132, para. 261, and *Frontier Dispute (Burkina Faso/Republic of Mali)* (see footnote 875 above), pp. 573–574, para. 39.

⁸⁸⁸ See the eighth report of the Special Rapporteur, *Yearbook ... 2005*, vol. II (Part One), document A/CN.4/557, paras. 138–156.

⁸⁸⁹ *Ibid.*, paras. 58–60 or 66. See also, by analogy, in the case of conduct other than unilateral statements, the courses of conduct followed by Cambodia and Thailand in the *Temple of Preah Vihear* case (eighth report of the Special Rapporteur, paras. 160–167) and the judgment in the case, of 15 June 1962) (*Merits, Judgment*, I.C.J. Reports 1962, p. 6, at pp. 32–34).

⁸⁹⁰ See footnote 878 above. See also the eighth report of the Special Rapporteur, *Yearbook ... 2005*, vol. II (Part One), document A/CN.4/557, paras. 47–48.

(3) Several of these examples show the importance of the reactions of other States concerned in evaluating the legal scope of the unilateral acts in question, whether those States take cognizance of commitments undertaken⁸⁹¹ (or, in some cases, rights asserted⁸⁹²), or, on the contrary, object to⁸⁹³ or challenge the binding nature of the “commitments” at issue.⁸⁹⁴

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 are competent 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.

Commentary

(1) Guiding principle 4 is also inspired by the consistent jurisprudence of the PCIJ and the ICJ, on unilateral acts and the capacity of State authorities to represent and commit the State internationally. In its recent judgment on jurisdiction and admissibility in the case of *Armed Activities on the Territory of the Congo*, the ICJ observed, referring to the similar customary rule in the law of treaties,⁸⁹⁵ that

in accordance with its consistent jurisprudence (*Nuclear Tests (Australia v. France)*, Judgment, I.C.J. Reports 1974, pp. 269–270, paras. 49–51; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, Preliminary Objections, Judgment, I.C.J. Reports 1996 (II), p. 622, para. 44; *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, I.C.J. Reports 2002, pp. 21–22, para. 53; see also *Legal Status of Eastern Greenland (Denmark v. Norway)*, Judgment, 1933, P.C.I.J., Series A/B, No. 53, p. 71), it is a well-established rule of international law that the Head of State, the Head of Government and the Minister for Foreign Affairs are deemed to represent the State merely by virtue of exercising their functions, including for the performance, on behalf of the said State, of unilateral acts having the force of international commitments.⁸⁹⁶

⁸⁹¹ See the international community’s reactions to the Egyptian statement on the Suez Canal (*ibid.*, paras. 63–64), and the reactions to Jordan’s statement about the West Bank (*ibid.*, paras. 48 and 50–51).

⁸⁹² See *United States Statutes at Large*, 1945, vol. 59, part 2 (Washington D.C., United States Government Printing Office, 1946), p. 884. See the reactions of certain States to the Truman Proclamation (eighth report of the Special Rapporteur, *Yearbook ... 2005*, vol. II (Part One), document A/CN.4/557, paras. 132–134); see also the note dated 22 November 1952 by the Government of Venezuela concerning the Los Monjes archipelago (Vázquez Carrizosa, *op. cit.* (footnote 880 above), pp. 340–341, cited in the eighth report of the Special Rapporteur, para. 17); however, like the Ihlen Declaration (see footnote 879 above) this note was clearly a matter of bilateral negotiations with Colombia.

⁸⁹³ See in particular Uruguay’s refusal of a donation of vaccines from Cuba (eighth report of the Special Rapporteur, *Yearbook ... 2005*, vol. II (Part One), document A/CN.4/557, paras. 38–39) or the Russian protest at the law passed by Turkmenistan in 1993 on the delimitation of its internal and territorial waters in the Caspian Sea (*ibid.*, paras. 84–98).

⁸⁹⁴ See the reactions of the non-nuclear-weapon States to the statements made in April 1995 to the Conference on Disarmament by the permanent members of the Security Council (*ibid.*, paras. 113–115); their scepticism is, incidentally, vindicated by the content of those statements (A/50/151–155; S/1995/261–265).

⁸⁹⁵ See article 7 of the 1969 Vienna Convention.

⁸⁹⁶ *Armed Activities on the Territory of the Congo (New Application: 2002)* (see footnote 637 above), p. 27, para. 46.

(2) State practice shows that unilateral declarations creating legal obligations for States are quite often made by Heads of State or Government⁸⁹⁷ or Ministers for Foreign Affairs⁸⁹⁸ without their capacity to commit the State being called into question. In the two examined cases in which problems relating to the extent of the speaker’s authority arose, both related to compliance with the domestic law of the State concerned.⁸⁹⁹ The statement by the King of Jordan relating to the West Bank, which some considered to be *ultra vires* under the Constitution of the Kingdom, was confirmed by subsequent domestic acts.⁹⁰⁰ In the case of the declaration by the Colombian Minister for Foreign Affairs about Venezuelan sovereignty over the Los Monjes archipelago, the note itself was set aside in domestic law because its author had no authority to make such a commitment, yet the Colombian authorities did not challenge the validity of the commitment at the international level.⁹⁰¹

(3) In its judgment of 3 February 2006,⁹⁰² the ICJ did, however, note “that with increasing frequency in modern international relations other persons representing a State in specific fields may be authorized by that State to bind it by their statements in respect of matters falling within their purview. This may be true, for example, of holders of technical ministerial portfolios exercising powers in their field of competence in the area of foreign relations, and even of certain officials”.⁹⁰³

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

Commentary

(1) It is generally accepted that the form of a unilateral declaration does not affect its validity or legal effects. The ICJ mentioned the relative unimportance of formalities⁹⁰⁴

⁸⁹⁷ See the statement made on 31 July 1988 by the King of Jordan waiving Jordan’s claims to the West Bank territories (eighth report of the Special Rapporteur, *Yearbook ... 2005*, vol. II (Part One), document A/CN.4/557, para. 44), the Egyptian declaration of 24 April 1957 on the Suez Canal made by the Government of Egypt (*ibid.*, para. 55), the statements of 8 June and 25 July 1974 and the letter of 1 July 1974 by the President of the French Republic (*ibid.*, para. 71), or the statement made on 28 September 1945 by President Truman of the United States concerning the continental shelf (*ibid.*, para. 127).

⁸⁹⁸ See the note dated 22 November 1952 from the Colombian Minister for Foreign Affairs relating to Venezuelan sovereignty over the Los Monjes archipelago (*ibid.*, para. 13), the statement from the Minister for Foreign Affairs of Cuba about the supply of vaccines to Uruguay (*ibid.*, para. 36), the statement by the French Minister for Foreign Affairs to the United Nations General Assembly on 25 September 1974 about the cessation of nuclear tests in the atmosphere (*ibid.*, para. 71), the statements made, as representatives of nuclear-weapon States, by the Minister for Foreign Affairs of the Russian Federation and the United States Secretary of State to the United Nations Security Council (*ibid.*, para. 106), and the statement by Mr. Ihlen, the Minister for Foreign Affairs of Norway (*ibid.*, para. 116).

⁸⁹⁹ See the case of the statement made by the Colombian Minister for Foreign Affairs on 22 November 1952 (*ibid.*, paras. 24–35) and the statement by the King of Jordan about the West Bank (*ibid.*, paras. 53–54).

⁹⁰⁰ *Ibid.*, para. 54.

⁹⁰¹ *Ibid.*, para. 35.

⁹⁰² *Case concerning Armed Activities on the Territory of the Congo (New Application: 2002)* (see footnote 637 above).

⁹⁰³ *Ibid.*, p. 27, para. 47.

⁹⁰⁴ See *Mavrommatis Palestine Concessions* (footnote 26 above), p. 34; and *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina v. Yugoslavia)*,

in its judgment in the *Temple of Preah Vihear* case in connection with unilateral conduct.⁹⁰⁵ In the *Nuclear Tests* cases, the Court emphasized that

[w]ith regard to the question of form, it should be observed that this is not a domain in which international law imposes any special or strict requirements. Whether a statement is made orally or in writing makes no essential difference, for such statements made in particular circumstances may create commitments in international law, which does not require that they should be couched in written form. Thus the question of form is not decisive.⁹⁰⁶

(2) State practice also shows the many different forms that unilateral declarations by States may take. The various declarations by France about the cessation of atmospheric nuclear tests took the form of a *communiqué* from the Office of the President of the Republic, a diplomatic note, a letter from the President of the Republic sent directly to those to whom the declaration was addressed, a statement made during a press conference and a speech to the General Assembly.⁹⁰⁷ Other examples also go to show that, while written declarations prevail,⁹⁰⁸ it is not unusual for States to commit themselves by simple oral statements.⁹⁰⁹

(3) France's statements on the suspension of atmospheric nuclear tests also show that a unilateral commitment by a State can come about through a series of declarations with the same general thrust, none of which might, in isolation, have bound the State. In its judgments of 1974 on the *Nuclear Tests* cases, the ICJ did not concentrate on any particular declaration by the French authorities but took them, together, to constitute a whole: "[the] statements [of the President of the French Republic], and those of members of the French Government acting under his authority, up to the last statement made by the Minister of Defence (of 11 October 1974), constitute a whole. Thus, in whatever form the statements were expressed, they must be held to constitute an engagement of the State, having regard to their intention and to the circumstances in which they were made".⁹¹⁰

Preliminary Objections, Judgment, I.C.J. Reports 1996, p. 595, at p. 612, para. 24, and pp. 613–614, para. 26.

⁹⁰⁵ See *Temple of Preah Vihear (Cambodia v. Thailand)*, *Preliminary Objections, Judgment of 26 May 1961, I.C.J. Reports 1961*, p. 17, at p. 31.

⁹⁰⁶ *Nuclear Tests (Australia v. France)* and *(New Zealand v. France)* (see footnote 869 above), pp. 267–268, para. 45, and p. 473, para. 48.

⁹⁰⁷ See the eighth report of the Special Rapporteur, *Yearbook ... 2005*, vol. II (Part One), document A/CN.4/557, paras. 71–72.

⁹⁰⁸ Consider the examples of the note dated 22 November 1952 from the Colombian Minister for Foreign Affairs (diplomatic note, *ibid.*, para. 13), the declaration by Egypt of 24 April 1957 (*ibid.*, pp. 55 *et seq.*), the protests of the Russian Federation against Azerbaijan and Turkmenistan (*ibid.*, paras. 85 and 99), the statements by the nuclear-weapon States (statements made before an international body, *ibid.*, paras. 106–107), the Truman Proclamation of 28 September 1945 (*ibid.*, para. 127) and the Swiss statements concerning the United Nations and its staff members (tax exemptions and privileges) (*ibid.*, paras. 140–142).

⁹⁰⁹ See, for example, Jordan's waiver of its claims to the West Bank territories in a public speech (*ibid.*, para. 44), or the Ihlen Declaration (*ibid.*, para. 117; see the judgment of the PCIJ in *Legal Status of Eastern Greenland* (footnote 879 above), p. 71).

⁹¹⁰ *Nuclear Tests (Australia v. France)* and *(New Zealand v. France)* (see footnote 869 above), p. 269, para. 49, and p. 474, para. 51. See also the Swiss statements concerning the United Nations and its staff members (tax exemptions and privileges), eighth report of the Special Rapporteur, *Yearbook ... 2005*, vol. II (Part One), document A/CN.4/557, paras. 138–156.

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

Commentary

(1) Several of the cases examined remain within the scope of strictly bilateral relations between two States; accordingly, these unilateral declarations by a State had another State as the sole addressee. Such was the case of the Colombian diplomatic note addressed to Venezuela,⁹¹¹ the Cuban declarations concerning the supply of vaccines to Uruguay,⁹¹² the protests by the Russian Federation against Turkmenistan and Azerbaijan⁹¹³ and the Ihlen Declaration.⁹¹⁴

(2) Although initially concerning a limited group of States, other declarations were addressed to the international community as a whole, containing *erga omnes* undertakings. Thus, Egypt's declaration regarding the Suez Canal was not addressed only to the States parties to the Convention between Austria-Hungary, France, Germany, Great Britain, Italy, the Netherlands, Russia, Spain and Turkey respecting the Free Navigation of the Suez Canal (Constantinople Convention) or to the States members of the Suez Canal Users' Association, but to the entire international community.⁹¹⁵ Similarly, the Truman Proclamation,⁹¹⁶ and also the French declarations regarding suspension of nuclear tests in the atmosphere, although the latter were of more direct concern to Australia and New Zealand, as well as certain neighbouring States,⁹¹⁷ were also made *erga omnes* and, accordingly, were addressed to the international community in its entirety.⁹¹⁸ The same holds for the declaration by the King of Jordan of 31 July 1988, waiving Jordan's claims to the West Bank territories, which was addressed simultaneously to the international community, to another State (Israel) and to another entity, the Palestine Liberation Organization.⁹¹⁹

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.

⁹¹¹ Eighth report of the Special Rapporteur (footnote 910 above), paras. 15–16.

⁹¹² *Ibid.*, para. 36.

⁹¹³ *Ibid.*, paras. 85 and 99.

⁹¹⁴ *Ibid.*, para. 117.

⁹¹⁵ *Ibid.*, para. 62.

⁹¹⁶ *Ibid.*, para. 127.

⁹¹⁷ Fiji filed an application to intervene in the proceedings. The Governments of Argentina, Fiji and Peru requested that the pleadings and annexed documents should be made available to them. See *Nuclear Tests (Australia v. France)* and *(New Zealand v. France)* (footnote 869 above), pp. 255–256, paras. 7 and 9, and p. 459, paras. 7 and 9.

⁹¹⁸ *Ibid.*, pp. 269–270, paras. 50–51, and pp. 474–475, paras. 52–53.

⁹¹⁹ See the eighth report of the Special Rapporteur, *Yearbook ... 2005*, vol. II (Part One), document A/CN.4/557, para. 45. Other unilateral declarations are addressed to one or more international organizations, as is the case with Switzerland's declarations concerning the United Nations and its staff (tax exemptions and privileges) (*ibid.*, paras. 138 *et seq.*)

Commentary

(1) In its judgments in the *Nuclear Tests* cases, the ICJ stressed that a unilateral declaration may have the effect of creating legal obligations for the State making the declaration only if it is stated in clear and specific terms.⁹²⁰ This understanding has been adopted without change by the Court in the case concerning *Armed Activities on the Territory of the Congo*.⁹²¹

(2) In case of doubt concerning the legal scope of the unilateral declaration, it must be interpreted in a restrictive manner, as clearly stated by the Court in its judgments in the *Nuclear Tests* cases when it held that “[w]hen States make statements by which their freedom of action is to be limited, a restrictive interpretation is called for”.⁹²² The interpreter must therefore proceed with great caution in determining the legal effects of unilateral declarations, in particular when the unilateral declaration has no specific addressee.⁹²³

(3) With regard, in particular, to the method and means of the interpretation, attention is drawn to the observation by the ICJ that

[t]he régime relating to the interpretation of declarations made under Article 36 of the Statute [of the International Court of Justice⁹²⁴] is not identical with that established for the interpretation of treaties by the Vienna Convention on the Law of Treaties Spain has suggested in its pleadings that “[t]his does not mean that the legal rules and the art of interpreting declarations (and reservations) do not coincide with those governing the interpretation of treaties”. The Court observes that the provisions of that Convention may only apply analogously to the extent compatible with the *sui generis* character of the unilateral acceptance of the Court’s jurisdiction.⁹²⁵

Applying the Court’s dictum and by analogy with article 31, paragraph 1, of the 1969 Vienna Convention, priority consideration must be given to the text of the unilateral declaration, which best reflects its author’s intentions. In addition, as acknowledged by the Court in its judgment in the *Frontier Dispute* case, “to assess the intentions of the author of a unilateral act, account must be taken of all the circumstances in which the act occurred”,⁹²⁶ which

⁹²⁰ *Nuclear Tests (Australia v. France)* and *(New Zealand v. France)* (see footnote 869 above), p. 267, para. 43; pp. 269–270, para. 51; p. 472, para. 46; and pp. 474–475, para. 53.

⁹²¹ *Armed Activities on the Territory of the Congo (New Application: 2002)* (see footnote 637 above), pp. 28–29, paras. 50 and 52.

⁹²² *Nuclear Tests (Australia v. France)* and *(New Zealand v. France)* (see footnote 869 above), p. 267, para. 44, and pp. 472–473, para. 47.

⁹²³ See *Frontier Dispute (Burkina Faso/Republic of Mali)* (footnote 875 above), pp. 573–574, para. 39.

⁹²⁴ Declarations accepting the compulsory jurisdiction of the ICJ made under Article 36 of the Statute of the Court lie outside the scope of the present study (see footnote 856 above). That said, the Court’s reasoning is fully applicable to unilateral acts and declarations *stricto sensu*.

⁹²⁵ *Fisheries Jurisdiction (Spain v. Canada)*, *Jurisdiction of the Court, Judgment of 4 December 1998*, I.C.J. Reports 1998, p. 432, at p. 453, para. 46. See also *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, *Preliminary Objections, Judgment of 11 June 1998*, I.C.J. Reports 1998, p. 275, at p. 293, para. 30.

⁹²⁶ *Frontier Dispute (Burkina Faso/Republic of Mali)* (see footnote 875 above), p. 574, para. 40; see also *Armed Activities on the Territory of the Congo (New Application: 2002)* (footnote 637 above), p. 29, para. 53, and *Nuclear Tests (Australia v. France)* and *(New Zealand v. France)* (footnote 869 above), pp. 269–270, para. 51, and pp. 474–475, para. 53.

constitutes an application by analogy of article 31, paragraph 2, of the 1969 Vienna Convention.

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

Commentary

The invalidity of a unilateral act which is contrary to a peremptory norm of international law derives from the analogous rule contained in article 53 of the 1969 Vienna Convention. Most members of the Commission agreed that there was no obstacle to the application of this rule to the case of unilateral declarations.⁹²⁷ In its judgment in the *Armed Activities on the Territory of the Congo* case, the Court did not exclude the possibility that a unilateral declaration by Rwanda⁹²⁸ could be invalid in the event that it was in conflict with a norm of *jus cogens*, which proved, however, not to be the case.⁹²⁹

9. No obligation may result from 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.

Commentary

(1) It is well established in international law that obligations cannot be imposed by a State upon another State without its consent. For the law of treaties, this principle has been codified in article 34 of the 1969 Vienna Convention.⁹³⁰ There is no reason why this principle should not also apply to unilateral declarations; the consequence is that a State cannot impose obligations on other States to which it has addressed a unilateral declaration unless the latter unequivocally accept these obligations resulting from that declaration.⁹³¹ In the circumstances, the State or States concerned are in fact bound by their own acceptance.

(2) The 1945 Truman Proclamation, by which the United States of America aimed to impose obligations on other States or, at least, to limit their rights on the American continental shelf, was not strictly speaking accepted by other States. All the same, as the Court has stressed, the “régime [of the continental shelf] furnishes an example of a legal theory derived from a particular source that has secured a

⁹²⁷ See *Yearbook ... 1999*, vol. II (Part Two), document A/54/10, p. 136, para. 557; and *Yearbook ... 2000*, vol. II (Part Two), document A/55/10, pp. 97–98, para. 597.

⁹²⁸ The declaration in this case was a reservation, a unilateral act which lies outside the scope of the present guiding principles (see paragraph 174 above).

⁹²⁹ See *Armed Activities on the Territory of the Congo (New Application: 2002)* (footnote 637 above), p. 33, para. 69.

⁹³⁰ This article states: “A treaty does not create either obligations or rights for a third State without its consent.” See also *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide* (footnote 714 above), p. 21.

⁹³¹ Or if there was a general norm authorizing States to take such action; but the unilateral acts made pursuant to a norm of this kind lie outside the scope of the present guiding principles (see paragraph 175 above).

general following”⁹³². In fact, the other States responded to the Truman Proclamation with analogous claims and declarations⁹³³ and, shortly thereafter, the content of the Proclamation was taken up in article 2 of the 1958 Geneva Convention on the Continental Shelf. It could therefore be said to have been generally accepted and it marked a point of departure for a customary process leading, in a very short time, to a new norm of international law. The ICJ remarked in that context: “The Truman Proclamation however, soon came to be regarded as a starting point of the positive law on the subject, and the chief doctrine it enunciated ... came to prevail over all others, being now reflected in Article 2 of the 1958 Geneva Convention on the Continental Shelf.”⁹³⁴

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:

(a) any specific terms of the declaration relating to revocation;

(b) the extent to which those to whom the obligations are owed have relied on such obligations;

(c) the extent to which there has been a fundamental change in the circumstances.

⁹³² *North Sea Continental Shelf* (see footnote 789 above), p. 53, para. 100.

⁹³³ See the case of Mexico, *Laws and Regulations on the Regime of the High Seas*, vol. I (United Nations publication, Sales No. 1951.V.2), p. 13. See also the eighth report of the Special Rapporteur, *Yearbook ... 2005*, vol. II (Part One), document A/CN.4/557, para. 132.

⁹³⁴ *North Sea Continental Shelf* (see footnote 789 above), pp. 32–33, para. 47.

Commentary

(1) In its 1974 judgments in the *Nuclear Tests* cases, the ICJ stated that “the unilateral undertaking resulting from [the French] statements cannot be interpreted as having been made in implicit reliance on an arbitrary power of reconsideration”⁹³⁵. This does not, however, exclude any power to terminate a unilateral act, only its arbitrary withdrawal (or amendment).

(2) There can be no doubt that unilateral acts may be withdrawn or amended in certain specific circumstances. The Commission has drawn up an open-ended list of criteria to be taken into consideration when determining whether or not a withdrawal is arbitrary.

(3) A similar situation occurs where the declaration itself stipulates the circumstances in which its author may terminate it⁹³⁶ or when its addressees have relied on it in good faith and have accordingly been led “detrimentally to change position or suffer some prejudice”⁹³⁷. A unilateral declaration may also be rescinded following a fundamental change of circumstances within the meaning and within the strict limits of the customary rule enshrined in article 62 of the 1969 Vienna Convention.⁹³⁸

⁹³⁵ *Nuclear Tests (Australia v. France)* and *(New Zealand v. France)* (see footnote 869 above), p. 270, para. 51, and p. 475, para. 53.

⁹³⁶ When the circumstances do not exist.

⁹³⁷ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Jurisdiction and Admissibility*, *I.C.J. Reports 1984*, p. 392, at p. 415, para. 51.

⁹³⁸ See *Fisheries Jurisdiction (Federal Republic of Germany v. Iceland)*, *Jurisdiction of the Court, Judgment*, *I.C.J. Reports 1973*, p. 49, at p. 63, para. 36, and *Gabčíkovo–Nagymaros Project* (footnote 363 above), p. 64, para. 104.

Chapter X

EFFECTS OF ARMED CONFLICTS ON TREATIES

A. Introduction

178. The Commission, at its fifty-second session, held in 2000, identified the topic “Effects of armed conflicts on treaties” for inclusion in its long-term programme of work.⁹³⁹ A brief syllabus describing the possible overall structure and approach to the topic was annexed to the report of the Commission to the General Assembly on the work of its fifty-second session.⁹⁴⁰ In paragraph 8 of its resolution 55/152 of 12 December 2000, the General Assembly took note of the topic’s inclusion.

179. During its fifty-sixth session, held in 2004, the Commission decided, at its 2830th meeting, on 6 August 2004, to include the topic “Effects of armed conflicts on treaties” in its current programme of work, and to appoint Mr. Ian Brownlie as Special Rapporteur for the topic.⁹⁴¹ The General Assembly, in paragraph 5 of its resolution 59/41 of 2 December 2004, endorsed the decision of the Commission to include the topic in its agenda.

180. At its fifty-seventh session, held in 2005, the Commission had before it the first report of the Special Rapporteur⁹⁴² as well as a memorandum prepared by the Secretariat entitled “The effects of armed conflict on treaties: an examination of practice and doctrine”.⁹⁴³ At its 2866th meeting, on 5 August 2005, the Commission endorsed the Special Rapporteur’s suggestion that the Secretariat be requested to circulate a note to Governments requesting information about their practice with regard to this topic, in particular the more contemporary practice as well as any other relevant information.⁹⁴⁴

B. Consideration of the topic at the present session

181. At the present session, the Commission had the second report of the Special Rapporteur (A/CN.4/570) before it. The Commission considered the Special Rapporteur’s report at its 2895th to 2898th meetings, from 18 to 21 July 2006.

1. GENERAL REMARKS ON THE TOPIC

(a) *Introduction by the Special Rapporteur*

182. The Special Rapporteur observed that his second report, which had to be read together with his first report,⁹⁴⁵ focused on two matters: (a) considering specific elements

of the debate in the Commission and the substantial points made by various Governments in the debate in the Sixth Committee at the sixtieth session of the General Assembly; and (b) implementing the first report by asking the Commission to consider the first seven draft articles with a view to referring them to the Drafting Committee or to a working group.

183. The Special Rapporteur noted that general support had been expressed for his view that the topic was generally part of the law of treaties and not of the law on the use of force. He also recalled the views expressed in the Sixth Committee that the subject was closely related to other domains of international law, such as international humanitarian law, self-defence and State responsibility.

(b) *Summary of the debate*

184. It was reiterated that it was not possible to maintain a strict separation between the law of treaties and other branches of international law such as that of the rules relating to prohibition of use or threat of force in international relations, international humanitarian law and the law of responsibility of States for internationally wrongful acts, which were also of relevance to the topic.

(c) *Special Rapporteur’s concluding remarks*

185. The Special Rapporteur was of the view that, given the nature of the debate in the Commission and the existence of substantial differences of opinion on important aspects of the subject, it would be premature to send the matter to a working group. In addition, a working group established in the first year of the new quinquennium of the Commission in 2007 would not necessarily be familiar with the debate on the topic during the present quinquennium. Accordingly, it was proposed that the best way forward would be for the Special Rapporteur to prepare a third report on the topic which could, together with the first two reports, form the basis for consideration by a working group in the future.

2. ARTICLE 1. SCOPE⁹⁴⁶

(a) *Introduction by the Special Rapporteur*

186. The Special Rapporteur pointed to the suggestion made in the Sixth Committee that, since article 25 of the 1969 Vienna Convention allowed for the provisional application of treaties, it seemed advisable that the draft articles also cover treaties that were being provisionally

⁹³⁹ *Yearbook ... 2000*, vol. II (Part Two), p. 131, para. 729.

⁹⁴⁰ *Ibid.*, Annex.

⁹⁴¹ *Yearbook ... 2004*, vol. II (Part Two), p. 120, para. 364.

⁹⁴² *Yearbook ... 2005*, vol. II (Part One), document A/CN.4/552.

⁹⁴³ Document A/CN.4/550 and Corr.1–2 (mimeographed).

⁹⁴⁴ *Yearbook ... 2005*, vol. II (Part Two), p. 27, para. 112.

⁹⁴⁵ See footnote 942 above.

⁹⁴⁶ Draft article 1 reads as follows:

“Scope

“The present draft articles apply to the effects of an armed conflict in respect of treaties between States.”