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Summary record of the 2524th meeting

Topic:
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national legal systems; hence the need to strengthen its role in guaranteeing the rights of individuals. From that standpoint, diplomatic protection and the machinery for the protection of human rights acted as complements to each other in the promotion of the pre-eminence of law in the treatment of individuals. At the current time, diplomatic protection was undergoing modernization in the light of the development of international law since the adoption of the Charter of the United Nations. The task was therefore both to codify a topic which was ripe for codification and to relocate it in the contemporary historical context.

36. At the current time, in fact, some rights were accorded directly to the individual at the international level. The individual possessed those rights from the outset and retained them intact, but they could be defended by his State of nationality by means of the institution of diplomatic protection. It thus emerged from the discussion that it must be accepted that, in accordance with the traditional case law and doctrine, the State of nationality had a discretionary power by virtue of the nationality link, but that, in view of those new rights of the individual, a State was not automatically and in all scenarios asserting its own right when exercising diplomatic protection. It had thus been proposed that the question put in paragraph 54 of the preliminary report should be answered by drawing a distinction between, on the one hand, the right either of the individual as the direct addressee of certain rules of international law or of the State and, on the other hand, the exercise of that right, which in all scenarios was a matter for the discretionary power of the State of nationality. A kind of right of the individual to enjoy the protection of his State of nationality was indeed beginning to emerge in some national constitutions, but that obligation did not yet exist in international law. With the help of the Secretariat, the Commission would seek to ask States to inform it about the status of their legislation on the topic.

37. An individual also had the possibility of recourse to international bodies, including courts of arbitration, and the State could always espouse his cause and enforce his rights through the procedures available to it vis-à-vis the host country. In future, he would try to clarify the relationship between those two different means of recourse. It had been pointed out in that connection that the boundaries between some of the legal categories used to delimit the topic at the Commission's forty-ninth session were neither watertight nor rigid, especially with respect to the distinctions between direct and indirect injury and between primary and secondary rules. In the case of that second distinction and to reply to the question put in paragraph 65 of the preliminary report, the main tendency in the Commission was to accept that the frame of reference, for the purposes of the topic, consisted of secondary rules, but that, in its consideration of the topic, the Commission should bear in mind the inevitable clashes with primary rules, which must be taken into account when answering questions about, for example, the rights in question, the nationality or the nationals concerned, the "clean hands" rule, and so forth. It was clear from the discussion that wisdom did not consist of reproducing the past, but of reading the past with an eye to the present.

38. He wished to make it clear that his comments about the Commission's secretariat should not be interpreted as criticism, but, on the contrary, as an appeal to the Secretary-General to boost the resources of the Codification Division to enable it to cope with the very heavy workload which it had to bear, in respect of the Commission in particular.

39. Mr. PELLET said that the terms "direct injury" and "indirect injury" were dangerous in the context of State responsibility and that it was more a question, in the topic under consideration, of the distinction between mediate and immediate injury. Furthermore, while a right to diplomatic protection certainly did not exist in international law, it might nevertheless be asked whether, in the event of a serious violation of the rights of the human person, a State which did not exercise its diplomatic protection would not for all that be violating a rule of general international law.

40. Mr. MELESCANU said that the notion of denial of justice used by the Special Rapporteur must be understood in the general sense of the term. While some national constitutions did contain an obligation to provide diplomatic protection, it was very doubtful whether that constituted an obligation in international law; hence the need for a careful redrafting of the questionnaire on the topic which was to be sent to States.

41. Mr. KUSUMA-ATMADJA said that he was generally in agreement with the Special Rapporteur's conclusions, provided that the points raised by other speakers, in particular Mr. Pellet, were incorporated in them. He would also welcome clarification of the notions of legal construct or fiction and of the distinction between "individual" and "person". He cited three cases in which Indonesia had accorded its diplomatic protection to its nationals over the past year and said that soft law could in some cases prove more effective.

42. Mr. BENNOUNA (Special Rapporteur), referring to the Commission's further work on the topic, said that the conclusions he had offered were the ones he had personally drawn from the discussion. The Commission must at the current time, perhaps during the drafting of its report to the General Assembly, produce some preliminary conclusions of its own, provide guidance for the Sixth Committee's debates on a number of points and prepare the questionnaire to be sent to Member States.

43. The CHAIRMAN pointed out that the Commission must comply with the programme of work it had submitted to the General Assembly.

The meeting rose at 1.15 p.m.

2524th MEETING

Tuesday, 5 May 1998, at 10 a.m.

Chairman: Mr. João BAENA SOARES

Atmadja, Mr. Lukashuk, Mr. Melescanu, Mr. Mikulka, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Simma, Mr. Thiam, Mr. Yamada.

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Unilateral acts of States (A/CN.4/483, sect. F, A/CN.4/486,[1] A/CN.4/L.558)

[Agenda item 7]

FIRST REPORT OF THE SPECIAL RAPPORTEUR

1. The CHAIRMAN invited the Special Rapporteur for the topic of unilateral acts of States to introduce his first report (A/CN.4/486).

2. Mr. RODRÍGUEZ CEDEÑO (Special Rapporteur) said that, in accordance with its request at the forty-ninth session,[2] the Commission had before it his first report on unilateral acts of States. He trusted that he would receive members' comments and guidance for further work in preparing a substantive report for the next session.

3. The first report, which was in the nature of an introduction to the topic, reflected much of the doctrine, jurisprudence and State practice on which the Sixth Committee had commented (A/CN.4/483, sect. F). It took account of the Commission's earlier work and in particular of the conclusions contained in the report of the Working Group established at the Commission's forty-ninth session.[3] Despite the many doctrinal works on unilateral acts of States in general and the number of unilateral legal acts in particular, they were not necessarily consistent. The main purpose of the first report, therefore, was to decide on a systematic approach to the study of such acts, in keeping with the methodology proposed.

4. PCIJ and ICJ, having considered unilateral declarations of States on a number of occasions, had concluded that they were binding regardless of whether they fell within the treaty sphere (*Legal Status of Eastern Greenland* case). In two other cases, ICJ had held that there had been legal unilateral declarations (*Nuclear Tests* cases) while in others that there had been political declarations which had no legal force (*Frontier Dispute* and *Military and Paramilitary Activities in and against Nicaragua* cases).

5. As to the scope of the topic, the first report took the view that it would not be possible to work on the codification and progressive development of the rules to govern the functioning of a specific category of the legal unilateral acts of the State until a definition, or at least the elements of a definition, were found. In particular, it was important to decide whether a unilateral act that could be the subject of codification and progressive development was a formal unilateral act, in other words, a declaration that would be to the law of unilateral acts (if deemed to be a branch of international law) what a treaty was to international treaty law.

6. Chapter I of the first report related to the existence of unilateral acts of States and chapter II related to strictly unilateral acts of States. The latter term had been used for the sake of convenience simply to differentiate such acts from non-autonomous or dependent acts whose operation was governed by existing rules.

7. There was absolutely no doubt that, as reflected in international practice and general doctrine, unilateral acts did exist in international law. States performed a variety of unilateral acts in their foreign relations: some political, others legal and many others indeterminate. But they all had an important effect internationally. The topic called for an initial delimitation of the acts that would fall outside the ambit of strictly unilateral or autonomous acts, and, also, for a subsequent limitation with a view to laying down criteria for determining that category of acts. It was important to note that, just as not all treaty acts fell within the law of treaties, so not all unilateral declarations would fall exclusively within the law of unilateral acts. The introduction to the first report drew a distinction between non-legal unilateral acts—or political acts, unilateral legal acts of international organizations and the conduct, attitudes and acts of the States which, though carried out voluntarily, were not performed with the intention of producing specific legal effects.

8. The purpose was to endeavour to arrive at a definition of a strictly unilateral act, with a view to preparing more precise reports on rules pertaining to the preparation, validity, effects, nullity, interpretation, revocation and modification of such acts. To that end, the Commission should, in a kind of parallel approach, take account of the law of treaties and particularly of the methodology it had adopted when examining the matter, but bearing in mind the specific nature of unilateral acts.

9. The introduction to the first report, which sought to arrive at an initial delimitation, first took up political acts. It was of course no easy matter to determine the nature of an act performed by a subject of international law and, in particular, the State. A political act might be purely political if it produced only political effects and, consequently, did not produce legal effects—a significant occurrence in State practice. But there was no reason why an apparently political act, formulated outside the context of negotiations and in a political context without any of the formalities specific to an international legal act, could not contain legal elements that bound the State. The intention of the State was essential in determining the nature of the unilateral act. It would be for the courts to interpret whether the State, in performing a political act, had intended to enter into legal obligations. That was apparent from the *Nuclear Tests* cases and the decisions taken by ICJ when it had inferred that political declarations made outside the context of negotiations could contain legal elements binding on the State.

10. Accordingly, acts which were regarded as strictly political, in other words, which produced solely political

[1] Reproduced in *Yearbook . . . 1998*, vol. II (Part One).

[2] *Yearbook . . . 1997*, vol. II (Part Two), p. 66, para. 213.

[3] Ibid., p. 64, chap. IX, sect. B.

effects, must be excluded from the scope of the report. Obviously, such political acts were significant in international relations. States could enter into political commitments via such acts so as to regulate their conduct at the international level, and, even if non-compliance did not give rise to a legal sanction, the political responsibility of the State would be at issue, affecting its credibility and hence its participation in international relations. Strictly political commitments could not be equated with legal commitments, but there was a common element in that both acts governed the conduct of the State in international relations, although they might have different consequences especially in the case of non-compliance.

11. Again, the first report did not deal with the unilateral legal acts of international organizations, a subject that nonetheless called for special consideration. Such acts undoubtedly existed, as was evident from an ever-increasing body of practice. However, unilateral acts of international organizations were founded on the will of States as reflected in the constituent instruments of those organizations, on the powers vested in the organizations, and could give rise to obligations. That also differentiated them from unilateral acts of the State, which could, in principle, only create rights in favour of third parties. From legal writers and from the practice of international organizations, at least those of a universal character, it could be inferred that a wide variety of acts were formulated as resolutions: they were sometimes recommendatory and sometimes involved decisions, but had different legal effects. Unilateral acts under decision-making resolutions were legally binding, such as those that related to the operations of the organization or that were addressed to a subsidiary body and could also be vested with legal force. Others, in the nature of recommendations and addressed to States, although not binding, were highly relevant to international law, particularly so far as the formation of customary rules was concerned. Yet other unilateral acts, which had received little attention from legal writers, were those formulated by the organization's highest administrative authority, in the exercise of its powers, and were not only those of an internal nature but also those relating to one or more States or to the international community as a whole.

12. That account, which showed how complex the topic was, highlighted the difficulties of drawing up rules common to States and international organizations, especially in the matter of the binding nature of such unilateral acts. Although States and international organizations were subjects of international law, there were significant differences in terms of their powers and the formulation of their acts, which made it necessary, for the time being, to separate acts of international organizations from the consideration of unilateral acts of States.

13. The first report also excluded unilateral acts of States which might be connected with international responsibility, the issue the Commission was considering on the basis of the first report on State responsibility submitted by the Special Rapporteur, Mr. Crawford (A/CN.4/490 and Add.1-7)[4] and the first report on prevention of transboundary damage from hazardous activities submitted by the Special Rapporteur, Mr. Sreenivasa Rao (A/CN.4/487 and Add.1).[5] That did not mean acts relating to international responsibility were of no interest for unilateral acts. They too were unilateral although some might be contrary to international law and others not. Unilateral declarations formulated by a State, which could have international legal effect, could be directly related to the question of international responsibility. The exclusion related more to the actual subject of responsibility than to unilateral acts themselves.

14. Chapter I of the first report, on the existence of unilateral acts of States, took up the fundamental question of sources of international law and sources of international obligations, distinguishing between formal legal acts and the legal rules that created such acts and focusing on unilateral declarations as legal acts whereby legal rules, and in particular legal obligations, were created for the declarant State. In his view, a unilateral declaration was a formal legal act whereby legal rules could be created; accordingly, it could be the subject of special rules governing its operation. It had been felt important to consider more closely declarations as a formal legal act of the State, regardless of content: that had a bearing on a later section of the report which dealt with criteria for determining the strictly unilateral nature of legal acts of States. Again, distinguishing between the formal declaration and the rule it embodied could make it easier to consider unilateral acts of States. That did not, however, mean the substantive act was not taken into account when deciding whether a unilateral declaration was autonomous or independent.

15. Chapter I also spoke of the various substantive legal acts of States with a view to determining those which might fall outside the treaty sphere and therefore require special rules to govern their operation. Unilateral acts connected with the law of treaties fell, without undue difficulty, into the treaty sphere insofar as the relevant rules and in particular the Vienna Convention on the Law of Treaties (hereinafter referred to as the "1969 Vienna Convention") would apply. That was true, in particular, of acts such as signature, ratification, formulation of reservations and even interpretative declarations.

16. Similarly, acts relating to custom were excluded, though unilateral acts were undoubtedly of great importance in that respect. An important question had to be considered: a unilateral act of the State could form part of the process of the formation of a customary rule, but at the same time it could be autonomous if the requisite conditions obtained in order for it to be regarded as an autonomous or strictly unilateral act. At all events, the first report showed that in the process of the formation of custom a unilateral act was part of a tacit consensual process inasmuch as such acts were basically a reaction to other pre-existing acts.

17. Another category of apparently autonomous unilateral acts excluded from the first report were those resulting from the exercise of a power granted under a treaty or by virtue of a rule of customary law. Such was the case, for instance, with unilateral acts of the State involved in the establishment of maritime zones, and particularly of

[4] See footnote 1 above.

[5] Ibid.

the exclusive economic zone, something that was generally set out in an internal legal act. In those instances, even though they created rights in favour of the declarant State and obligations for third States, they were valid in international law. That affirmation had called for a general comment in the report on internal unilateral legal acts of States which were not connected with pre-existing rules, in other words, internal legislation and its extraterritorial legal effects.

18. In that connection it was important to note that unilateral legal acts could not create obligations for third States which had not participated in their elaboration, something that was in keeping with settled principles of international law, unless the third State so agreed. Internal unilateral legal acts were without a doubt relevant to international law; that was true, for instance, in the case of the formation of custom and when such acts were connected with the law of treaties, particularly where the development of international commitments was concerned. Consequently, the State's internal legislation could not be of extraterritorial scope, in other words, it could not create obligations for third States which had not participated in its elaboration.

19. Furthermore, unilateral legal acts of States should be disregarded where, by virtue of their very nature, they formed part of a treaty relationship, as in offer and acceptance or the simultaneous unilateral declarations to be found in international practice which reflected a treaty relationship and to which the existing rules would apply.

20. He thought a brief comment on estoppel should be made. Estoppel was a rule of evidence which, though Anglo-Saxon in origin, had at the current time found a place in the doctrine and jurisprudence of international law but which, while it had been considered on a number of occasions by international judicial bodies, had rarely been used as the basis for a ruling. He would refer members in that connection to the *Corvaïa* case between Italy and Venezuela in 1903.[6] The term "estoppel" was accepted in international doctrine, although some writers thought it inappropriate to transfer a concept of internal law to international law when general rules that were applicable already existed. Jurisprudence, for its part, had apparently considered it only in its restrictive form, namely, estoppel by representation. That was apparent from, among others, the *Legal Status of Eastern Greenland*, *North Sea Continental Shelf*,[7] *Temple of Preah Vihear*,[8] *Nottebohm*, and *Barcelona Traction, Light and Power Company, Limited*,[9] cases and the *Arbitral Award Made by the King of Spain on 23 December 1906*.[10] Estoppel in itself was not of interest to a study of unilateral acts, but the conduct and the actions of the State which allowed it to be invoked did bear an apparent relationship to unilateral legal acts. However, while it was clearly important to consider them when studying the acts under consideration, the conduct of the State which allowed another State to rely on estoppel in any proceedings was of a different kind. Estoppel related to acts or conduct that created certain expectations in a third State on the basis of which that State adopted an attitude that caused it harm or damage. The matters which might allow estoppel to be invoked in proceedings could arise from a positive act or a passive one, such as silence. In estoppel, the main thing was the objective appreciation of the third State, namely, whether it had relied on the intention as deduced from the attitude of the first State. Notwithstanding a certain similarity between the conduct and acts that allowed estoppel to be invoked, a unilateral declaration was a formal legal act carried out precisely with the intention of producing legal effects, which would not be the case with the conduct and attitudes connected with estoppel. Moreover, a unilateral declaration would place the State under an obligation from the moment of its formulation. In the case of estoppel the effect flowed not from the will of the State whose conduct it was but from the representation made by the third State concerning the will of the author. The conduct of the third State was fundamental, whereas, in the case of a substantive unilateral act, such as promise, and as indicated by ICJ in its decisions in the *Nuclear Tests* cases, the conduct of the beneficiary did not determine whether it was binding in character. Interestingly enough, on that point, some writers took the view that, in the *Barcelona Traction*, *Serbian Loans*[11] and *North Sea Continental Shelf* cases, estoppel was treated as a special means of establishing a treaty relationship.

21. The first report also expressly excluded certain conduct and attitudes on the part of the State that were not formal legal acts although they could have legal effects. That applied to silence, which was a failure to act on the part of the State or, as some felt, one form of consent. Silence was a passive attitude which, in most cases, was reflected in tacit assent. It was not a strictly unilateral act within the meaning of the topic under consideration, since it could not have an autonomous effect nor could it create a new legal relationship. Still less was it a formal unilateral legal act comparable to a unilateral declaration. The same was true of notification, which, regardless of whether it was a legal act, although he agreed that it did not produce effects per se, was not formally autonomous since it related to a pre-existing act.

22. Chapter II dealt with the criteria which, in his view, determined the strictly unilateral nature of the legal act and the legal basis for its binding character, in an effort to arrive at a definition of a strictly unilateral act. Such an act, which could produce effects at the international level, should be considered as a single expression of the will of one or more States, in other words, what was involved were individual and collective unilateral acts. He had termed such acts hetero-normative in that they produced effects and in particular created rights in favour of third parties who had not participated in their elaboration. That criterion was not, however, sufficient to determine whether such acts were autonomous, independent or purely unilateral. It was necessary to think in terms not only of the single attribution but of the autonomy of the act and of the autonomy of the obligation entered into by the declarant State. A strictly unilateral legal act had to be

[6] UNRIAA, vol. X (Sales No. 60.V.4), pp. 609 et seq., at p. 633.

[7] *Judgment, I.C.J. Reports 1969,* p. 3.

[8] *Merits, Judgment, I.C.J. Reports 1962*, p. 6.

[9] *Preliminary Objections, Judgment, I.C.J. Reports 1964,* p. 6, in particular pp. 24-25.

[10] *Judgment, I.C.J. Reports 1960*, p. 192.

[11] *Judgment No. 14, 1929, P.C.I.J., Series A, No. 20.*

autonomous and independent of any manifestation of will, whether prior, simultaneous or subsequent. Otherwise, the act would be unilateral in form and would fall into the treaty sphere. In addition, however, as clearly noted in the report, the autonomy of the obligation was a decisive criterion in establishing its strictly unilateral nature.

23. Any legal act created, by virtue of its very structure, rights and obligations, and a unilateral act naturally created obligations for the State which performed it and rights in favour of third parties. But in that case the obligation arose not at the time of acceptance or of any subsequent conduct on the part of the third State but when the State that formulated the declaration or carried out the unilateral act intended to enter into a commitment and to assume the international legal obligation, which was possible when it exercised the power of self-limitation conferred upon it by international law. There were important practical consequences to the autonomy of the obligation. As noted in the report, when the courts considered whether an act was strictly unilateral and determined its legal effects, they would examine the formulation of the act and not the conduct of the other State although the latter could acquire rights, as was so held by ICJ in its judgments in the *Nuclear Tests* cases.

24. Chapter II referred to the legal basis of the binding nature of unilateral acts of States. In the first place, as in treaty law, under which every treaty had to be performed in good faith, a unilateral declaration had to be respected in the same way. Given the need for mutual trust and international legal certainty, good faith also had to be regarded as fundamental to the binding nature of unilateral acts of States. Furthermore, the decisions of ICJ in the *Nuclear Tests* cases, which were essential to a study of the sources of international law and international obligations, made it clear that the binding nature of a substantive unilateral act—a promise, in the event—was based on good faith. The binding nature of such acts by the State would also be based on the power of self-limitation, deriving as it did from the capacity to act at the international level and to enter into international obligations that were not necessarily subject to the principle of reciprocity. The State could enter into international obligations unilaterally and autonomously, in the exercise of its sovereignty and by the capacity conferred upon it by international law. Accordingly, the binding nature of a unilateral legal declaration by the State would be based not on any legal interest the third State might have but on the actual intention of the State that formulated it, something which had important practical consequences when the international courts came to interpret an act of that kind.

25. Again, with the law of treaties, the *pacta sunt servanda* rule lay at the basis of its binding nature, as was apparent from article 26 of the 1969 Vienna Convention. In the same way, in the case of unilateral acts a special rule, such as *promissio est servanda* could be used for the specific case of promise. It was also possible in that connection to use the rule *acta sunt servanda*, or, more specifically, *declaratio est servanda* as a basis for the binding nature of the unilateral declarations of the State.

26. A definition was therefore fundamental for the future work and the first report endeavoured to submit its constituent elements. A strictly unilateral declaration could be regarded as a clear and unambiguous autonomous manifestation of will, expressed explicitly and publicly by a State, with the object of creating a legal relationship and, in particular, of creating international obligations for itself, in relation to one or more States which had not participated in its elaboration, without any need for that State or those States to accept it or for subsequent conduct signifying such acceptance.

27. Clearly, unilateral acts of States did exist in international law. Some of them were truly autonomous in the sense that they were strictly unilateral and were not subject to any other manifestation of will, and through them, new legal relationships were created. Consideration by the Commission of those acts was of practical interest and considerable political relevance, since international law must adjust to the fact of life that States were increasingly resorting to the formulation of unilateral acts, many of which had a legal content and some of which fell within the field of strictly unilateral acts. If the Commission took the view that a unilateral declaration, as an act whereby international legal rules could be created, was a subject for the formulation of rules governing its operation, it would be advisable to consider forthwith the scope of the work ahead. To that end, it would be helpful if the Working Group established at the previous session could be reconstituted. It would also be advisable to push on with work on the content and scope of the topic, with a view to reaching a decision on the matter. It was important to note that a final document on the topic should exclude unilateral acts other than declarations. The 1969 Vienna Convention referred to treaties—or written agreements—which did not mean there were no other conventional acts in international law. In his view, therefore, any further work on the topic should take very careful account of the law of treaties, not only from the standpoint of form but also from that of the procedure for adopting the 1969 Vienna Convention and the methodology used at that time.

28. He thanked all those who had assisted him with their comments and had supported him during his work.

29. Mr. BROWNLIE expressed his congratulations to the Special Rapporteur on a very helpful first report on what was probably by far the most difficult and protean topic on the Commission's agenda, and also one which, as colleagues who practised before international tribunals would recognize, had important practical applications. While it might be premature to decide on the ultimate form of the Commission's work, that consideration should influence the way in which the work was conducted. His first impression was that, given the nature of the subject, the most useful form the product could take would be that of an expository study. On the other hand, attempts to codify the subject might prove positively unhelpful.

30. His concerns on the matter stemmed from the fact that he seriously doubted whether the topic was a unified subject. If he was right, it did not mean the topic was flawed, but it should nevertheless influence the way in which the subject matter was approached. He was reluctant to impose categorical limits on an "umbrella" topic of which the outside world might take a more untidy view.

Unilateral acts should therefore not be defined narrowly—though the Commission might still wish to classify them in various ways. The question arose of the effect of the conduct of States, and of implied acceptance or acquiescence, as in the decision in the *Arbitral Award Made by the King of Spain on 23 December 1906*, in which Nicaragua had been held to an arbitral award essentially on the basis of her subsequent conduct. In his opinion, a pure definition of a unilateral act—if one could be found—should not also serve as a definition of the mandate. He did not mean to imply that it was unhelpful to try to isolate the concept of a unilateral act, at least for some purposes. But he was not sure it would be wise for the Commission to treat that definition as the perimeter of the subject. In the final analysis, even if one accepted—as one should—the Special Rapporteur's setting aside of various forms of subject matter as not falling within the Commission's mandate, the fact remained that the Commission was dealing with a series of separate legal institutions. Even at a cursory glance, he had already identified five such institutions.

31. First, there was implied consent on the basis of conduct, including silence. Secondly, there was the issue of opposability. Although the *Fisheries* case (United Kingdom of Great Britain and Northern Ireland *v.* Norway)[12] had probably been decided on the basis of general international law relating to the system of baselines, the reasoning in the decision, and especially the last six pages of the judgment, were essentially based on opposability. The fact was that over a period of decades, in the face of the development of the Norwegian system of baselines, the United Kingdom—which was after all another riparian State, and one whose fishermen had been directly affected by that system after 1906—had kept silent, making no formal protest until as late as 1933. Opposability thus probably formed part of the same family as protests and reservations of rights.

32. Thirdly, there was estoppel. With all due respect to the Special Rapporteur, he was not convinced that in international law estoppel could still properly be described as an institution of Anglo-Saxon doctrine. There was currently a very well-established jurisprudence in ICJ, starting with paragraph 26 of the judgments in the *North Sea Continental Shelf* cases, incorporating a version of estoppel—with the condition of detrimental reliance—into public international law. There were at the current time six such cases and five of them referred back to that same paragraph.

33. Fourthly, there were declarations which were binding per se on the basis of good faith, as accepted by ICJ in the *Nuclear Tests* cases. Fifthly, in the *Corfu Channel* case, a major part of the evidence of Albanian responsibility relied on by the Court had been what it called the "attitude" of Albania—both its statements and its silences in the period after the mines had exploded. All those examples suggested that the intention of the first State actor was not in all cases a necessary condition for the existence of legal effects. That was another respect in which the Commission should take care to employ categories as useful dividers, rather than to fix unnecessarily rigorous outer limits to the subject.

34. Mr. HAFNER said that all five institutions referred to by Mr. Brownlie were the result of "activities" or "attitudes" of States, rather than of "acts" of States as the term was usually understood. Should the unilateral act be understood as comprising all the activities of the State that had an effect, or as comprising only activities of the State that were intended to create a legal effect, in which case the term "act" would cover a narrower field than the term "activity"?

35. Mr. BROWNLIE said he accepted that a problem did exist in that connection. At the same time, he did not accept that all five examples he had cited involved activities or conduct. The *Nuclear Tests* cases were regarded as relating to unilateral acts, and although there was doubtless a grey area, it would be unduly doctrinal for the Commission to confine itself to certain types of unilateral acts. Quite often there was a pattern of conduct that included unilateral acts and also significant silences. As for Mr. Hafner's question concerning the need for a legal intention of some kind, it was a condition that would be appropriate for some, but not all, departments of the subject. Perhaps accepting the complexity and departmentalization of the subject was an easier way out than insisting that the subject was more unitary than it really was.

36. Mr. GOCO said that the first report on unilateral acts of States contained a convincing exposition of what could not be regarded as unilateral acts. While there was no doubt that formal unilateral acts of States existed in international law, the majority of such acts nonetheless fell within the sphere of treaty relations.

37. In paragraphs 96 and 97 of the first report, the Special Rapporteur also pointed out that States carried out a number of acts which could be regarded as falling within the treaty sphere; and referred to a number of legal acts which were unilateral in form but which fell within the realm of the law of treaties as such. The report went on to mention a variety of other State acts which, though producing legal effects and binding on the State concerned, did not fall within the category of unilateral acts. It cited the Statute of ICJ, Article 38 of which set out the main formal sources of international law, without, however, mentioning unilateral acts of States. The fact that unilateral acts of States were not mentioned in article 38 could not, of course, in itself preclude their treatment as such.

38. The report also made a serious attempt to separate the legal acts of States from their political acts. Demarcating the division between the two was no easy task. Despite an attempt to define a political act as one underpinned by the political will of the State performing the act, the basis for whose obligatoriness resided in morality and politics, in the final analysis it was the intention of the State in entering into the commitment that determined its legal or political character.

39. The aim of the current exercise was, first of all, to identify, by considering the various acts and forms of conduct of States, the constituent elements of a definition of a unilateral legal act, and to determine whether they existed in international law and, if so, whether the rules governing those acts could be the subject of codification and progressive development. That aim was in full conformity with the mandate assigned to the Special Rappor-

[12] *Judgment, I.C.J. Reports 1951*, p. 116.

teur by the Working Group at the forty-ninth session of the Commission.[13]

40. In general, acts and conduct of Governments could not be directed towards the formation of agreements, yet were capable of creating legal effects. While there were certain identifiable acts that could be deemed unilateral acts—protest, promise, renunciation, recognition, declaration—there were still many that could be treated as unilateral acts only by means of an interpretation of their constituent elements. In his conclusion the Special Rapporteur himself admitted the difficulty of pinning them down and placing them in a specific category. A similar view had been expressed in the Sixth Committee. That was precisely where the difficulty lay: while there was no dearth of practice, doctrine and jurisprudence on the acts and conduct of States, they were not always consistent.

41. The aim of obligatoriness under international law was for the concerned State to be bound by its act or conduct. A unilateral act must have consequences, even if the intention to enter into an undertaking, as in a treaty, was absent. For such an act might affect a third State or third party, so that it could indeed bear legal effects or obligations. But to identify those acts and find a degree of consistency or an underlying pattern in them might be difficult. To be bound as a consequence of a unilateral act depended to a large extent on an appreciation of the facts. In the *Nuclear Tests* cases, the Court had decided that France was legally bound by its public declaration to stop conducting atmospheric nuclear tests. However, in the *North Sea Continental Shelf* cases the same Court had held that unilateral assumption of the obligations of a convention by conduct was not likely to be presumed and that a very consistent course of conduct was required in such a situation.

42. There seemed to be little treatment in the first report of effects or consequences. The binding character of a unilateral act would be illusory if the legal relationship the act created were to be terminable unilaterally and at the will of the author State. For if the act was unilaterally revoked or terminated, what would become of its binding effect?

43. Finally, the report laid down the criteria for a strict definition of unilateral acts and the legal basis for their binding character. He doubted, however, whether those criteria were sufficient to encompass all acts. As to the legal basis, in his view, only the principle of good faith of the declarant or promisor State could serve as a legal basis for obligatoriness. If such good faith was expressed, then there would be no call to bring the matter before an international tribunal.

44. Mr. LUKASHUK drew attention to paragraph 45 of the first report on unilateral acts of States, in which the Special Rapporteur stated that the obligatoriness of a political engagement was at times far more effective and consequential than that of a legal engagement. Mr. Pellet had begged to differ, giving it as his view that legal obligations were always supreme. Yet if Mr. Pellet, on his way to the university to deliver a lecture in fulfilment of his legal obligation, were to encounter a child drowning in a lake, he would undoubtedly intervene in order to rescue the child, thereby putting his moral duty before his legal obligation.

45. More importantly, the Special Rapporteur spoke, not of the supremacy of political applications, but of their effectiveness, which was quite another matter. During the cold war, for instance, a whole complex of "rules of the game" had been evolved by the Union of Soviet Socialist Republics and the United States of America in the sphere of security. Both sides had recognized that those political rules were highly effective—more so, indeed, than some treaties. That, however, did not undermine the authority of treaties and the role they played. General de Gaulle had once remarked that treaties are like women: good while they are young. For lawyers, a more seemly motto would be: treaties are like women, in that women always remain women.

46. The Special Rapporteur considered the sources of international law as methods and procedures for creating international law and international rules. It was well known that a source of international law signified not only the method of creating rules, but also the form that such rules took. It was in that sense that ICJ used the concept of a treaty in its practice. The Special Rapporteur needed to have recourse to that conception in order to resolve the central problem of the first report, namely: that while unilateral acts of States did not constitute a source of law, that did not mean a State could not create international law through its unilateral acts (para. 81). It appeared, however, that by not constituting a source of international law, a unilateral act could not in itself create rules of international law. As the Special Rapporteur rightly stressed, a unilateral act could create an international obligation of the State, which was another matter.

47. He also doubted the Special Rapporteur's view that a unilateral act could establish unilateral relations. It seemed to him that legal relations must always be at least bilateral. Love could be unilateral, but there was no such thing as a unilateral marriage contract. Consequently, one could scarcely agree with the proposition contained in paragraph 133 of the first report that a unilateral act should be understood as an act which was attributable to one or more States and which created a new legal relationship with a third State which had not participated in its elaboration. In point of fact, such a legal relationship could not be created without the agreement of the third State. An important question arose in connection with a unilateral act involving several States, one on which the Special Rapporteur unfortunately did not touch, namely: what were the relations and obligations between the participants in a unilateral act, and to what extent were they binding? The Special Rapporteur, guided by practice, rightly defined the rule giving rise to the binding force of the unilateral act as the principle of good faith. So there was no need to invent any special rule such as *declaratio est servanda*, proposed by the Special Rapporteur in paragraph 157. The principle of good faith was enough.

48. Those debatable questions confirmed the complexity of the topic. Consequently, it would be advisable to define the fundamental parameters of the study from the outset. In his view, it would be helpful to turn first to national law, from which it could be seen that Roman law

[13] See *Yearbook . . . 1997*, vol. II (Part Two), p. 65, para. 209.

had never attached any significance to a unilateral manifestation of the will of an individual: only agreements had legal consequences. The French Civil Code, too, contained no concept of unilateral acts, referring only to quasi-contracts, which were a different matter. Admittedly, German law contained the well-known concept of *Rechtsgeschäft*, which was close to that of a unilateral act. The Italian Civil Code of 1938 provided for *promesse unilaterali*, which, however, had legal significance only if provided for by law. That proposition had very important implications for international law: unilateral acts could have significance if provided for by the norms of international law. In his separate opinion on the *South West Africa* cases in 1962, Judge Jessup had stated that "unilateral contracts" were possible in the United States (see page 403 of the separate opinion). It was not clear, however, what was referred to.

49. That brief overview of national law showed that national systems left very little room, if any, for unilateral legal acts. Thus, international law occupied a special place in that regard, offering a broader scope for unilateral acts. Interestingly enough, Grotius had considered promises, as well as agreements, to be a source of legal obligations, with the important proviso that a promise could have legal effect only when accepted by the addressee.[14] And that, alas, meant it was no longer merely a promise. Perhaps it was closer to the United States concept of "unilateral contracts".

50. The issue of unilateral acts had arisen frequently in the practice of international courts, for example in the *Legal Status of Eastern Greenland* case and the case of the *Free Zones of Upper Savoy and the District of Gex*.[15] But the unilateral act in such cases was most often a component of a bilateral action. International law had quite clearly embraced the concept of the unilateral act in the decision of ICJ in the *Nuclear Tests* cases. In its declaration, the French Government had certainly not given the impression that its intention had been to undertake a legal obligation. The Court, however, had stated that the existence of such an intention was a decisive factor. The Charter of the Nürnberg Tribunal[16] had placed assurances on the same footing as treaties in defining a crime against humanity as the preparation or waging of war in violation of treaties, agreements or assurances.

51. He had been able to uncover only one truly unilateral act and, in fact, it established not only obligations but precise norms at the international level. It was the Declaration made by the Government of Egypt on the Suez Canal in 1957,[17] which had created the legal regime for the Canal. In it, Egypt had clearly expressed the intent that the Declaration serve as an international legal instrument.

52. All other unilateral acts had been *acta tertiis* in respect of other States, namely they had created no rights or duties without the consent of such States and had established no legal relationship. If third States availed themselves of certain rights, however, they were then obliged to fulfil certain duties. There were, on the other hand, a great many unilateral acts that were not accompanied by proof that their authors intended them to have legal force, but such acts could still have legal consequences in accordance with the rules of estoppel.

53. One of the specific features of unilateral acts was the renunciation of rights. The practice of international courts emphasized that such renunciation must always be clearly expressed: it could be neither presumed nor inferred. Another specific feature was recognition as indicated by ICJ in its advisory opinion on the *International Status of South West Africa* (see page 135).

54. Acquiescence played a pivotal role in the formation of rules of international law, embracing as it did custom and tradition. It likewise incorporated silence or failure to protest in situations requiring positive action. In many instances, acquiescence entailed very definite legal consequences. Finally, protest, a purely unilateral act, had legal consequences as well. Those were the main types of unilateral acts, but it remained for the Special Rapporteur to undertake the complex task of identifying and classifying the many others that had not yet been mentioned.

55. Certain issues should be addressed in the future work on the topic: How was the intent of States to give a unilateral act the character of a legal obligation to be established? What was the role of third States in establishing a legal relationship on the basis of a unilateral act? What regime should be set up for revocation or revision of a unilateral act?

56. Mr. ECONOMIDES thanked the Special Rapporteur for an excellent first report that prudently delineated the parameters of the topic, which was indeed one of the most difficult in international law. A coherent theory on unilateral acts of States had yet to be developed, in contrast to other areas of the law like treaty acts and international custom. The Commission's future work would thus be more in the nature of progressive development, rather than codification, of the law.

57. Certain categories of unilateral acts must be excluded from the scope of the study. One of them was unilateral acts designed solely for domestic impact and which had no effect at the international level. Some unilateral acts that had an effect at the international level should also be excluded. Such acts were those whereby a State exercised powers conferred under international law, for example in relation to the territorial sea, the contiguous zone or the exclusive economic zone.

58. Other acts that must be excluded from the study were those whereby States discharged at the domestic level their international obligations. Examples were the implementation of Security Council resolutions under Chapter VII of the Charter of the United Nations or of directives of the European Communities. Unilateral acts

[14] H. Grotius, *De jure belli ac pacis, libri tres* [1646] (Book II, Chap. XI, para. XIV), *The Classics of International Law*, Carnegie Endowment for International Peace (Oxford, Clarendon Press, 1925), vol. II. English translation.

[15] *Judgment, 1932, P.C.I.J., Series A/B, No. 46*, p. 96.

[16] Charter of the International Military Tribunal annexed to the London Agreement of 8 August 1945 for the prosecution and punishment of the major war criminals of the European Axis (United Nations, *Treaty Series*, vol. 82, p. 279).

[17] Declaration (with letter of transmittal to the Secretary-General of the United Nations) on the Suez Canal and the arrangements for its operation (Cairo, 24 April 1957) (United Nations, *Treaty Series*, vol. 265, p. 299).

that could contribute to the formation of international custom by strengthening the material component, *opinio juris*, or both, should also be excluded. The same was true of unilateral acts relating to an international treaty such as parliamentary approval or ratification, reservations, interpretative declarations and denunciation. Again, unilateral acts by which States wilfully or involuntarily violated international law must also be excluded, as they were wrongful acts and could incur the international responsibility of the State.

59. The acts of international organizations, including international courts, must be excluded, since the topic was defined as unilateral acts of States. Nevertheless, inspiration could be drawn from the law applicable to the acts of international institutions, which was much further developed than the law on unilateral acts of States, and from the decisions of such bodies. He did not, however, see the point of distinguishing between political acts and legal acts of States. It was a very fine distinction to begin with, and political acts were just as relevant to the topic as were legal acts. It was not the nature or characteristics of the unilateral act that mattered most, but rather the underlying intention, particularly the intention to produce an effect at the international level.

60. Despite convincing arguments by the Special Rapporteur in favour of their exclusion from the scope of the topic, he believed that silence, acquiescence, declarations of State agents before international courts and notification merited a more in-depth investigation with a view to determining in which cases and under what conditions they could create non-treaty rights and obligations at the international level. The autonomy with which the act was performed was clearly the decisive factor, but account should also be taken of certain non-formal acts that could create such rights and obligations in a non-autonomous fashion. Such an inquiry could facilitate a final decision on whether such non-formal acts should be excluded from the topic or treated as exceptions.

61. The distinction between formal unilateral acts and substantive unilateral acts was apt. It was also true that the majority of unilateral acts were set out in a declaration, which was, accordingly, the most common formal unilateral act. Nevertheless, the possibility that unilateral acts might in future be expressed in other legislative or regulatory texts could not be ruled out.

62. What should the Commission set as its objectives? Naturally, the study must pinpoint the unilateral act, showing that it was one that created certain rights and obligations for States. Normally, unilateral acts did not create objective rights such as those which, according to a doctrinal distinction, proceeded from law-making treaties as opposed to contractual treaties. Mr. Lukashuk had already cited an exception to that rule, and one could likewise mention the political communiqués issued after meetings of heads of State, for they were unilateral declarations that sometimes dealt with legal issues and even set down normative principles, but they were not treaties or agreements. Such cases were, however, the exception rather than the rule. Unilateral acts essentially created subjective rights and obligations, but when those were produced at the international level, they were covered by international law and could thus properly be described as sources of international law.

63. The Special Rapporteur cited recognition, promise, renunciation and protest as unilateral acts that, in some circumstances, could create rights and obligations at the international level, but, personally, he would argue that estoppel also fell into that category. They would have to be carefully discussed and it would be necessary to determine their specific features, their basis, the parties able to adopt them, the form in which they were made public, their conformity with international law and the intention of States in adopting them. As Mr. Goco and Mr. Lukashuk had pointed out, it would also be necessary to study the delicate matter of revocation of a unilateral act, which, in contrast to a treaty act, was not based on reciprocity.

64. Mr. FERRARI BRAVO said that doctrine in his country contemplated unilateral acts, but he wondered whether the exercise was really worthwhile, and indeed, whether the Commission should engage in the study currently being undertaken by the Special Rapporteur, who had nevertheless done a remarkable job of building on the foundation created by the Working Group on unilateral acts of States at the forty-ninth session.

65. If two or more entities or parties directed unilateral acts against one another, there was always a reciprocal undertaking that was defined as a contract or a treaty. The action of the parties was thus creative, because it brought into being, by the intention of the parties, something that had not existed before. Hence there was every justification for elaborating precise rules concerning the manifestation and execution of that intention—in other words, for developing the law of treaties. But if the intention was manifested by one party alone, as was, by definition, the case with unilateral acts, could it really be described as creative? In his opinion, an intention not put into effect was not creative, although it could bring certain legal obligations into play if certain preconditions were met. In reality, a unilateral act was usually performed in response to a pre-existing situation and was often prompted by a dispute over what the pre-existing situation had been.

66. As to whether a unilateral act could create international law, a declaration of war was no doubt a unilateral act which did have legal effects, but in such cases everything was already predetermined by the rules of the law of war. If a unilateral act did not create international law and was merely something which brought international law into play, he doubted whether the topic really needed codification. Unilateral acts were so varied precisely because States wanted such variety. If unilateral acts were governed by an international convention, how would unilateral declarations be made, what declarations would be valid and what would be their consequences? States would not in fact be willing to go down that road, for it would eliminate the possibility of making further uses of a unilateral declaration.

67. The Commission could discuss the topic, but only in the context of specific situations—of environmental law, the law of war,—rather than *in abstracto*. But such an exercise would not prove very useful, and the Commission might find itself sailing on a boundless ocean.

68. Mr. MELESCANU said that the whole discussion of whether unilateral acts had legal effects could be placed between two extreme positions. At one extreme it could be argued that there were virtually no unilateral legal acts but only international agreements concluded in a simplified manner with varying degrees of formality, so that the legal effects of such acts were based on an agreement between the parties. It might be objected that there were cases in which the party to whom the unilateral act was addressed did not react. The principle of *qui tacet consentit* could well apply and provide a legal basis for arguing that, even in such cases, a voluntary agreement was established between the parties. Mr. Ferrari Bravo had given some of the arguments in favour of that extreme but defensible position.

69. The fact that Article 38 of the Statute of ICJ did not mention unilateral acts was of some importance. The Special Rapporteur had pointed out that some unilateral acts did not constitute sources of international law but nevertheless created international obligations. That was the basic idea on which the whole report should rest, and the Commission must first reach agreement on it, for otherwise, the legal basis of any codification would be very weak.

70. The other extreme position would be to argue that all unilateral acts could create legal effects in certain circumstances. The Commission had to make a proper distinction between acts creating legal effects of themselves and other acts deriving either from an international convention or, and here there was a big danger, from international customary law. If it was accepted that the Commission should not study unilateral acts deriving from a treaty obligation, how could the situation not be the same with respect to unilateral acts deriving from international custom?

71. "Unilateral acts of States" was one of the most difficult topics to codify. Perhaps the Commission should engage in a more thorough examination of it before deciding to make an attempt at codification. Such an examination would in itself produce very interesting results.

72. Mr. HAFNER responding to two of the points made by Mr. Ferrari Bravo, said that the Commission's mandate from the General Assembly[18] imposed a duty to codify unilateral acts, something it could not decline. The only possibility to pursue a different approach would be to try to persuade the Assembly to reconsider its decision. To argue that unilateral acts should be dealt with only in their specific contexts was tantamount to saying that treaties should be dealt with in their specific contexts and not as a general phenomenon of international law. Unilateral acts did have common features, irrespective of their context, and the Commission could examine them.

73. Mr. FERRARI BRAVO said that, in the case of treaties, two declarations had to be taken into account. The first need was to establish the equivalence of those declarations and the way in which one echoed the other. That already provided sufficient material for codification, and it was perfectly possible to have a theory of treaties without knowing what their purpose was. The situation of unilateral acts was quite different.

74. A unilateral act was an act in its pure form which could create nothing except in terms of its context, so the context became much more important than the act itself.

75. Mr. LUKASHUK congratulated the Special Rapporteur on his introduction of a detailed first report in which he had, in particular, succeeded in resolving the problem of political and legal obligations. The former were sometimes even more effective and significant in terms of their results than the latter. International rules were not only legal; there were also moral rules, the rules of *comitas gentium*, usage, traditions and, in particular, international political rules, such as the rules created in the course of the Helsinki process, that governed cooperation between States on many levels. OSCE had been established with the aid of political instruments. It followed that the problem of political obligations went beyond the bounds of the topic under consideration and was of wider significance.

76. He agreed with those lawyers who held that law and politics were inseparable and that every legal instrument was also political in nature. However, what was at issue in the current case was not the content of an obligation, but the nature of its binding force. States could give an instrument with identical content either political or legal binding force. OSCE instruments, for example, contained a special mention to the effect that their provisions had political binding force and were not subject to registration with the United Nations as international treaties.

77. A new topic had clearly emerged in the discussion: simplified or informal agreements. It would be difficult to reach a conclusion on unilateral acts without considering that topic, because the widely used practice of informal agreements stood between the codification of the law of treaties and the codification of unilateral acts. It was important to study the two topics in parallel.

78. Mr. SIMMA said that the difficulty of dealing with the topic led to a "bilateralization" of unilateral acts focusing on estoppel or, as Mr. Lukashuk had suggested, equating the problem of unilateral acts with the problem of informal agreements. The topic of unilateral acts was in fact broader than that. An agreement implied a meeting of minds, whereas a unilateral promise, for example, would have legal effects only as intended by the State making the promise. One such effect was reliance, which might be equated with estoppel in some circumstances.

79. Mr. ROSENSTOCK said that, if reliance was essential, then at least a functional equivalent of will existed. The topic was then bilateralized and shifted in the direction indicated by Mr. Lukashuk, for the reliance was what created the legal situation, which was very similar to an offer and an acceptance, that is to say, a voluntary commitment, reliance on which was equivalent to acceptance.

80. Mr. GOCO pointed out that the General Assembly had invited the Commission further to examine the topic of unilateral acts and indicate its scope and content. Since actual codification would indeed be very difficult, perhaps the Commission could produce guidelines for States, as suggested by the Special Rapporteur; that approach

[18] General Assembly resolution 51/160, para. 13.

would be consistent with the General Assembly's instructions.

81. Mr. MELESCANU said that he would like to know whether Mr. Simma thought that the principle of *acta sunt servanda* was analogous to that of *pacta sunt servanda*. And did a unilateral declaration create legal effects if it was not accepted by the State to which it was addressed?

82. Mr. SIMMA, responding to the point made by Mr. Goco, said that guidelines on the topic might prove counter-productive by creating a straitjacket for States. The good thing about unilateral acts was that States were free to couch them in whatever terms they pleased, as long as they realized that they might have unwanted consequences. As to Mr. Melescanu's question, the principle of *acta sunt servanda* could not apply, because acts were binding only in the sense that the State making a unilateral statement would be held to it. Treaties, in contrast, were fully binding. A recent work on unilateral acts had in fact come up with at least six theories on the binding nature of such acts.

83. Mr. ECONOMIDES said he was not sure that ICJ was competent to create law, but it was certainly competent to state the law and it had accepted unilateral acts as a source of international rights and obligations. In fact, the discussion in the Commission could not take place unless there was some relevant case law, and it had all the material necessary for studying unilateral acts. On a technical point, he wondered whether Mr. Ferrari Bravo would agree that the law of war no longer existed in the sense that, under the Charter of the United Nations, it had no application except in the case of self-defence.

84. Mr. HERDOCIA SACASA said that the point raised by Mr. Economides about ICJ was illustrated by the *Nuclear Tests* and the *Frontier Dispute* cases, in which the legal existence of unilateral acts and their effects had been clearly established. The Court had ruled, *inter alia*, that only when the State making the declaration intended to be bound by it did that intention confer on the State's position the character of a legal commitment. Therefore, everything depended on the State's intention.

85. As to the relations between unilateral acts and other acts or the existence of sufficient case law on the autonomy of the act itself, the Court had ruled elsewhere that no counterpart was necessary for a declaration to have legal effects and that no subsequent acceptance or other reaction by another State was needed either, because that was incompatible with the strictly unilateral nature of the legal act in which the declaration had been made.

86. It was the Commission's task to develop those existing fundamental texts of international law.

87. Mr. RODRÍGUEZ CEDEÑO (Special Rapporteur) said that the initial exchange of views had confirmed the complexity of the topic and that the work of the Special Rapporteur was fundamental to the discussion. In his first report he had attempted to systematize a theory of the unilateral acts of States. The exercise was not merely an academic one: the Commission must also take account of the legal realities because unilateral acts did exist in international law. The question was whether such legal declarations created effects unilaterally or whether they entered the realm of treaties.

88. The distinction between sources of international law and sources of international obligations was interesting, because it led to the question of formal declarations dealt with in the report. Any future codification work could not be based on anything other than the formal legal act.

89. Silence or failure to react to a declaration could not itself be regarded as a unilateral act, which was a positive formal act. Just as treaties were the most usual means of providing legal effects in treaty law, in the law of unilateral acts the unilateral act was the most important means of doing so.

90. The existing material on unilateral acts could be codified; a doctrine and case law already existed on the topic, and the formal unilateral act existed in international law as an act creating legal rules. The autonomy of such acts was a very important point, on which ICJ had ruled that unilateral declarations could exist independently of other manifestations of will. The autonomy of the obligation was also important: a State could enter into a commitment without any counterpart or other basis of reciprocity.

91. The Commission would also have to consider further the difficult question of revocation of unilateral acts.

Other business

[Agenda item 11]

92. The CHAIRMAN announced that the Gilberto Amado Memorial Lecture, sponsored every other year by the Brazilian Government, would be given by Ambassador Ramiro Saraiva Guerreiro, former Minister for External Relations of Brazil, on 13 May 1998. The title was "The creation of the International Law Commission and some considerations on supposed new sources of international law".

The meeting rose at 1 p.m.

2525th MEETING

Wednesday, 6 May 1998, at 10.05 a.m.

Chairman: Mr. João BAENA SOARES

Present: Mr. Addo, Mr. Brownlie, Mr. Candioti, Mr. Crawford, Mr. Dugard, Mr. Economides, Mr. Elaraby, Mr. Ferrari Bravo, Mr. Galicki, Mr. Goco, Mr. Hafner, Mr. He, Mr. Herdocia Sacasa, Mr. Lukashuk, Mr. Melescanu, Mr. Mikulka, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Simma, Mr. Thiam, Mr. Yamada.