Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, with commentaries thereto

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Text adopted by the International Law Commission at its Fifty-eighth session, in 2006, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/61/10). The report, which also contains commentaries on the draft articles, will appear in *Yearbook of the International Law Commission, 2006*, vol. II, Part Two.

9. No obligation may result for other States from the unilateral declaration of a State. However, the other State or States concerned may incur obligations in relation to such a unilateral declaration to the extent that they clearly accepted such a declaration;

10. A unilateral declaration that has created legal obligations for the State making the declaration cannot be revoked arbitrarily. In assessing whether a revocation would be arbitrary, consideration should be given to:

(i) Any specific terms of the declaration relating to revocation;

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

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

2. Text of the Guiding Principles with commentaries thereto adopted by the Commission at its fifty-eighth session

177. The text of the Guiding Principles together with commentaries[921] thereto adopted by the Commission at its fifty-eighth session is reproduced below.

Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations

The International Law Commission,

Noting that States may find themselves bound by their unilateral behaviour on the international plane,

Noting that behaviours capable of legally binding States may take the form of formal declarations or mere informal conduct including, in certain situations, silence, on which other States may reasonably rely,

Noting also that the question whether a unilateral behaviour by the State binds it in a given situation depends on the circumstances of the case,

Noting also that in practice, it is often difficult to establish whether the legal effects stemming from the unilateral behaviour of a State are the consequence of the intent that it has expressed or depend on the expectations that its conduct has raised among other subjects of international law,

[921] These commentaries are explanatory notes reviewing the jurisprudence of the International Court of Justice and pertinent State practice analysed by several members of the Working Group and the Special Rapporteur and summarized in the eighth report of the Special Rapporteur (A/CN.4/557).

Adopts the following Guiding Principles which relate only to unilateral acts *stricto sensu*, i.e. those taking the form of formal declarations formulated by a State with the intent to produce obligations under international laws.

1. Declarations publicly made and manifesting the will to be bound may have the effect of creating legal obligations. When the conditions for this are met, the binding character of such declarations is based on good faith; States concerned may then take them into consideration and rely on them; such States are entitled to require that such obligations be respected.

Commentary

(1) The wording of Guiding Principle 1, which seeks both to define unilateral acts in the strict sense and to indicate what they are based on, is very directly inspired by the *dicta* in the Judgments handed down by the International Court of Justice on 20 December 1974 in the *Nuclear Tests* case.[922] In the case concerning the *Frontier Dispute (Burkina Faso v. Republic of Mali)*, the Court was careful to point out that "it all depends on the intention of the State in question".[923]

(2) Most of the cases studied illustrate this principle. Besides the declarations made by France in 1974 on the cessation of nuclear tests in the atmosphere, the public nature of the declaration made by Egypt on 24 April 1957 on the Suez Canal[924] and Jordan's waiver of claims to the West Bank territories[925] represent an important indication of their authors' intention to commit themselves. The Ihlen Declaration, made during a purely bilateral meeting between the Minister for Foreign Affairs of Denmark and the Norwegian ambassador to Copenhagen,[926] and the Colombian diplomatic note addressed solely to the Venezuelan authorities are not counter-examples: they relate only to bilateral relations between the two States concerned.[927]

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[922] *Nuclear Tests (Australia v. France; New Zealand v. France)*, Judgments dated 20 December 1974, *I.C.J. Reports 1974*, pp. 267-8, paras. 43 and 46 and pp. 472-3, paras. 46 and 49.

[923] *Case concerning the Frontier Dispute (Burkina Faso v. Republic of Mali)*, Judgment of 22 December 1986, *I.C.J. Reports 1986*, p. 573, para. 39.

[924] Document A/CN.4/557, paras. 55-58; see also paras. 62 and 63.

[925] *Ibid.*, paras. 44-45.

[926] *Ibid.*, paras. 116-126; *Legal Status of Eastern Greenland*, Judgment of 5 April 1933, *P.C.I.J., Series A/B, No. 53*, p. 71. It should, however, be pointed out that whether this declaration constituted a unilateral act is controversial (see A/CN.4/557, para. 122).

[927] See Guiding Principle 6 below.

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

Commentary

Just as "(e)very State possesses capacity to conclude treaties",[928] every State can commit itself through acts whereby it unilaterally undertakes legal obligations under the conditions indicated in these Guiding Principles. This capacity has been acknowledged by the International Court of Justice.[929]

3. To determine the legal effects of such declarations, it is necessary to take account of their content, of all the factual circumstances in which they were made, and of the reactions to which they gave rise.

Commentary

(1) The wording of Guiding Principle 3 is also inspired by a passage in the ICJ Judgments in the *Nuclear Tests* cases;[930] allusion is made to this jurisprudence in the Judgments of 22 December 1986 in the *Frontier Dispute (Burkina Faso v. Republic of Mali)* case[931] and of 3 February 2006 in the *Armed Activities on the Territory of the Congo* case.[932] In the *Military and Paramilitary Activities in and against Nicaragua* and *Frontier Dispute* cases, the Court found nothing in the content of the declarations cited or the circumstances in which they were made "from which it [could] be inferred that any legal undertaking was intended to exist".[933]

(2) Generally speaking, the cases studied by the Commission confirm the relevance of this principle. In the Commission's view, it is particularly important to take account of the context

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[928] Vienna Convention on the Law of Treaties, 23 May 1969, article 6.

[929] See the jurisprudence cited in support of Guiding Principles 1 and 3.

[930] *Nuclear Tests (Australia v. France; New Zealand v. France), I.C.J. Reports 1974*, pp. 269-70, para. 51, and pp. 474-5, para. 53.

[931] *Case concerning the Frontier Dispute (Burkina Faso v. Republic of Mali), I.C.J. Reports 1986*, pp. 573-4, paras. 39-40.

[932] *Case concerning Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction of the Court and Admissibility of the Application*, para. 49.

[933] *Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgment of 27 June 1986, *I.C.J. Reports 1986*, p. 132, para. 261, and *Case concerning the Frontier Dispute (Burkina Faso v. Republic of Mali), I.C.J. Reports 1986*, p. 573, para. 39.

and circumstances in which the declarations were made in the case of the Swiss statements concerning the privileges and immunities of United Nations staff,[934] the Egyptian declaration of 1957[935] and Jordan's waiver of claims to the West Bank territories.[936]

(3) Several of these examples show the importance of the reactions of other States concerned in evaluating the legal scope of the unilateral acts in question, whether those States take cognizance of commitments undertaken[937] (or, in some cases, rights asserted[938]), or, on the contrary, object to[939] or challenge the binding nature of the "commitments" at issue.[940]

4. A unilateral declaration binds the State internationally only if it is made by an authority vested with the power to do so. By virtue of their functions, heads of State, heads of Government and ministers for foreign affairs are competent to formulate such declarations. Other persons representing the State in specified areas may be authorized to bind it, through their declarations, in areas falling within their competence.

Commentary

(1) Guiding Principle 4 is also inspired by the consistent jurisprudence of the P.C.I.J. and I.C.J., on unilateral acts and the capacity of State authorities to represent and commit the State internationally. In its recent Judgment on jurisdiction and admissibility in the case of *Armed Activities on the Territory of the Congo*, the International Court of Justice observed, referring to

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[934] A/CN.4/557, para. 157.

[935] *Ibid.*, paras. 58-60 or 66. See also, by analogy, in the case of conduct other than unilateral statements, the courses of conduct followed by Thailand and Cambodia in the *Temple of Preah Vihear* case (*ibid.*, paras. 160-167 and *Case concerning the Temple of Preah Vihea (Cambodia v. Thailand)* Judgment of 15 June 1962, *I.C.J. Reports 1962*, pp. 32-34).

[936] *Ibid.*, paras. 47-48.

[937] Cf. the international community's reactions to the Egyptian statement on the Suez Canal (*ibid*., paras. 63-64); also the reactions to Jordan's statement about the West Bank (*ibid*., paras. 48 and 50-51).

[938] Cf. the reactions of certain States to the Truman Proclamation (*ibid*., paras. 132-134); also the note dated 22 November 1952 by the Venezuelan Government concerning the Los Monjes archipelago (*ibid*., para. 17 - yet like the Ihlen Declaration (see footnote 926 above) this note was clearly a matter of bilateral negotiations with Colombia).

[939] See in particular Uruguay's refusal of a donation of vaccines from Cuba (*ibid*., paras. 38-39) or the Russian protest at the law passed by Turkmenistan in 1993 on the delimitation of its internal and territorial waters in the Caspian Sea (*ibid*., paras. 84-98).

[940] Cf. the reactions of the non-nuclear-weapon States to the statements made in April 1995 to the Conference on Disarmament by the permanent members of the Security Council (*ibid*., paras. 113-115); their scepticism is, incidentally, vindicated by the content of those statements.

the similar customary rule in the law of treaties,[941] that "in accordance with its consistent jurisprudence (*Nuclear Tests (Australia v. France), Judgment, I.C.J. Reports* 1974, pp. 269-270, paras. 49-51; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections, Judgment, I.C.J. Reports 1996 (II)*, p. 622, para. 44; *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), Judgment, I.C.J. Reports 2002*, pp. 21-22, para. 53; see also *Legal Status of Eastern Greenland (Denmark v. Norway), Judgment, 1933, P.C.I.J., Series A/B, No. 53*, p. 71), it is a well-established rule of international law that the Head of State, the Head of Government and the Minister for Foreign Affairs are deemed to represent the State merely by virtue of exercising their functions, including for the performance, on behalf of the said State of unilateral acts having the force of international commitments".[942]

(2) State practice shows that unilateral declarations creating legal obligations for States are quite often made by heads of State or Government[943] or ministers for foreign affairs[944] without their capacity to commit the State being called into question. In the two examined cases in which problems relating to the extent of the speaker's authority arose both related to compliance with the domestic law of the State concerned.[945] The statement by the King of Jordan relating to the West Bank, which some considered to be *ultra vires* under the Constitution of the Kingdom,

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[941] Cf. article 7 of the 1969 Vienna Convention on the Law of Treaties.

[942] *Case concerning Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, Judgment of 3 February 2006, *Jurisdiction of the Court and Admissibility of the Application*, para. 46.

[943] See the statement made on 31 July 1988 by the King of Jordan waiving Jordan's claims to the West Bank territories (A/CN.4/557, para. 44), the Egyptian declaration of 24 April 1957 on the Suez Canal, made by the Egyptian Government (*ibid*., para. 55), the statements of 8 June and 25 July 1974 and the letter of 1 July 1974 by the President of the French Republic (*ibid*., para. 71) or the statement made on 28 September 1945 by President Truman of the United States concerning the continental shelf (*ibid*., para. 127).

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

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

was confirmed by subsequent domestic acts.[946] In the case of the declaration by the Colombian Minister for Foreign Affairs about Venezuelan sovereignty over the Los Monjes archipelago, the note itself was set aside in domestic law because its author had no authority to make such a commitment, yet the Colombian authorities did not challenge the validity of the commitment at the international level.[947]

(3) In its Judgment of 3 February 2006,[948] the I.C.J., did, however, note that "with increasing frequency in modern international relations other persons representing a State in specific fields may be authorized by that State to bind it by their statements in respect of matters falling within their purview. This may be true, for example, of holders of technical ministerial portfolios exercising powers in their field of competence in the area of foreign relations, and even of certain officials".[949]

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

Commentary

(1) It is generally accepted that the form of a unilateral declaration does not affect its validity or legal effects. The I.C.J. mentioned the relative unimportance of formalities[950] in its Judgment in the *Temple of Preah Vihear* case in connection with unilateral conduct.[951] In the *Nuclear Tests* cases, the Court emphasized that "[w]ith regard to the question of form, it should be observed that this is not a domain in which international law imposes any special or strict requirements. Whether a statement is made orally or in writing makes no essential difference,

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[946] *Ibid*., para. 54.

[947] *Ibid*., para. 35.

[948] *Case concerning Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction of the Court and Admissibility of the Application*, para. 46.

[949] *Ibid.*, para. 47.

[950] See *The Mavrommatis Palestine Concessions*, Judgment of 30 August 1924, *P.C.I..J,. Series A, No. 2*, p. 34; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina v. Yugoslavia)*, Judgment of 11 July 1996, *I.C.J. Reports 1996*, p. 612, para. 24 and p. 613, para. 26.

[951] *Case concerning the Temple of Preah Vihear (Cambodia v. Thailand), Preliminary Objections*, Judgment of 26 May 1961, *I.C.J. Reports 1961*, p. 31.

for such statements made in particular circumstances may create commitments in international law, which does not require that they should be couched in written form. Thus the question of form is not decisive".[952]

(2) State practice also shows the many different forms that unilateral declarations by States may take. The various declarations by France about the cessation of atmospheric nuclear tests took the form of a communiqué from the Office of the President of the Republic, a diplomatic note, a letter from the President of the Republic sent directly to those to whom the declaration was addressed, a statement made during a press conference and a speech to the General Assembly.[953] Other examples also go to show that, while written declarations prevail,[954] it is not unusual for States to commit themselves by simple oral statements.[955]

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

[952] *Nuclear Tests (Australia v. France; New Zealand v. France), I.C.J. Reports 1974*, pp. 267-268, para. 45, and p. 473, para. 48.

[953] Cf. Eighth report, A/CN.4/557, paras. 71 and 72.

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

[955] See, for example, Jordan's waiver of its claims to the West Bank territories in a public speech, (*ibid*., para. 44) or the Ihlen Declaration (*ibid*., para. 117 - see *Legal Status of Eastern Greenland*, Judgment of 5 April 1933, *P.C.I.J., Series A./B*., No. 53, p. 71.

expressed, they must be held to constitute an engagement of the State, having regard to their intention and to the circumstances in which they were made".[956]

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

Commentary

(1) Several of the cases examined remain within the scope of strictly bilateral relations between two States; accordingly these unilateral declarations by a State had another State as the sole addressee. Such was the case of the Colombian diplomatic note addressed to Venezuela,[957] the Cuban declarations concerning the supply of vaccines to Uruguay,[958] the protests by the Russian Federation against Turkmenistan and Azerbaijan[959] and the Ihlen Declaration.[960]

(2) Although initially concerning a limited group of States, other declarations were addressed to the international community as a whole, containing *erga omnes* undertakings. Thus, Egypt's declaration regarding the Suez Canal was not addressed only to the States parties to the Constantinople Convention or to the States members of the Suez Canal Users' Association, but to the entire international community.[961] Similarly, the Truman Proclamation,[962] and also the French declarations regarding suspension of nuclear tests in the atmosphere, although the latter were of more direct concern to Australia and New Zealand, as well as certain neighbouring States[963] were also made *erga omnes* and, accordingly, were addressed to the

[956] *Nuclear Tests (Australia v. France; New Zealand v. France), I.C.J. Reports 1974*, p. 269, para. 49, and p. 474, para. 51. See also the Swiss statements concerning the United Nations and its staff members (tax exemptions and privileges) A/CN.4/557, paras. 138-156).

[957] A/CN.4/557, paras. 15 and 16.

[958] *Ibid*., para. 36.

[959] *Ibid*., paras. 85 and 99.

[960] *Ibid*., para. 117.

[961] *Ibid*., para. 62.

[962] *Ibid*., para. 127.

[963] Fiji filed an application to intervene in the proceedings. The Government of Argentina, Fiji and Peru requested that the pleadings and annexed documents should be made available to them. See *Nuclear Tests (Australia v. France; New Zealand v. France), I.C.J. Reports 1974,* p. 6, paras. 7 and 9.

international community in its entirety.[964] The same holds for the declaration by the King of Jordan of 31 July 1988, waiving Jordan's claims to the West Bank territories, which was addressed simultaneously to the international community, to another State (Israel) and to another entity the Palestine Liberation Organization (PLO).[965]

7. A unilateral declaration entails obligations for the formulating State only if it is stated in clear and specific terms. In the case of doubt as to the scope of the obligations resulting from such a declaration, such obligations must be interpreted in a restrictive manner. In interpreting the content of such obligations, weight shall be given first and foremost to the text of the declaration, together with the context and the circumstances in which it was formulated.

Commentary

(1) In its Judgments in the *Nuclear Tests* cases, the International Court of Justice stressed that a unilateral declaration may have the effect of creating legal obligations for the State making the declaration only if it is stated in clear and specific terms.[966] This understanding has been adopted without change by the Court in the case concerning *Armed Activities on the Territory of the Congo*.[967]

(2) In case of doubt concerning the legal scope of the unilateral declaration, it must be interpreted in a restrictive manner, as clearly stated by the Court in its Judgments in the *Nuclear Tests* cases when it held that, "when States make statements by which their freedom of action is to be limited, a restrictive interpretation is called for".[968] The interpreter must therefore proceed with great caution in determining the legal effects of unilateral declarations, in particular when the unilateral declaration has no specific addressee.[969]

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[964] *Ibid.*, p. 269, paras. 50 and 51 and p. 474, paras. 52 and 53.

[965] A/CN.4/557, para. 45. Other unilateral declarations are addressed to one or more international organizations, as is the case with Switzerland's declarations concerning the United Nations and its staff (tax exemptions and privileges) (*ibid*., paras. 138 et seq.)

[966] *Nuclear Tests (Australia v. France; New Zealand v. France), I.C.J. Reports 1974*, p. 267, para. 43, p. 269, para. 51, and p. 472, para. 46, p. 474, para. 53.

[967] *Armed Activities on the Territory of the Congo (New application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility*, paras. 50 and 52.

[968] *Nuclear Tests (Australia v. France; New Zealand v. France), I.C.J. Reports 1974*, p. 267, para. 44, and pp. 472 and 473, para. 47.

[969] *Frontier Dispute (Burkina Faso v. Republic of Mali), I.C.J. Report*s *1986*, p. 574, para. 39.

(3) With regard, in particular, to the method and means of the interpretation, attention is drawn to the observation by the International Court of Justice that "[t]he régime relating to the interpretation of declarations made under Article 36 of the Statute [[970]] is not identical with that established for the interpretation of treaties by the Vienna Convention on the Law of Treaties (...). Spain has suggested in its pleadings that '[t]his does not mean that the legal rules and the art of interpreting declarations (and reservations) do not coincide with those governing the interpretation of treaties'. The Court observes that the provisions of that Convention may only apply analogously to the extent compatible with the *sui generis* character of the unilateral acceptance of the Court's jurisdiction".[971] Applying the Court's dictum and by analogy with article 31, paragraph 1, of the 1969 Vienna Convention on the Law of Treaties, priority consideration must be given to the text of the unilateral declaration, which best reflects its author's intentions. In addition, as acknowledged by the Court in its Judgment in the *Frontier Dispute* case, "to assess the intentions of the author of a unilateral act, account must be taken of all the circumstances in which the act occurred",[972] which constitutes an application by analogy of article 31, paragraph 2, of the 1969 Vienna Convention.

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

Commentary

The invalidity of a unilateral act which is contrary to a peremptory norm of international law derives from the analogous rule contained in article 53 of the 1969 Vienna Convention on the Law of Treaties. Most members of the Commission agreed that there was no obstacle to the application of this rule to the case of unilateral declarations.[973] In its Judgment in the *Armed*

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[970] Declarations accepting the compulsory jurisdiction of the International Court of Justice made under Article 36 of the Statute of the Court lie outside the scope of the present study (see above, footnote 1). That said, the Court's reasoning is fully applicable to unilateral acts and declarations *stricto sensu*.

[971] *Fisheries Jurisdiction (Spain v. Canada), Merits*, Judgment of 4 December 1998, *I.C.J. Reports 1998*, p. 453, para. 46. See also *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections*, Judgment of 11 June 1998, *I.C.J. Reports 1998*, p. 293, para. 30.

[972] *Frontier Dispute (Burkina Faso v. Republic of Mali), I.C.J. Reports 1986*, p. 574, para. 40; see also *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility*, para. 53, and *Nuclear Tests (Australia v. France; New Zealand v. France), I.C.J. Reports 1974*, p. 269, para. 51, and p. 474, para. 53.

[973] O*fficial Records of the General Assembly, Fifty-fourth Session, Supplement No. 10* (A/54/10), p. 332, para. 557; *ibid., Fifty-fifth Session, Supplement No. 10* (A/55/10), p. 203, para. 597.

Activities on the Territory of the Congo case, the Court did not exclude the possibility that a unilateral declaration by Rwanda[974] could be invalid in the event that it was in conflict with a norm of *jus cogens*, which proved, however, not to be the case.[975]

9. No obligation may result for other States from the unilateral declaration of a State. However, the other State or States concerned may incur obligations in relation to such a unilateral declaration to the extent that they clearly accepted such a declaration.

Commentary

(1) It is well established in international law that obligations cannot be imposed by a State upon another State without its consent. For the law of treaties, this principle has been codified in article 34 of the 1969 Vienna Convention.[976] There is no reason why this principle should not also apply to unilateral declarations; the consequence is that a State cannot impose obligations on other States to which it has addressed a unilateral declaration unless the latter unequivocally accept these obligations resulting from that declaration.[977] In the circumstances, the State or States concerned are in fact bound by their own acceptance.

(2) The 1945 Truman Proclamation, by which the United States of America aimed to impose obligations on other States or, at least, to limit their rights on the American continental shelf, was not strictly speaking accepted by other States. All the same, as the Court has stressed, "this régime [of the continental shelf] furnishes an example of a legal theory derived from a particular source that has secured a general following".[978] In fact, the other States responded to the Truman Proclamation with analogous claims and declarations[979] and, shortly thereafter, the content of the Proclamation was taken up in article 2 of the 1958 Geneva Convention on the

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[974] The declaration in this case was a reservation, a unilateral act which lies outside the scope of the present Guiding Principles (see paragraph 174 above).

[975] *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility*, para. 69.

[976] This article states: "A treaty does not create either obligations or rights for a third State without its consent." See also *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, I.C.J. Reports 1951*, p. 21.

[977] Or if there was a general norm authorizing States to take such action; but the unilateral acts made pursuant to a norm of this kind lie outside the scope of the present Guiding Principles (see paragraph 174 above).

[978] *North Sea Continental Shelf (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands), I.C.J Reports 1969*, p. 53, para. 100.

[979] See the case of Mexico, A/CN.4/557, para. 132.

Continental Shelf. It could therefore be said to have been generally accepted and it marked a point of departure for a customary process leading, in a very short time, to a new norm of international law. The International Court of Justice remarked in that context: "The Truman Proclamation however, soon came to be regarded as a starting point of the positive law on the subject, and the chief doctrine it enunciated ... came to prevail over all others, being now reflected in article 2 of the 1958 Geneva Convention on the Continental Shelf."[980]

10. A unilateral declaration that has created legal obligations for the State making the declaration cannot be revoked arbitrarily. In assessing whether a revocation would be arbitrary, consideration should be given to:

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

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

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

Commentary

(1) In its 1974 Judgments in the *Nuclear Tests* cases, the International Court of Justice states that "the unilateral undertaking resulting from [the French] statements cannot be interpreted as having been made in implicit reliance on an arbitrary power of reconsideration".[981] This does not, however, exclude any power to terminate a unilateral act, only its arbitrary withdrawal (or amendment).

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

(3) A similar case obtains where the declaration itself stipulates the circumstances in which its author may terminate it[982] or when its addressees have relied on it in good faith and have

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[980] *North Sea Continental Shelf (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands), I.C.J Reports 1969*, para. 47.

[981] *Nuclear Tests (Australia v. France; New Zealand v. France), I.C.J. Reports 1974*, p. 270, para. 51, and p. 475, para. 53.

[982] When the condition of the circumstances do not exist.

accordingly been led "detrimentally to change position or suffer some prejudice".[983] A unilateral declaration may also be rescinded following a fundamental change of circumstances within the meaning and within the strict limits of the customary rule enshrined in article 62 of the 1969 Vienna Convention on the Law of Treaties.[984]

[983] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction of the Court and Admissibility of the Application, I.C.J. Reports 1984*, p. 415, para. 51.

[984] *Fisheries jurisdiction (Germany v. Iceland), Jurisdiction of the Court, I.C.J. Reports 1973*, p. 63, para. 36, and *Case concerning the Gabcikovo-Nagymaros Project (Hungary v. Slovakia), I.C.J. Reports 1997*, p. 64, para. 104.