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**DRAFT REPORT OF THE INTERNATIONAL LAW COMMISSION  
ON THE WORK OF ITS FIFTY-EIGHTH SESSION**

**Rapporteur: Ms. Hanqin XUE**

**CHAPTER IX**

**UNILATERAL ACTS OF STATES**

**Addendum**

**Corrigendum**

Delete title 1. Introduction by the Special Rapporteur of his ninth report

Replace paragraphs 9 to 12 with

The ninth report of the Special Rapporteur comprised two parts. The first part related to the causes of invalidity,<sup>1</sup> and termination<sup>2</sup> of unilateral acts. The second part

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<sup>1</sup> **Principle 5**

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

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

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**Principle 6**

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

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

**Principle 7**

**Invalidity of unilateral acts**

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

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

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

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

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

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

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

<sup>2</sup> **Principle 8**

**Termination of unilateral acts**

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

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

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

dealt with definition,<sup>3</sup> the capacity of a State to formulate a unilateral act,<sup>4</sup> the competence to formulate unilateral acts on behalf of the State,<sup>5</sup> the subsequent

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

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

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

### <sup>3</sup> Principle 1

#### **Definition of a unilateral act**

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

#### **Addressees of unilateral acts of States**

##### **Option A**

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

##### **Option B**

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

### <sup>4</sup> Principle 2

#### **Capacity of States to formulate unilateral acts**

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

### <sup>5</sup> Principle 3

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

1. By virtue of their office, heads of State, heads of Government and ministers for foreign affairs are considered to represent their State and to have the capacity to formulate unilateral acts on its behalf.

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

confirmation of an act formulated by a person without authorization,<sup>6</sup> the basis for the binding nature of the unilateral acts,<sup>7</sup> and the interpretation of unilateral acts.<sup>8</sup>

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<sup>6</sup> **Principle 4**  
**Subsequent confirmation of an act formulated by a person without authorization (or not qualified to do so)**

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

<sup>7</sup> **Principle 10**  
**Basis for the binding nature of unilateral acts**

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

<sup>8</sup> **Principle 11**  
**Interpretation of unilateral acts**

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