Chapter VIII

UNILATERAL ACTS OF STATES

A. Introduction

177. In the report to the General Assembly on the work of its forty-eighth session, in 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.[485]

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

179. At its forty-ninth session, in 1997, the Commission established a Working Group on this topic which reported to the Commission on the admissibility and facility 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.[486]

180. Also at its forty-ninth session, the Commission appointed Mr. Víctor Rodríguez Cedeño, Special Rapporteur on the topic.[487]

181. 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.

182. At its fiftieth session, in 1998, the Commission had before it and considered the Special Rapporteur's first report on the topic.[488] As a result of its discussion, the Commission decided to reconvene the Working Group on unilateral acts of States.

183. The Working Group reported to the Commission on issues related to the scope of the topic, its approach, the definition of "unilateral acts" and the future work of the Special Rapporteur. At the same session, the Commission considered and endorsed the report of the Working Group.[489]

184. At its fifty-first session, in 1999, the Commission had before it and considered the Special Rapporteur's second report on the topic.[490] As a result of its discussion, the Commission decided to reconvene the Working Group on unilateral acts of States.

185. The Working Group reported to the Commission on issues related to: (*a*) the basic elements of a workable definition of "unilateral acts" as a starting point for further work on the topic as well as for gathering relevant State practice; (*b*) the setting of general guidelines according to which the practice of States should be gathered; and (*c*) the direction that the work of the Special Rapporteur should take in the future. In connection with point (*b*) above, the Working Group set the guidelines for a questionnaire to be sent to States by the Secretariat in consultation with the Special Rapporteur, requesting materials and inquiring about their practice in the area of unilateral acts as well as their position on certain aspects of the Commission's study of the topic.

186. At its fifty-second session, in 2000, the Commission considered the third report of the Special Rapporteur on the topic,[491] along with the text of the replies received from States[492] to the questionnaire on the topic circulated on 30 September 1999. The Commission decided to refer revised draft articles 1 to 4 to the Drafting Committee and revised draft article 5 to the Working Group on the topic.

187. At its fifty-third session, in 2001, the Commission considered the fourth report of the Special Rapporteur[493] and established an open-ended Working Group. At the recommendation of the Working Group, the Commission requested that a questionnaire be circulated to Governments inviting them to provide further information regarding their practice of formulating and interpreting unilateral acts.[494]

188. At its fifty-fourth session, in 2002, the Commission considered the fifth report of the Special Rapporteur,[495] as well as the text of the replies received from States[496] to the questionnaire on the topic circulated on 31 August 2001.[497] The Commission also established an open-ended Working Group.

189. At its fifty-fifth session in 2003, the Commission considered the sixth report of the Special Rapporteur.[498]

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[485] *Yearbook ... 1996*, vol. II (Part Two), document A/51/10, para. 248 and Annex II.

[486] *Yearbook ... 1997*, vol. II (Part Two), paras. 194, 196 and 210.

[487] *Ibid.*, paras. 212 and 234.

[488] *Yearbook ... 1998*, vol. II (Part One), document A/CN.4/486.

[489] *Ibid.*, vol. II (Part Two), paras. 192–201.

[490] *Yearbook ... 1999*, vol. II (Part One), document A/CN.4/500 and Add.1.

[491] *Yearbook… 2000*, vol. II (Part One), document A/CN.4/505.

[492] *Ibid.*, document A/CN.4/511.

[493] *Yearbook ... 2001*, vol. II (Part One), document A/CN.4/519.

[494] *Ibid.*, vol. II (Part Two), paras. 29 and 254. The text of the questionnaire is available at http://untreaty.un.org/ilc/sessions/53/53sess.htm.

[495] *Yearbook… 2002*, vol. II (Part One), document A/CN.4/525 and Add.1, Corr.1, Corr.2 and Add.2.

[496] *Ibid.*, document A/CN.4/524.

[497] See footnote 494 above.

[498] *Yearbook… 2003*, vol. II (Part One), document A/CN.4/534.

190. The Commission established an open-ended Working Group on unilateral acts of States chaired by Mr. Alain Pellet. The Working Group held six meetings.

191. At the same session, the Commission considered and adopted the recommendations contained in Parts 1 and 2 of the Working Group's report on the scope of the topic and the method of work.[499]

B. Consideration of the topic at the present session

192. At the present session, the Commission had before it the seventh report of the Special Rapporteur (A/CN.4/542), which it considered at its 2811th to 2813th and 2815th to 2818th meetings, held on 5 to 7 and 9, 13, 14 and 16 July 2004.

1. Introduction by the Special Rapporteur of his seventh report

193. The Special Rapporteur indicated that, in accordance with the recommendations made by the Commission in 2003 (particularly recommendation No. 4),[500] the seventh report related to the practice of States in respect of unilateral acts and took account of the need to identify the relevant rules for codification and progressive development. He was especially grateful to the law faculty and students of the University of Málaga for their valuable work on the report, which was based on material from various regions and legal systems and on statements by representatives of Governments and international organizations and decisions of international courts. The comments of Governments in the Sixth Committee had also been taken into account. However, few Governments had replied to the questionnaire that had been addressed to them.[501]

194. The report, which dealt with acts and declarations producing legal effects, was only an initial study that could be given more detailed consideration in the future if the Commission deemed that necessary.

195. In order to determine the criteria for the classification of acts and declarations, the Special Rapporteur used three generally established categories: acts by which a State assumes obligations (promise and recognition); acts by which a State waives a right (waiver); and acts by which a State reaffirms a right or a claim (protest). Although notification is formally a unilateral act, it produces effects that vary depending on the situation to which it referred (protest, promise, recognition, etc.), including in the context of treaty regimes.

196. Conduct that could have legal effects similar to unilateral acts formed the subject of a separate section, which consisted of a brief analysis of silence, consent and estoppel and their relationship with unilateral acts and described the practice of some international courts.

197. Promise and recognition are among the acts under which States assume obligations. They take the form of unilateral declarations by a single State or collectively by a number of States, whereby obligations are assumed and rights accorded to other States, international organizations or other entities. Several examples of such declarations—including some controversial ones, such as the Egyptian declaration of 26 July 1956 concerning the Suez Canal—were cited, on the basis of which it was established that a promise constitutes a unilateral expression of will made in public by a State having a specific intention and purpose. Such declarations could cover a vast array of topics, ranging from defence or financial questions to the commitment not to apply internal rules that might have an adverse effect on third States. Promises that do not create legal obligations, such as promises to assist with negotiations being conducted between two States, were excluded from the study.

198. Some promises elicit a reaction on the part of States that consider themselves affected. Such a reaction may take the form of protest or recognition of a specific situation. Others are subject to specific conditions, and this raises the question whether they constitute unilateral acts *stricto sensu*.

199. Certain declarations that may be of interest to the Commission have been made in the context of disarmament negotiations. Some of these declarations have been made by persons authorized to represent the State at the international level (ministers for foreign affairs, ambassadors, heads of delegation, etc.) and the scope of their effects raises difficult questions. Are they political declarations or declarations having the intention of creating legal obligations? The context in which such declarations were made could be one way of clarifying their scope and their consequences.

200. For methodological reasons, recognition was included in the category of acts whereby States assume obligations. Although an exhaustive study was not carried out, the report stated that recognition was often based on a pre-existing situation; it did not create that situation. Most writers nevertheless considered recognition to be a manifestation of the will of a subject of international law, whereby that subject took note of a certain situation and expressed its intention to consider the situation legal. Recognition, which may be expressed by means of an explicit or implicit, oral or written declaration (or even by acts not constituting unilateral acts *stricto sensu*), affects the rights, obligations and political interests of the "recognizing" State. Moreover, it does not have a retroactive effect, as the jurisprudence shows (case of *Eugène L. Didier, adm.* et al. v. *Chile*).[502]

201. The report dealt with various cases of recognition of States, given the wealth of practice relating, above all, to the "new" States of Eastern Europe, such as the States of the former Yugoslavia. Reference was made to conditional recognition and to cases of recognition arising out of membership of an international organization.

202. Cases of recognition of Governments, on the other hand, are less frequent and less well defined. The

[499] *Yearbook… 2003*, vol. II (Part Two), pp. 57–58, paras. 304–308.

[500] *Ibid.*, paras. 306 and 308.

[501] See footnotes 494 and 496 above.

[502] See J. B. Moore, *History and Digest of the International Arbitrations to which the United States has been a Party*, Washington D.C., United States Government Printing Office, 1898, vol. IV, p. 4332. See also V. Coussirat-Coustère and P. M. Eisemann, *Repertory of International Arbitral Jurisprudence*, vol. I (1794–1918), Dordrecht, Martinus Nijhoff/Kluwer, 1989, p. 54.

continuation or non-continuation of diplomatic relations and the withdrawal of ambassadors are factors in the practice of recognition.

203. The report also dealt with formal declarations or acts whereby States express their position with regard to territories whose status was disputed (Turkish Republic of North Cyprus, Timor-Leste, etc.) or with regard to a state of war.

204. Another category of acts related to those by which a State waives a right or a legal claim, including waivers involving abdication or transfer.

205. The jurisprudence of international courts leads to the conclusion that a State may not be presumed to have waived its rights. Silence or acquiescence is not sufficient for a waiver to produce effects (ICJ, *Case concerning rights of nationals of the United States of America in Morocco*[503]). In order for a waiver to be acceptable, it must be the result of unequivocal acts (PCIJ, *Free Zones of Upper Savoy and the District of Gex* case[504]).

206. A third category related to protest, or the unilateral declaration whereby a protesting State makes it known that it does not recognize the legality of the acts to which the protest relates or that it does not accept the situation that such acts have created or threatened to create. Protest therefore has the opposite effect from that of recognition: it may consist of repeated acts and it must be specific, except in the case of serious breaches of international obligations or when it arises out of peremptory rules of international law. The report cites several examples of protests, some of which relate to the existence of a territorial or other dispute between States.

207. The final category dealt with in the report relates to State conduct that may produce legal effects similar to those of unilateral acts. Such conduct may result in recognition or non-recognition, protest against the claims of another State or even waiver.

208. The report also considered silence and estoppel, which are closely linked to unilateral acts, despite the fact that the legal effects of silence have often been disputed.

209. The report's conclusions aimed to facilitate the study of the topic and to establish some generally applicable principles. Although the examples cited were based on generally accepted categories of unilateral acts, the Special Rapporteur suggested that a new definition of unilateral acts could be formulated, taking as a basis the definition provisionally adopted at the fifty-fifth session and taking into account forms of State conduct producing legal effects similar to those of unilateral acts.

2. Summary of the debate

210. Several members expressed their satisfaction with the seventh report and the wealth of practice it described. Some members recalled that, given the density of the report, the Commission had had the right idea when it had requested the Special Rapporteur to devote the seventh report to State practice. However, the concept of a unilateral act had still not been analysed rigorously enough. Moreover, some members and some States had stated in the Sixth Committee that they were not convinced that the topic should be the subject of draft articles. One point of view was that the Commission should select certain aspects on which to carry out studies explaining State practice and the applicable law.

211. The opinion was expressed that certain categories of unilateral acts, such as promise, continued to give rise to problems and that the term used by the author State to qualify its conduct should not be taken into account. The categories selected were not that clearcut. The view was expressed that recognition and the recognition of States or Governments should be excluded from the study because it was not to be assumed that the General Assembly regarded that sensitive issue as part of the topic of unilateral acts. In this context it was pointed out that recognition of States and Governments formed a separate item in the original list of topics for codification. According to another point of view, however, the legal effects of recognition and non-recognition should be included in the study.

212. It was noted that the concept of international legal obligations assumed by the author State of the declaration *vis-à-vis* one or more other States should be adopted as a criterion rather than that of legal effects, the latter notion being far broader. Unilateral acts should thus be studied as a source of international law; there was not very much practice in that regard and the ICJ's decision in the *Nuclear Tests* case[505] was an isolated case.

213. It was also stated that the Special Rapporteur had fulfilled the task entrusted to him by the Commission. One might nevertheless feel somewhat confused and wonder whether the Commission had reached a stalemate. It would probably have been better not to have made the mistake of choosing the method of dealing with unilateral acts on the same basis as treaties.

214. It was pointed out that the way in which classification was used could be called into question, particularly the Special Rapporteur's tendency to present as unilateral acts *stricto sensu* forms of conduct having legal effects similar to those of unilateral acts.

215. According to some members, the report, which was full of examples of *de facto* and *de jure* situations taken from practice (some of which were not really relevant), was missing an analysis of the examples cited. The report did not provide an answer to the question asked in the Working Group's recommendation 6—i.e. what the reasons were for the unilateral act or conduct of the State.[506] The other questions in the recommendation, namely, what the criteria for the validity of the express or implied commitment of the State were, and in which circumstances and under which conditions a unilateral commitment could be modified or withdrawn, had not been taken up. Additional information and an in-depth analysis were needed to be

[503] *Case concerning rights of nationals of the United States of America in Morocco, Judgment of 27 August 1952, I.C.J. Reports 1952*, p. 176.

[504] *Free Zones of Upper Savoy and the District of Gex, Judgment, 1932, P.C.I.J., Series A/B, No. 46*, p. 96.

[505] *Nuclear Tests (New Zealand* v. *France), Judgment of 20 December 1974, I.C.J. Reports 1974*, p. 457.

[506] See footnote 500 above.

able to answer those questions, even where there was not a great deal of relevant practice. Recent examples from the proceedings before the ICJ (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide*)[507] showed that the question of the competence of State organs to engage the State through unilateral acts was complex.

216. Other members also questioned whether some of the many cases of which examples had been provided did not constitute political acts. In that respect, it was admitted that it was very difficult to tell the difference between political acts and legal acts in the absence of objective criteria and this would be one of the tasks of the Commission. The main element of the definition chosen in recommendation 1, namely, the intention of the State which purports to create obligations or other legal effects under international law, was subjective in nature. How could that intention be determined objectively? From that point of view, several of the examples given in the report were nothing more than acts or declarations of a political nature which were not intended to have legal effects. The purpose of the act would be an important factor in determining its nature—a case in point being the recognition of States or Governments. If there was no means of determining the nature of the act, the principle of the non-limitation of sovereignty or of restrictive interpretation should be taken into consideration. It was difficult, if not impossible, to identify unilateral acts *stricto sensu* (some writers considered that they were not a source of law insofar as there was always acceptance on the part of their addressees); however, the idea of a thematic study or an expository study warranted consideration. As to the criteria for the validity of unilateral acts or the conditions for their modification or withdrawal, it might well be asked whether the analogy with treaties was not altogether relevant or satisfactory, since, for example, the concepts of *jus dispositivum* or reciprocity would not play the same role. The flexibility of unilateral undertakings was something that could be looked into more closely.

217. According to another point of view, the term "unilateral act" covered a wide range of legal relations or procedures used by States in their conduct towards other States. Acts meant conduct and conduct includes silence and acquiescence. Conduct can also be intended to create legal relations or to bring the principle of good faith into play. Recognition could include legal or political recognition. The usual terminology was not very helpful; a possible approach would be to look for relevant criteria. In that connection, silence and estoppel, which had been invoked in some cases before the ICJ, including in the *Delimitation of the Maritime Boundaries in the Gulf of Maine* case,[508] should be taken into account.

218. It was also recalled that the jurisprudence of the ICJ, both in the *Nuclear Tests*[509] and *Frontier Dispute (Burkina Faso/Republic of Mali)*[510] cases, placed considerable emphasis on the intention of the author State of declarations to be able to create legal obligations. It could not be denied that unilateral acts existed and could create an entire bilateral or multilateral system of relations whose mechanism was not always clear or even evident. The study should be continued with a view to deriving legal rules from the material considered; the draft definition of unilateral acts offered a useful basis, but all the categories referred to by the Special Rapporteur should be reconsidered for that purpose. The final form the study should take would depend on the assessment of State practice and the conclusions to be drawn therefrom. In the absence of a draft convention, consideration might be given to the possibility of flexible guidelines.

219. The Special Rapporteur's preliminary conclusions contained some useful pointers, but a fuller analysis had been required in order to conclude that there were generally applicable rules or a legal regime comparable to that established by the 1969 Vienna Convention.

220. It was also noted that some matters of substance had been raised in the presentation of practice, such as the question whether conditionality was compatible with a unilateral act *stricto sensu*. Conditionality could be a determining factor in the motives for the formulation of a unilateral act. The purpose of the act also had to be taken into consideration, since it was indicative of the political or legal nature of the act; the Commission should, of course, confine itself to investigating legal unilateral acts; in addition, the purpose of an act might determine whether it was autonomous and that, in turn, was crucial for the very qualification of an act as unilateral. Any future regime should contain a provision that was equivalent to article 18 of the 1969 Vienna Convention in order to ensure a balance between freedom of action and the security of inter-State relations. Other aspects, such as the withdrawal of a unilateral act, possibly subject to the beneficiary's consent, might also be considered.

221. The autonomy of a unilateral act thus precluded any act undertaken in the framework of conventional or joint relations or connected with customary or institutional law. The specific nature of a unilateral act as a source of international law depended on criteria such as the intention of the author State and the status of the addressee as a subject of international law and the modalities whereby and the framework within which the act was formulated.

222. It was also pointed out that, although practice contained a wealth of examples and constituted an unavoidable reference source, it was still necessary to explore the reactions prompted by such acts, particularly promises, and especially in the case when they had not been honoured. Could the international responsibility of the author of the promise be invoked? An examination of practice from that standpoint might reveal whether unilateral acts could give rise to international legal obligations for the author State. The ICJ had considered the legal scope of such acts (*Military and Paramilitary Activities in and against Nicaragua* case[511] or *Frontier Dispute (Burkina*

[507] *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*, p. 595.

[508] *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984*, p. 246.

[509] See footnote 505 above.

[510] *Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986*, p. 554.

[511] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Jurisdiction and admissibility, I.C.J. Reports 1984*, p. 392 and *Merits, Judgment, I.C.J. Reports 1986*, p. 14.

Faso/Republic of Mali) case[512]). Protests against unilateral acts, such as that lodged by the United States of America in 1993 against maritime claims contained in the Islamic Republic of Iran's legislation, should also be analysed in greater detail.[513] Even when protests were filed on the basis of a treaty (for example, the United Nations Convention on the Law of the Sea), they were still, in certain cases, a source of international law. A comprehensive study of the "lifespan" of, or background to, a unilateral act would therefore shed light on its particular features and might make it possible to identify the legal rules applicable to them.

223. In that respect, it would be necessary to consider unilateral acts *stricto sensu*, i.e. those which purported to produce legal effects. There was no reason to abide scrupulously by the categories of unilateral acts mentioned by the Special Rapporteur, but it would be advisable to determine how best to pursue the study of unilateral acts.

224. It was also noted that the criterion for unilateral acts should be the concept of an international legal obligation and not that of their legal effects, which was a broader and vaguer concept applying to all unilateral acts of States, whether or not they were autonomous, since all those acts produced legal effects which varied considerably from one act to another.

225. The opinion was expressed that a distinction should perhaps be drawn between acts creating obligations and acts reaffirming rights. The lack of a unitary concept of unilateral acts made classification difficult. Perhaps a typology consisting of an *ad hoc* list of sub-principles, which should be studied separately, would be more useful.

226. The Commission should also reassure States about its intentions by dealing painstakingly with the topic. In that connection, a State's intention to enter into a unilateral commitment at the international level had to be absolutely clear and unambiguous.

227. According to another viewpoint, it would be regrettable to exclude *a priori* unilateral acts adopted within the framework of a treaty regime (for example, practices following ratification).

228. The revocability of a unilateral act should also be examined in detail. By its very nature, a unilateral act was said to be freely revocable unless it explicitly excluded revocation or, before the act was revoked, it became a treaty commitment following its acceptance by the beneficiary of the initial act.

229. Other questions, such as that of the bodies which had the power to bind States by unilateral acts or that of the conditions governing the validity of those acts, could be settled by reference to the 1969 Vienna Convention.

230. The opinion had been expressed that several declarations mentioned as examples in the report constituted only political declarations which did not purport to produce legal effects and were an integral part of diplomacy and inter-State relations.

231. The description of State practice in the report showed how hard it would be to draw general conclusions applicable to all the different types of acts mentioned. For example, acts of recognition had specific legal consequences which set them apart from other categories of acts. The Commission should therefore analyse those acts one by one and draw separate conclusions, due account being taken of the specific features of each act.

232. It was unclear to what extent it would be possible to identify the precise legal consequences of unilateral conduct. Given the great diversity of such conduct, the Commission should be extremely cautious in formulating recommendations in that regard. According to another point of view, unilateral acts did not constitute an institution or a legal regime and therefore did not lend themselves to codification, since the latter consisted in the formulation of the relevant concepts. It was precisely those concepts which were lacking when it came to unilateral acts, each of which was separate and independent.

233. Some members expressed the opinion that some references to the practice of certain entities as being examples of unilateral acts of States were wrong, since those entities were not States. The view was expressed that some of the cases referred to in the report in relation to Taiwan as a subject of international law were not in keeping with General Assembly resolution 2758 (XXVI) of 25 October 1971 and should therefore not have been included.

234. It was also pointed out that it was not entirely correct to say that the solemn declarations made before the Security Council concerning nuclear weapons were without legal value. That showed just how complex and difficult the topic was. Even if the report gave examples of several types of declarations that might not all come within the definition of unilateral acts *stricto sensu*, moreover, it was not enough simply to cite such declarations: in order to determine whether the intention had been to produce legal effects, the context of the declarations, both *ex ante* and *ex post*, had to be taken into account, as the *Nuclear Tests* cases[514] had shown. The report provided next to no information on that subject. In addition, the classification was made according to traditional categories and *a priori* contained no indications of how it should be used; instead of the deductive method requested by the Working Group, the Special Rapporteur had adopted an inductive method. An act could belong to several categories at once (for example, a promise to repay a debt could be viewed as a waiver, a promise or the recognition of certain rights). More generally, a "teleological" classification did not lead to constructive conclusions. A distinction should also be drawn between acts by which States committed themselves of their own volition and conduct by which States committed themselves without expressing their will and, initially, only the first group of acts should be considered.

[512] See footnote 510 above.

[513] See *The Law of the Sea: Current Developments in State Practice No. IV* (United Nations publication, Sales No. E.95.V.10), pp. 147–149.

[514] See footnote 505 above.

235. An analysis of context, which was essential to an understanding of unilateral acts, was often lacking. Hence the need to concentrate, from now on, on analysing examples and trying to draw up a comparative table including information on the author of the act, its form, objective, purpose and motives, the reactions of third parties, possible modifications, withdrawal (if applicable) and its implementation. The purpose of the table would be to identify rules that were common to the acts studied. As to the autonomy of unilateral acts, it had been pointed out that no unilateral act was completely autonomous. Legal effects always derived from pre-existing rules or principles. Some members pointed out that autonomy was a controversial element that should be excluded from the definition, although the non-dependent nature of the acts should be acknowledged.

236. A number of members thought that a working group could be set up again in order to clarify the methodology of the next stage of the study and to carry out a critical evaluation of practice.

237. The working group would be encouraged to continue its work on the basis of the recommendations made the previous year and to focus on the direction of future work. In addition, State practice should continue to be collected and analysed, with an emphasis, *inter alia*, on the criteria for the validity of the State's commitment and the circumstances under which such commitments could be modified or withdrawn. The working group should select and analyse in depth salient examples of unilateral acts aimed at producing legal effects (in conformity with the definition adopted at the fifty-fifth session).

3. Special Rapporteur's concluding remarks

238. At the end of the discussion, the Special Rapporteur pointed out that the seventh report was only an initial overview of the relevant State practice which was to be expanded upon by a study of the way certain acts identified in the report had developed and of others that remained to be identified.

239. The evolution, lifespan and validity of such acts could be dealt with in the next report, which would have to attempt to reply to the questions raised in recommendation 6 adopted by the Working Group at the fifty-fifth session.[515] The Commission's discussions once again highlighted the complexity of the subject and the difficulties involved in the codification and progressive development of rules applicable to unilateral acts. Irrespective of the final form the work would take, the topic warranted in-depth consideration in view of its growing importance in international relations.

240. In order to settle the question of the nature of a declaration, act or conduct of a State and whether such acts produced legal effects, the will of the State to commit itself must be determined. That called for an interpretation based on restrictive criteria.

241. Whether they were considered sources of international law or sources of international obligations, unilateral acts *stricto sensu* were nonetheless a form of creation of international law. A unilateral act was part of a bilateral or multilateral relationship even if that relationship could not be described as a treaty arrangement.

242. Reference to acts of recognition could facilitate the study of conditional unilateral acts and their various aspects (their application, modification or withdrawal).

243. As to the direction of future work, a more in-depth study of practice could be carried out by looking into specific issues such as those raised by certain speakers (author, form, subject, reaction, subsequent evolution, etc.) and studying some specific aspects that could be derived primarily from court decisions and arbitral awards.

244. The next report would take account of the conclusions or recommendations to be formulated by the working group, if it was established.

4. Conclusions of the Working Group

245. At its 2818th meeting on 16 July 2004, the Commission established an open-ended Working Group on unilateral acts of States, chaired by Mr. Alain Pellet. The Working Group held four meetings.

246. At its 2829th meeting on 5 August 2004, the Commission took note of the oral report of the Working Group.

247. The Working Group agreed to retain a sample of unilateral acts sufficiently documented to allow for an in-depth analysis. It also established a grid which would permit the use of uniform analytical tools.[516] The members of the Working Group shared a number of studies which would be effected in accordance with the established grid. These studies should be transmitted to the Special Rapporteur before 30 November 2004. It was decided that the synthesis, on the basis of these studies exclusively, would be entrusted to the Special Rapporteur, who would take them into consideration in order to draw the relevant conclusions in his eighth report.

[515] See footnote 500 above.

[516] 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