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Chairman: Ms. Hallum . . . . . (New Zealand)

Contents

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The meeting was called to order at 3.55 p.m.

Agenda item 155: Report of the International Law Commission on the work of its fifty-first session (*continued)* (A/54/10 and Corr.1 and 2)

1. **Ms. Ariyoshi** (Japan), referring to chapter VIII of the report of the International Law Commission (A/54/10 and Corr. 1 and 2), relating to unilateral acts of States, said that the issue had not been discussed sufficiently and that in particular not enough attention had been given to the very important question of actual practice. Her delegation welcomed the Commission's decision to conduct a survey by sending questionnaires to Governments, and Japan was in the process of preparing its response. Since the purpose was to give greater stability to the international legal system and ensure the rule of law, unilateral acts of States should not be discussed in the abstract. From that standpoint, Japan had doubts about the approach the Commission had adopted in the draft articles, which drew largely on the Vienna Convention on the law of treaties, without taking sufficient account of the fact that unilateral acts, by their nature and their effects, differed from treaty acts.

2. Concerning chapter IX of the Commission's report, relating to international liability for injurious consequences arising out of acts not prohibited by international law, her delegation strongly supported the Commission's decision to defer consideration of the question until it had completed its second reading of the draft articles on the prevention of transboundary damage from hazardous activities. Japan hoped that once the comments that Governments would submit on the draft articles by January 2000 had been taken into consideration, the draft text would refer more to actual practice. The Commission would also have to decide at the appropriate stage what recommendation it would make regarding the final form of the draft articles.

3. With regard to chapter X of the report, relating to other decisions and conclusions of the Commission, her Government was pleased that the Commission had identified the protection of the environment as one of the topics it might take up in the next quinquennium, and that it was examining feasibility studies on the polluter-pays principle, international control of environmental disputes, precautionary principles and obligations *erga omnes*. Like the Asian-African Legal Consultative Committee which represented 42 States, it firmly believed that the Commission should study the important question of the environment, and hoped that it would be able to define the scope and content of the topic. In order to assist it, Japan planned to submit written comments as requested in paragraph 33 of the Commission's report.

4. Her delegation noted the explanations the Commission had given in paragraph 639 of its report regarding the greater efficiency that could result from split sessions, but emphasized that, given the current financial situation of the Organization, her Government could not approve the new arrangement except on the understanding that it would not involve any additional costs and for the year 2000 alone, during which the necessary conference services would be available only during the dates scheduled for the split sessions.

5. **Mr. Diaz** (Costa Rica) said that his delegation did not approve of the direction taken by the Commission in its consideration of the question of unilateral acts of States. The definition it was proposing was restrictive, formalist, voluntarist and abstract; despite its intellectual merit, it was defective in failing to take account of the complexity of State practice. Nor was it useful to try to make a distinction between political and legal acts because, in international relations, all acts were political in nature. His delegation believed that the question to be asked in defining unilateral acts was whether or not they produced legal effects and under what circumstances they were carried out. The study of the subject should moreover be limited exclusively to acts capable of producing legal effects, among them, for example, autonomous unilateral declarations made with the express intention of producing legal effects.

6. The Commission should adopt a broader frame of reference than the one it was proposing and centre its proposal on good faith, estoppel and consent. The obligatory nature of an act did not arise from the unilateral will on the part of the declaring State to assume an obligation; yet that was difficult to demonstrate unless, precisely, the principle of good faith was taken into account. The autonomy of such acts, moreover, could only be relative. Although it might lack the Cartesian rigour of the Commission's reasoning, that interpretation had the advantage of being closer to State practice and by the same token more productive. If one held to the Commission's interpretation, one would have to admit that express declarations could indeed be subject to rules similar to those governing treaties. The question then arose as to the identity of the persons or entities making the declarations and the formalities and rules of interpretation that applied to them. From that legal standpoint, the wisest position was that such declarations could be made only by heads of State or Government, ministers of foreign affairs or expressly

empowered officials. It was interesting to note that it had been suggested that when other authorities could commit the State unilaterally at the international level, that capacity should be limited to circumstances in which the persons concerned were given an official mandate to conduct foreign policy in their field of competence and where their counterparts, to whom the unilateral declaration was addressed, were fully cognizant of that fact. Similarly, to the extent that such declarations were autonomous and their objective was to assume licit obligations or renounce rights to which the declaring State was entitled, that very autonomy precluded the declarations from imposing obligations on other States or conferring rights on the declaring State.

7. With regard to formalities, the only requirements were the clarity and deliberate nature of the expression of will, bearing in mind the terms used in the text of the declarations, their intention and the factual and legal context in which they were made. On the question of their duration, he believed that, in the light of the proposed definition, such acts were instantaneous because they did not go beyond the immediate expression of the will to assume an obligation. As to revocability, the acts in question could not be unilaterally revoked or restrictively modified . Once the declaration had produced legal effects and created rights or given powers vis-à-vis other States, it could not be revoked or limited except with the consent of the States concerned.

8. Turning to chapter V of the report of the International Law Commission, concerning State responsibility, he said that he supported the proposal aimed at establishing a distinction between the different types of States affected by an internationally wrongful act in draft article 40, which dealt with the meaning of injured State. The instances cited in paragraph 2 (e) (iii) in connection with rights created for the protection of human rights and in paragraph 2 (f) in connection with the collective interests of States parties should be given separate treatment. Moreover, once that distinction had been made, specific provisions on reparation in the event of an *erga omnes* obligation should be adopted, taking into account the valuable experience of human rights tribunals.

9. The inclusion in the draft articles on State responsibility of provisions such as those set forth in draft article 41, on the cessation of wrongful conduct, was questionable, since their reference to the binding nature of the primary obligation served no purpose. The same rationale applied to draft article 46 on assurances and guarantees of non-repetition. He did, however, support inclusion of the ideas contained in draft article 42, paragraph 3, and draft article 43 (d); in both cases, the provisions in question imposed reasonable limits on the duty of reparation, taking into account the fundamental rights of the population of the State having committed an internationally wrongful act. Both of those draft articles could be better formulated, however, with a view to eliminating their political character and indicating that they related only to extreme cases. The Commission might ask itself whether such instances should not be included under state of necessity or distress. Moreover, draft article 42, paragraph 3, should instead form part of draft article 44, since its provisions were applicable neither to satisfaction nor to guarantees of non-repetition. The phrase "if and to the extent necessary to provide full reparation" should be deleted from draft article 45, paragraph 1, as it was superfluous in an optional provision and appeared to subordinate that type of reparation to restitution and compensation. Draft article 45, paragraph 2 (c), should also be deleted, as its content was already covered under paragraph 2 (b).

10. In regard to countermeasures, draft articles 47, 49 and 50 were satisfactory inasmuch as they codified contemporary international law in that field. He also welcomed the Commission's aim in draft article 48 of making provision for the obligation to resort to a binding dispute settlement procedure and thereby contributing to the progressive development of international law. The idea contained in draft article 48, paragraph 3, that countermeasures should be suspended when the dispute settlement procedure was being implemented was worth retaining. Referring to the suggestion in paragraph 29 of the Commission's report that the link between the taking of countermeasures and compulsory arbitration should be avoided, he said that such a link should be maintained if the draft articles were adopted in the form of a treaty, although it should also be stipulated that the two parties to the dispute could, if they so wished, resort to the procedure for the peaceful settlement of disputes.

11. Concerning draft article 51 to 53, he said that the concept of international crimes was not without merit from the standpoint of the progressive development of law; however, in view of its experimental character, it was not very useful in the draft articles that the Commission was preparing to adopt in final form. The Commission could return to the question if it was the subject of a significant international practice that specified its outlines and consequences. As for the potential consequences of such crimes, the obligation under draft article 53 (a) and (b) not to recognize as lawful the situation created by the crime and not to render aid or assistance to the State which had

committed the act could prove useful when examining the consequences of violation of *erga omnes* obligations, in which case it merited more thorough consideration. Lastly, the idea of considering the plurality of States in the context of the draft articles was an interesting one, as it raised an extremely important point which the draft articles had not touched upon.

12. Concluding his views on the topic of State responsibility, he said that the rule concerning the exhaustion of local remedies was linked to the primary rules concerning the guarantees of a regular procedure and the existence of such remedies. The nature of that rule was therefore dependent on the nature of the primary obligations in each case. With a view to avoiding any possible confusion, reference to denial of justice could be made. In any event, that rule applied only to diplomatic protection, for which reason he favoured the second formulation proposed in paragraph 240 of the Commission's report. In addition, he was concerned to note that the Commission, which was a body composed of experts acting in their personal capacity, should be examining a question that fell within the competence of States, namely, that of humanitarian intervention. In his view, such intervention should be considered only by the political forums of the United Nations. Moreover, it was not a question that formed part of the topic of State responsibility. Although humanitarian intervention was based on a Security Council decision, no State responsibility was involved, since decisions of the Security Council outweighed any other primary rule. Otherwise, that responsibility would continue to exist owing to the prohibition of the use of force, which had the nature of *jus cogens*. Draft article 33, paragraph 2 (a), should therefore be retained.

13. **Mr. González** (Venezuela) said that the draft guidelines on reservations should develop the Vienna regime and ultimately culminate in the adoption of a draft convention following completion of the Guide to Practice in which they were to be included, thus contributing to the codification and progressive development of that area of international law. The proposed definitions of reservations and of interpretative declarations contained in draft guidelines 1.1 and 1.2 were wholly satisfactory. In connection with draft guideline 1.5.1 on reservations to bilateral treaties, he shared the view of those delegations that believed that such reservations were unauthorized and implied renegotiation of the treaty. He supported draft guideline 1.4, which provided that unilateral statements other than reservations and interpretative declarations were outside the scope of the Guide to Practice. In his view, declarations aimed at the assumption of unilateral commitments beyond those imposed by the treaty formed part of the Commission's work on unilateral acts.

14. Turning to the issue of unilateral acts of States, he said that the second report of the Special Rapporteur contained very significant elements. Those elements, however, depended on the definition attributed to such acts, which should be elaborated on the basis of the views of Governments and the practice of States. On that score, he noted that the Commission, on the recommendation of the Working Group, had adopted a provisional text on which Governments had been requested to express their opinions. The provisional text should be completed and finalized in 2000, taking into account the reports of the Special Rapporteur, the conclusions of the Working Group and the comments of Governments, as it concerned an important aspect of international law that should be regulated in practice. Furthermore, he believed that the Vienna Convention should serve as the reference for work on the topic, which did not mean to say, however, that its provisions should be applied *mutatis mutandis* to unilateral acts or that the latter should be likened to conventional acts, from which they differed in several respects.

15. With regard to the interpretation of unilateral acts, he said that the Special Rapporteur and the Commission should also take into consideration characteristics inherent in acts whose elaboration and intention differed from that of conventional acts, which depended on agreement and not on a State's expression of its willingness to produce legal effects. Moreover, the modification, suspension or revocation of unilateral acts must not depend solely on the will of the author State. The granting of consent by the addressee State was considered indispensable. It was important to distinguish between the unilateralism that characterized the elaboration of the act and its legal effects, which could give rights to States that had not participated in its elaboration. Once the unilateral act was elaborated and the State had expressed its willingness to engage in a relationship with another State, the relationship created was not unilateral. Indeed, unilateral acts were closely linked with other topics that the Commission was currently considering, such as reservations, which were unilateral declarations which could be considered (following the Commission's example) to arise out of conventional law or, as his delegation believed, to arise out of the law governing unilateral acts or that pertaining to international liability.

16. **Mr. Winkler** (Austria), referring to chapter IV of the Commission's report, said that his delegation had noted with satisfaction the final text of the draft articles on the

nationality of natural persons in relation to the succession of States adopted on second reading. That draft was on the whole satisfactory and should be adopted in the form of a declaration, as the Commission had proposed. His delegation agreed with the Commission, and with a large number of delegations that had previously spoken, that the work on that topic should be considered finished. Even though some delegations were not entirely satisfied, the result of those efforts helped to clarify certain basic principles and rules which provided greater security to States and persons in the matter of nationality in relation to the succession of States, within the context of respect for humanitarian principles.

17. With regard to reservations to treaties, most of the concerns that his delegation had raised in 1998 remained valid; such as that some provisions contained overly detailed definitions and that others were perhaps redundant. That was true, for example, of the slightly modified text of former guideline 1.1.5, renumbered as 1.4.1: the fact that a State or an international organization expressed its willingness to increase its conventional obligations did not of course modify the legal effects of obligations arising out of that treaty. Thus, by definition, a unilateral declaration did not constitute a reservation to a treaty. It was not apparent what that provision added to the Guide to Practice.

18. Turning to chapter VIII, on the unilateral acts of States, he said that work was at an early stage. At the current preliminary stage, his delegation did not see in what direction the Commission intended to take it, and hoped that a more detailed report would be submitted to the Assembly on the topic the following year. In particular, his delegation was not convinced that the approach chosen, which consisted in taking the Vienna Convention on the Law of Treaties as a point of reference, was the correct one. In that regard, it had noted with great interest the statement by the representative of France, and entirely supported his remarks concerning articles 1 to 3. The fact that the intention of the State when making a unilateral declaration was not taken into account was a problem in the text under consideration.

19. Turning to the report of the Working Group on the jurisdictional immunities of States and their properties, his delegation was pleased that consideration of that topic had been resumed, and appreciated the Commission's work in 1999. The merit of such an exercise was mainly to ensure that the prevailing restrictive view on the matter of the immunity of States was accepted more uniformly by the greatest possible number of States, and to help national courts to take decisions along those lines.

20. With regard to the topics listed in the Commission's long-term programme of work, his delegation noted that they covered a wide spectrum. It was striking to observe how international law had diversified, and how the various fields of law once considered external had gradually acquired an internal dimension. Various fields had been legalized and institutionalized, and had their own rules and regimes. That internationalist trend should be welcomed in every respect. At the same time, the substantial increase in the number of legal fields and regimes had resulted in a fragmentation of international law. That needed not be seen as a danger to a uniform concept of international law. Fragmentation was not a concept; it was simply a fact that arose from the multitude and variety of international relations, but that might lead to conflicts between varying norms and regimes, thus undermining the authority of international law. A solution to that problem was not easy to suggest. What could be done was to take existing law into careful consideration when elaborating new norms and establishing new regimes, with a view to avoiding future conflicts. In his delegation's view, the Commission should be asked to give some thought to that issue, which was of crucial importance for the future of international law in the next millennium.

21. The topics that the Commission proposed to consider in future usefully reflected the problems that called for more comprehensive discussion, and if possible, codification. Without denying the importance of other topics mentioned, his delegation attached particular importance to the question of the responsibility of international organizations and the effect of international conflicts on treaties, two growing problems in international relations.

22. Another field of international law that merited the Commission's attention was international environmental law. Admittedly, the Commission was already discussing some aspects of that matter under the topic of international liability, and had presented the first draft articles on prevention to the General Assembly the previous year. As necessary and useful as that might be, other aspects of the topic were just as important and should be taken up as soon as possible. With regard to environmental law in general, an overall draft covering all of its aspects was unfeasible for practical and doctrinal reasons. The environment was addressed by a number of legal regulations from the most varied fields of international law, including treaty law. International environmental law must not be separated from the general structure of international law; on the contrary, the two must be reconciled without relinquishing the particularities of the former. It was conceivable that the

Commission, taking into account the general structure of international law, might concentrate its efforts on particular issues of environmental law, such as the precautionary principle or the "polluter pays" principle.

23. **Mr. Gomaa** (Egypt) said, first, that among the Commission's working methods, the identification and selection of topics was an important matter. The planning group of the enlarged bureau should concentrate on questions which were at the heart of international relations and were of importance to the whole of the international community as reflected in the summarized criteria laid out in paragraph 553 of the Commission's previous report (A/53/10). In his delegation's view, topics to be selected should be sufficiently advanced from the standpoint of State practice. It seemed, however, that that criterion had not been fully observed when selecting certain topics currently under consideration by the Commission. In addition, his delegation shared the view that split sessions would allow for inter-sessional deliberations and reflection, and should improve participation in the Commission's meetings. It also noted with appreciation that some progress had been made in putting the publication of the *Yearbook of the International Law Commission* back on schedule.

24. Turning to the matter of reservations to treaties, his delegation believed that the regime established under the Vienna Convention on the Law of Treaties should be preserved, since it continued to reflect the state of the art. It had been adopted after extensive discussions in the General Assembly, following its consideration by the International Court of Justice, the Commission itself, and three successive conferences on treaty law. The Special Rapporteur had therefore rightly taken the definition of reservations set forth in the Vienna Conventions of 1969, 1978 and 1986 as a starting point. The Commission had also rightly decided that the provisions of those three Conventions with respect to reservations should not be altered.

25. On reservations to treaties, he said that any regime should respect the differing characteristics of the various elements making up the international community. Hard and fast rules did not serve the purpose of creating a universal regime for reservations. If it ended up excluding the participation of some countries from a particular treaty arrangement, the very concept of universality — which the practice of reservations aimed to uphold — would collapse. In 1962 the Commission had been in favour of a flexible system that would maintain the balance between the widest possible participation and the preservation of the integrity of the treaty, as designed by the International Court of Justice in its Advisory Opinion of 1951, *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*. That regime had been carried into the 1969 Vienna Convention and later into the other two Vienna Conventions. There was no reason why the same approach should not be maintained.

26. The law of treaties, particularly the Vienna regime, did not draw a distinction between human rights treaties and other multilateral treaties. Furthermore, there was no reason to seek to establish a distinct regime on reservations for one area of codification, namely human rights, while all other areas remained subject to general rules. The fact that human rights constituted a self-contained regime should not be used as a pretext for creating a special reservations regime. Self-contained regimes more or less avoided the application of the general legal consequences of wrongful acts, but the secondary rules dealing with, among others, the introduction, modification and termination of legal rules themselves applied to such regimes as to others. The Commission might not be the most appropriate forum to discuss the disquieting attitude of human rights monitoring bodies, which claimed to be competent to assess the compatibility of reservations and to decide on their effect and scope, and thus their admissibility. He was, however, justified in addressing the issue because such claims were among those being looked at by the Commission in deciding whether there existed a distinct regime of reservations to human rights treaties. While attaching importance to the work of those monitoring bodies, his delegation believed that they should remain within their prerogatives and that, when their mandates contained no provision to that effect, the admissibility of reservations lay absolutely outside their competence. In fact, only the courts were competent to determine the admissibility and effect of reservations. For that reason his delegation believed that the comments received by the Commission from such bodies did not accurately reflect the legal regime of reservations to treaties.

27. Connected with the principle of universality in general multilateral treaties, particularly normative ones, was the question of interpretative declarations. Such declarations were often the only way for States to accede to a general multilateral instrument, by explaining their position on and interpretation of certain of its provisions. He therefore hoped that the Special Rapporteur would consider interpretative declarations in the light of the specificities of different cultures which influenced the legal regimes of nations.

28. With regard to State responsibility, he agreed with the Special Rapporteur that obligations *erga omnes* needed further elaboration. In the same vein, it should also be pointed out that *jus cogens*, the most important innovation of the Vienna Convention on the Law of Treaties, continued to raise questions and did not seem to be universally interpreted and applied in the same way. As for the relationship between the draft articles on State responsibility and other rules of international law, the draft should continue to respect *lex specialis*. He saw no merit in the distinction between "criminal" and "delictual" responsibility if it did not reflect the procedural or consequential impact of such a distinction in terms of a differentiated action to be taken against the wrongdoer State in either case. Indeed, the distinction between "primary" and "secondary" rules was imperfect and sometimes difficult to draw. His delegation therefore commended the Special Rapporteur on his caution in not straying too far in the field of "primary" obligations for the purposes of State responsibility.

29. With regard to the question of how to reconcile the different parts of the draft relating to the breach by a State of its obligations when no breach was intended, the Special Rapporteur was right to seek a solution in the "structure" of the draft, creating a physical link between the parts on breach and those on "preclusion of wrongfulness". While it might not be practicable or desirable to draw up detailed provisions on countermeasures, the relationship between countermeasures and the resort to third-party dispute settlement was intricate.

30. With regard to the question raised by the Commission as to whether a distinction should be drawn between States specifically injured by an internationally wrongful act and other States having a legal interest in the performance of the relevant obligations, it had to be clear that an "injured" State was one to which an international obligation was due. An excellent account of that was to be found in the 1949 Advisory Opinion of the International Court of Justice on the *Reparation for injuries suffered in the service of the United Nations*, as well as in the work of the former Special Rapporteur, Mr. Riphagen, reflected in Part Two of the draft articles. It was legally sound to conclude that, although all other States might be affected by the breach because of a legal interest in the performance of the obligation, they were not necessarily "injured" and could not be assumed to be so. On another issue addressed by the Commission, namely, the breach of an international obligation by a plurality of States, his delegation believed that the Commission's work would be undone if the issue was not covered by the draft.

31. With regard to the relationship of the draft to the 1969 and 1986 Vienna Conventions on the Law of Treaties, in view of the blanket proviso of article 73 and, of course, the regime set up under article 60 of the two Conventions, it was important to respect the parallelism between the two major branches of international law, namely, the law of treaties and the law of international responsibility. It was true that the relationship between them was particularly close in the work of the Commission; nevertheless, the draft should not blur the distinction between them with respect to the breach of contractual obligations. At the same time, there should be constant cross-references emphasizing the complementarity of the Convention and the draft articles.

32. As to the provisions on necessity as a circumstance precluding wrongfulness, his delegation agreed with the Commission that the issue of humanitarian intervention involving the use of force was extremely controversial. Such intervention violated the most salient peremptory norm, namely, the non-use of force in international relations.

33. With regard to international liability for injurious consequences arising out of acts not prohibited by international law, the Commission had moved surprisingly fast on the adoption on first reading of 17 draft articles, together with their commentaries. In 1999, however, the Commission had had to decide whether it should proceed with its consideration of the topic, suspend work until it finalized the second reading of the draft articles on the regime of prevention or terminate its work on the topic altogether. His delegation believed the second option to be more realistic and commended the Commission on having adopted it.

34. On a substantive note, the obligations in the area of the "prevention of transboundary damage from hazardous activities" were unclear as far as "damage" was concerned. It would not be practicable to attempt to solve the issue of the "duty of prevention" by making it hostage to the theoretical considerations of "obligations of conduct", which was the obligation of due diligence. There needed to be a more solid and objective legal basis for measuring compliance and identifying the degree of violation. The dispute mechanism under discussion might, in fact, compensate for any shortcomings of the current regime. In that respect, the mechanism should not stop at direct contact between the parties concerned. It was true that the issues involved were more amenable to consultation and negotiation, but if the latter did not yield solutions, the mechanism should extend to all other means of dispute settlement, in line with Article 33 of the Charter of the

United Nations. Damage was damage, whether it had arisen from legal or illegal acts. It should not be forgotten that the whole field of prevention of transboundary damage from hazardous activities was a new one and raised technical and legal issues. The relevant norms varied from one State to another according to the level of technological and economic development. Accordingly, the issue should be treated with the greatest care and the adjournment of the Commission's work would provide an opportunity to reflect on the many questions raised both within the Commission itself and by Governments.

35. Lastly, with regard to jurisdictional immunities of States and their property, his delegation noted with satisfaction the progress made. The five issues that the Commission had reviewed allowed the topic to be examined from a new angle at a time when it seemed that a deadlock had been reached. The Commission had made useful suggestions and its analysis of international practice would be useful for the work of the working group of the Sixth Committee that was scheduled to meet for the first time the following week. Egypt looked forward to Taking an active part in the meetings.

36. **Mr. Rogachev** (Russian Federation) emphasized that the topic of unilateral acts of States was one of the most complex in both the doctrine and practice of international law, not only because of the extraordinary variety of such acts, but also because they were omnipresent in international relations since they were the most direct means that States had of expressing their will. The relevant work of the Special Rapporteur would provide an excellent basis on which to continue examining the topic.

37. On the substantive issue, it was certain that, as in the case of treaties, unilateral acts of subjects of international law could create legal norms; that was confirmed by both State practice and international precedents. Nevertheless, as the Commission had indicated, considerable uncertainty reigned as to the legal regime on such acts and was a potential source of conflicts.

38. The Russian Federation agreed with the general approach adopted by the Commission, which consisted in limiting its discussions to certain categories of unilateral acts and excluding, for example, acts relating to the interpretation and application of treaties, acts performed in the exercise of jurisdiction according to international law, acts engaging the international responsibility of their author and those that were essentially internal with regard to their nature and effects. Moreover, in view of the characteristics of international organizations, it was preferable to exclude their unilateral acts from the discussions, for the time being.

39. Furthermore, the Russian Federation was not entirely convinced that estoppel should be excluded from the study of the unilateral acts of States. Indeed, estoppel usually resulted from a unilateral act, the State performing the act losing, because of estoppel, the right to use a certain fact or situation as a basis for asserting its rights. The Russian Federation believed that estoppel was not merely a procedural instrument, but related directly to the topic under discussion.

40. In principle, the Russian Federation was not opposed to excluding discussion of acts that had no legal effect at the international level, but it believed that flexibility and prudence should be shown in that regard. It was not always possible to establish a precise, reasoned distinction between "political" acts and "legal" acts. Indeed, numerous unilateral acts, whatever their content, could be classified as "political", while certain unilateral acts not originally intended to have legal effects at the international level could have such effects. His delegation agreed with the Special Rapporteur that the Commission should study unilateral acts that were formal legal acts; in other words, it should study not the content of the norms to which the acts gave rise, but the process that created those norms. However, the content of the acts and the circumstances in which they were carried out could not be totally ignored.

41. For procedural reasons, his delegation could not accept the Special Rapporteur's proposal to limit the scope of discussion to autonomous unilateral acts that created legal effects. In effect, the autonomy of unilateral acts was totally conditional since the legal obligation that they created arose not from the unilateral expression of the will of the State that issued them, but rather from the compatibility between that will and the interests of other States. It was unimaginable that a unilateral act would have legal effects in the relations between its author and another subject of international law if the latter had raised objections. Furthermore, a State that made a unilateral declaration took into consideration the reactions of those to whom it was addressed.

42. In that regard, his delegation agreed that discussions should primarily focus on unilateral declarations, although it should be understood that all forms of expression of will should be considered, including silence.

43. Lastly, with regard to the form that the results of the Commission's work on the topic of the unilateral acts of States should take, his delegation agreed that draft articles should be prepared, accompanied by commentaries.

44. **Mr. Sun Guoshun** (China), referring to chapter VIII of the Commission's report, emphasized the need to codify the laws on unilateral acts of States and promote their progressive development. Since unilateral acts were present in numerous areas and could have different legal effects, it was extremely difficult to establish precise rules and regimes that did not constitute a source of dispute at the international level.

45. There were those who held that unilateral acts included not only legal acts but also political acts, while others believed that only the former should be considered. The distinction between the two categories of acts was not always easy to establish. At times, an act could be both political and legal, as in the case of unilateral declarations offering certain kinds of security guarantees by nuclear-weapon States without consultation with non-nuclear-weapon States.

46. The Working Group established by the Commission at its fifty-first session had defined the unilateral acts of States as acts carried out with the intention of producing legal effects on the international plane, not only with the intention of acquiring international legal obligations. Despite encouraging progress, problems still existed. First, there was a gap between intention and result; in other words, acts performed with the intention of producing legal effects did not necessarily achieve the intended results. Second, acts that did not intend to produce legal effects sometimes produced them. Lastly, it was difficult to ascertain if the intention of the author State was to produce legal effects. Therefore, China suggested that the word "intention" should be explained in the commentary. Furthermore, it did not understand why the term "autonomous" had been deleted from the definition, and proposed that it should be retained.

47. It was impossible to codify all unilateral acts within a single legal regime, because of their great diversity. China therefore believed that a prudent approach should be taken, excluding unilateral acts of States that were related to treaty law, acts that were already regulated by international legal norms, and those that did not produce international legal effects, but without merely restricting the topic to unilateral statements.

48. Some unilateral acts of States aimed to establish obligations for the author, others to establish rights, and still others to establish both obligations and rights; that question merited serious study. On the one hand, regulations regarding unilateral acts of States were not subject to the rule *pacta sunt servanda* as treaty law. On the other hand, unilateral acts of States did indeed produce some legal consequences in international relations, and different unilateral acts might produce different consequences. The legal effects of some unilateral acts might be based on the necessity to honour a commitment, or the principle of good faith, whereas unilateral acts aimed at establishing rights for the author State might have another basis.

49. Since many aspects of that topic were related, in various degrees, to treaty law, relevant articles of the Vienna Convention on the Law of Treaties could be used for reference when provisions were being formulated. Regarding the addressee of a unilateral act, his delegation shared the view of the Working Group that it could be a State or a governmental organization. Some procedural provisions such as those concerning the interpretation, correction, suspension and termination of a unilateral act could also draw from the relevant provisions of the Vienna Convention on the Law of Treaties.

50. **Mr. Ouraga-Obou** (Côte d'Ivoire), referring to chapter VI of the Commission's report, "Reservations to treaties", noted that the sole aim of his statement was to refer to the definition of "interpretative declaration". The work of the Special Rapporteur showed that in the final analysis there was no single or unequivocal concept of interpretative declaration. As defined in the context of multilateral treaties, it was not properly speaking a legal act, which was not the case in the context of bilateral treaties, where it would not be deprived of all legal effect. Clearly, those two distinct legal regimes were in fact the result of the difference in nature, not in degree, between those two categories of interpretative declarations, a difference which should be clarified. It would be useful, in the interests of clarity, to find a more complete and less ambiguous definition, which would be more satisfactory. Without contradicting the proposed draft articles, his delegation hoped that the Commission would agree to refer in the definition of "interpretative declaration" to the legal nature of the act subject to interpretation — better a multilateral or a bilateral treaty — and the extent to which it might produce legal effects, so that there would be no ambiguity.

51. **Mr. Uykur** (Turkey) noted, on the subject of unilateral acts of States, that even if the Vienna Convention on the Law of Treaties provided an appropriate framework for the work of the Commission, one should not lose sight of the differences between treaty acts and unilateral acts when formulating the governing rules for them. In that respect, States acting unilaterally were not entitled to erode, to their own advantage, a particular

balance which had been established by the relevant treaty provisions constituted with the consent of its parties.

52. On the question of the capacity to take on international commitments on behalf of the State by means of a unilateral act, heads of State, heads of Government and foreign ministers were widely regarded as having that capacity. However, a restrictive approach should be followed with regard to other State officials who had the said capacity. In that connection, it was interesting to take into account the decision of the International Court of Justice in the *Gulf of Maine* case, where the Court had considered that the letter of an official of the Bureau of Land Management was not an official declaration of the State concerned. It was also necessary to make a distinction between legal acts and declarations of a political nature, and the intention of creating legal effects seemed to be an appropriate criterion there.

53. Similarly, the different types of unilateral acts such as protest, promise, waiver, recognition or notification should be dealt with taking into account their differing aspects. That approach could provide a reliable basis, particularly with regard to revocation. His delegation welcomed the questionnaire circulated to Governments to seek information on their views and practices, as it would enable the Commission to depict the general tendencies and practice of each State in that field.

54. On the topic of reservations to treaties, and the question of their admissibility, it was a questionable understanding that a State putting forward a reservation which the other States parties to the treaty found inadmissible should be deemed a party to the treaty, the reservation notwithstanding. That approach not only disregarded the consent expressed by the State in question on becoming a party to the treaty, but would also have negative implications for the basis of treaty law.

55. With regard to guideline 1.4.5, "Statements concerning modalities of implementation of a treaty at the internal level", the phrase "without purporting as such to affect its rights and obligations towards the other contracting parties" was used in place of the wording in the previous version "but which does not affect its rights and obligations towards the other contracting parties". His delegation had some concerns about the possible implications of the new formulation for the rights of States other than the author of the statement. Indeed, the rights of third States should not be negatively affected by a statement of that kind. In particular, the words "as such" could lead to disputes on the nature of a particular statement, in cases where the statement was likely to affect the rights and obligations of third States. His delegation thought that the new phrase included in that guideline should be studied further.

56. In conclusion, his delegation noted that it would submit to the Commission in writing the views of Turkey on international liability for injurious consequences arising out of acts not prohibited by international law, and on State responsibility. Nevertheless, his delegation wished to place on record its objection to one issue referred to in paragraph 109 (c) of the second report of the Special Rapporteur on State responsibility (A/CN.4/498). Utmost care should be taken in order to avoid misleading qualifications when individual cases were being tackled.

The meeting rose at 5.20 p.m.