

- A. Accord and satisfaction
- B. Submission to a jurisdiction to determine and liquidate claims
- C. Lump-sum settlements
- D. Elimination or suspension of private rights
- E. Effect on settlements of subsequent discovery of mistake, fraud, etc.

### Future Work of The Commission

Whilst endorsing the Report of the Working Group the Commission took the view that the topic should be considered in such a way that the first reading of a draft articles may be completed within the present quinquennium. To this end the Commission appointed Mr. M. Bennouna Special Rapporteur for the topic and recommended that he present at the next session a preliminary report on the basis of the outline proposed by the Working Group.

Finally, in response to paragraph 14 of General Assembly Resolution 51/160 the Commission has invited comments on the proposed outline in general and on four specific issues. The specific issues on which the Commission has invited Governments comment upon are:

- (i) the scope of the topic
- (ii) who can claim diplomatic protection with respect to whom and against whom;
- (iii) whether this topic should include protection claimed by international organizations on behalf of their agents; and
- (iv) any other issue which should be included in the proposed outline.

## 6. UNILATERAL ACTS OF STATES

In the report on the work of its forty eighth session the International Law Commission had proposed to the General Assembly that the law of unilateral acts of States be included as a topic for progressive development and codification of international law. By its resolution 51/160 the General Assembly inter alia invited the, ILC to examine the topic "Unilateral Acts of States" and to indicate its scope and content.

At its 49<sup>th</sup> session the Commission established a Working Group on the topic. The Working Group in its consideration of the scope and content of the topic took the view that the consideration by the Commission, of the Unilateral Acts of States, was advisable and feasible". In its report to the Commission the Working Group observed:

"In their conduct in the international sphere, states frequently carry out unilateral acts with the intent to produce legal effects. The significance, of such unilateral acts is constantly growing as a result of the rapid political, economic and technological changes taking place in the international community at the present time and, in particular , the great advances in the means for expressing and transmitting the attitudes and conduct of States;

"State practice in relation to unilateral legal acts is manifested in many forms and circumstances, has been a subject of study in many legal writings and has been touched upon in some judgments of the International Court of Justice and other international courts, there is thus sufficient material for the Commission to analyse and systematize;

In the interest of legal security and to bring about certainty, predictability and stability to international relations and thus strengthen the rule of law , an attempt should be made to clarify the functioning of this kind of acts and what the legal consequences are, with a clear statement of the applicable law."

### Scope and Content of the Stud

It may be recalled that in the General Scheme submitted to the General

Assembly the Commission had characterized the subject of study as unilateral acts of States that have consequences relating specifically to the sphere of international law. The Working Group accordingly, determined that the topic is the "unilateral acts of States" that are intended to produce Legal effects, creating, recognizing, safeguarding or modifying rights, obligations or legal situations. State activities which do not have legal consequences would be outside the purview of the study. Likewise the questions pertaining to the definition and consequences of internationally wrongful acts, in as much as they are studied under the heading international responsibility, would be beyond the scope of the study.

The fundamental characteristic of unilateral legal acts is their unilateral nature. They emanate from a single side or from one or several subjects of international law acting unilaterally and the participation of another party is not required. While this characteristic leaves Plurilateral international legal acts, such as treaties, outside the scope of the study it does not exclude the collective or joint acts. The collective or joint acts are within the scope of the study in as much as they are performed by a plurality of states not with an intention to regulate their mutual relations but to express as a unitary block the same willingness to produce certain legal effects without any need for the participation of other subjects or parties in the form of acceptance, reciprocity and the like.

The title of the topic Unilateral Acts of States implies ruling out from the purview of the study unilateral acts carried out by other subjects of international law particularly "the very important and varied category of such acts by international organizations". Excluded, however, from the scope of the study are such unilateral acts of States as are governed by the law of treaties and do not need to be dealt with further or such acts as have a treaty base.

While the internal acts of States that do not have any effect at the international plane ( laws, decrees, regulations etc. ) are also proposed to be excluded from the purview of the study such internal acts as have effects on the international plane ( Such as those fixing the extent of the various kinds of maritime jurisdiction ) are to be included to the extent that such unilateral acts

create legal situations which are opposable to other States and are permitted by international law.

As regards the content of the study the Working Group considered that the main objective of the study is to identify the constituent elements and effects of unilateral legal acts of States and to set forth rules which are generally applicable to them, as well as any special rule that might be relevant for particular types or categories of such acts. The outline of the study prepared by the Working Group is reproduced below.

### Outline for the study of unilateral legal acts of States

#### Chapter I. Definition of unilateral legal acts of States: Determination of their basic elements and characteristics:

- (i) Attribution of the act to a State as a subject of international law;
- (ii) Unilateral nature of the act;
- (iii) Normative content: expression of will, with intent to produce international legal effects;
- (iv) Publicity of the expression of will;
- (v) Binding force recognized by international law.

#### Chapter II. Criteria for classifying unilateral legal acts of States:

- (i) In terms of their substantive content and their effects;
- (ii) In terms of the addressee (acts addressed to one, several or all subjects of international law);
- (iii) In terms of form (written or oral, explicit or tacit).

Chapter III. Analysis of the process of creation, the characteristics and the effects of the most frequent unilateral acts in State practice.

- (i) Unilateral promise or engagement;
- (ii) Unilateral renunciation;
- (iii) Recognition;
- (iv) Protest;
- (v) Others.

Chapter IV. General rules applicable to unilateral legal acts:

- (a) Forms:
  - (i) Declarations, Proclamations and notifications, written or oral
  - (ii) Conduct.
- (b) Effects:
  - (i) Binding nature of the unilateral act for the author State;
  - (ii) Creation of rights for other States;
  - (iii) Renunciation Of rights of the author State;
  - (iv) Situations Of opposability and non-opposability.
- (c) Applicable rules of interpretation.
- (d) Conditions of validity.
  - (i) Capacity of State organs or agents to perform unilateral legal acts;

- (ii) Effects in the international sphere (as opposed to purely internal acts);
  - (iii) Lawfulness under international law;
  - (iv) Material possible content;
  - (v) Publicity;
  - (vi) Absence of defects in the expression of will.
- (e) Consequences of the invalidity of an international legal act:
    - (i) Nullity;
    - (ii) Possibility of validation.
  - (f) Duration, amendment and termination:
    - (i) Revocability, Limitation on and conditions of the power of revocation and review;
    - (ii) Amendment or termination because of external circumstances: Termination as a result of fundamental change of circumstances; Termination as a result of impossibility of application; Existence of a new peremptory norm;
    - (iii) Effects of a succession of States.

Chapter V. Rules applicable to specific categories of unilateral legal acts of States.

## Future Work of The Commission

Whilst endorsing the Report of the Working Group the Commission took the view that the topic should be considered in such a way that the first reading of a draft articles may be completed within the present quinquennium. To this end the Commission appointed Mr. V. Rodriguez - Cedeno Special Rapporteur for the topic and entrusted to him the task of preparing a general outline of the topic which would be included in an initial report to be submitted for discussion in 1998 and which would contain :

- (i) a brief description of the practice of States with examples of the main types of unilateral legal acts that are relevant to the study;
- (ii) a survey of the consideration of this category of acts by international courts and of the opinions of writers who have dealt with the topic; and
- (iii) a detailed scheme for the substantive development of the topic.

Finally, in response to paragraph 14 of General Assembly Resolution 51/160 the Commission has identified four specific issues and invited comments thereon. For providing effective guidance for its further work on the item Unilateral Acts of States the Commission has invited comments by Governments of Member States on the following matters

- (i) the general approach proposed by the working Group to deal with subject matter ;
- (ii) the scope and content of the study to be undertaken;
- (iii) the plan of work; and
- (iv) the final form of the study to be undertaken ( whether it should result doctrinal study followed by draft articles and commentaries, general conclusions or recommendations, a guideline for the conduct of States or a combination of these - or other alternatives.

## REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-NINTH SESSION

### Report of the Sixth Committee<sup>1</sup>

#### The General Assembly.

Having considered the report of the International Law Commission on the work of its forty-ninth Session<sup>2</sup>

Emphasizing the importance of furthering the progressive development of international law and its codification as a means of implementing the purposes and principles set forth in the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,<sup>3</sup>

Emphasizing also the role of the International Law Commission in the fulfilment of the objectives of the United Nations Decade of International Law,

Recognizing the desirability of referring legal and drafting questions to the Sixth Committee, including topics that might be submitted to the International Law Commission for closer examination, and of enabling the Sixth Committee and the Commission further to enhance their contribution to the progressive development of international law and its codification,

<sup>1</sup> A/52/648, 25 November 1997.

<sup>2</sup> Official Records of the General Assembly, Fifty-second Session. Supplement No. 10 (A/52/10).

<sup>3</sup> Resolution 2625 (XXV), Annex.

Recalling the need to keep under review those topics of international law which, given their new or renewed interest for the international community, may be suitable for the progressive development and codification of international law and therefore may be included in the future programme of work of the International Law Commission,

Stressing the usefulness of structuring the debate on the report of the international Law Commission in the Sixth Committee in such a manner that conditions are provided for concentrated attention to each of the main topics dealt with in the report.

Wishing to enhance further the interaction between the Sixth Committee as a body of government representatives and the International Law Commission as a body of independent legal experts, with a view to improving the dialogue between the two organs,

1. Take note of the report of the International Law Commission on the work of its forty-ninth session and expresses its appreciation to the Commission for the work accomplished at that session, in particular for the completion of the first reading of draft articles on nationality of natural persons in relation to the succession of States and for the preliminary conclusions on reservations to normative multilateral treaties, including human right treaties;

2. Draws the attention of Governments to the importance, for the International Law Commission, of having their view on all the specific issues identified in chapter III of its report and in particular on:

(a) The draft articles on nationality of natural persons in relation to the succession of States adopted on first reading by the Commission, and urges them to submit their comments and observations in writing by 1 October 1998;

(b) The Preliminary conclusions of the International Law Commission on reservations to normative multilateral treaties, including human rights treaties;

3. Recommends that taking into account the comments and

observations of Governments, whether in writing or expressed orally in debates in the General Assembly, the General Assembly, International Law Commission should continue its work on the topics in its current programme;

4. Takes note of the invitation by the International Law Commission to all treaty bodies set up by normative multilateral treaties that may wish to do so to provide, in writing, their comments and observations on the preliminary conclusions of the International Law Commission on reservations to normative Multilateral treaties, including human rights treaties, and takes note of the views expressed by Member States on the matter,

5. Invites Governments to submit comments and observations on the Practical problem raised by the succession of States affecting the nationality of legal persons in order to assist the International Law Commission in deciding on its future work on this portion of the topic of "Nationality" in relation to the succession of States";

6. Recalls the importance for the International Law Commission of having the views of Governments on the draft articles on State responsibility adopted on first reading by the Commission at its forty-eighth session in 1996;<sup>4</sup>

7. Takes note of the decision by the International Law Commission to proceed with its work on "International liability for injurious consequences arising out of acts not prohibited by international law", undertaking, as a first step, the issue of prevention, and to reiterate its request to Governments to provide in writing, if they have not previously done so, their comments and observations on the topic of international liability, including the draft articles prepared by the Working Group of the International Law Commission at its forty-eighth session in 1996,<sup>5</sup> in order to assist the Commission in its work on that topic;

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<sup>4</sup> Official Records of the General Assembly, Fifty-first Session, Supplement No. 10 and corrigendum (A/51/10 and Corr.1), chap. III, sect. D.

<sup>5</sup> Ibid. annex I.

8. Endorses the decision of the International Law Commission to include in its agenda the topics "Diplomatic protection" and "Unilateral acts of States"<sup>6</sup>

9. Welcomes with appreciation the steps taken by the International Law Commission in relation to its internal matters, and encourages it to continue enhancing its efficiency and productivity taking into consideration the discussion held by the General Assembly at its fifty second session,

10. Takes note of the comments of the International Law Commission on the question of a split session for 1998, as presented in paragraphs 225 to 227 of its report;

11. Takes note also of the position of the International Law Commission contained in paragraph 228 of its report on the duration of its future sessions;

12. Requests the International Law Commission to continue to pay special attention to indicating in its annual report, for each topic, those specific issues, if any, on which expressions of views by Governments, either in the Sixth Committee or in written form, would be of particular interest in providing effective guidance for the Commission in its further work;

13. Takes note with appreciation of the Commission's ongoing review of its cooperation and relationship with other bodies concerned with international law, and requests the Commission, in consultation with the Secretary-General, to consider further the implementation of article 16, paragraph (e), and article 26, paragraph 2, of its statute;

14. Notes that consulting with national organizations and individual experts concerned with international law may assist Government in considering whether to make comments and observations on drafts submitted by the Commission and in formulating their comments and observations;

15. Reaffirms its Previous decisions concerning the role of the Codification Division of the Office of Legal Affairs of the Secretariat and those concerning the summary records and other documentation of the International Law Commission;

16. Once again expresses the wish that seminars will continue to be held in conjunction with the sessions of the International Law Commission and that an increasing number of participants from developing countries will be given the opportunity to attend those seminars, appeals to States that can do so to make the voluntary contributions that are urgently needed for the holding of the seminar, and requests the secretary-general to provide the seminars with adequate services, including interpretation, as required;

17. Reuests the Secretary General to forward to the International Law Commission, for its attention, the records of the debate on the report of the Commission at the fifty-second session of the General Assembly, together with such written statements as delegations may circulate in conjunction with their oral statements, and to prepare and distribute a topical summary of the debate, following established practice;

18. Expresses its appreciation to the secretary-general for the organization of a colloquium on the progressive development and codification of international law which was held on 28 and 29 October 1997 in commemoration of the fiftieth anniversary of the establishment of the International Law Commission;

19. Welcomes the decision of the International Law Commission to hold a two-day seminar at Geneva on 22 and 23 April 1998 to celebrate the fiftieth anniversary of the Commission;

20. Recommends that the debate on the report of the International Law Commission at the fifty-third session of the General Assembly commence on 26 October 1998.

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<sup>6</sup> Ibid., Fifty-Second Session, supplement No. (A/52/10), para.221.

## VI. THE LAW OF INTERNATIONAL RIVERS

### (i) Introduction

The item "Law of International Rivers" was first taken up for consideration by the Asian-African Legal Consultative Committee following a reference made by the Governments of Iraq and Pakistan during the Eighth Session (Bangkok, 1966) of the AALCC. The following year, at the Ninth Session held in New Delhi (1967), the delegate of Iraq in his statement indicated the areas which necessitated a closer scrutiny, viz. (a) the definition of the term "international rivers"; and (b) the rules relating to utilization of waters of international rivers by the States concerned for agricultural, industrial and other purposes, not connected with navigation. At the Tenth Session (Karachi, 1969) after extensive deliberations the AALCC decided to set up a Sub-committee of all Member Governments to prepare a set of draft articles on the Law of International Rivers, particularly in the light of experience of the countries of Asia and Africa and reflecting the high moral and juristic concepts inherent in their own civilizations and legal systems.

The Sub-committee comprising the representatives of the Member Governments of Ghana, India, Indonesia, Iraq, Japan, Jordan, Pakistan, Sierra Leone and Sri Lanka met in New Delhi in December 1969. At that meeting the delegations of Pakistan and Iraq placed before the Sub-committee a set of draft principles consisting of 21 articles. In the subsequent sessions of the AALCC, the sub-committee could not finalize these draft articles due to a few unclear provisions. However, the draft articles were referred to the Member Governments for their consideration. The matter was thereafter discussed at the Eleventh, Twelfth, Thirteenth and Fourteenth Sessions of the Committee. At the Fourteenth Session of the AALCC held in New Delhi in 1973 it was decided that since the International Law Commission (ILC) was actively engaged in considering this topic, its examination could be deferred.

At the request of the Government of Bangladesh the item was reinstated on the agenda of the Twenty-third session of the Committee (Tokyo, 1983). The Government of Bangladesh, in its reference, had proposed that the AALCC could resume the consideration of the item excluding the areas