Public International Law

Lecture 5

UNIT III :-THE SOURCES OF INTERNATIONAL LAW

5. Custom

6. General Principles of Law

7. Codification

8. Resolutions of International Organisations

9. Unilateral Declarations of States

10. Hierarchy of Sources

11. Hierarchy of Norms in International Law

- ICJ, North Sea Continental Shelf Case (F.R. of Germany/Denmark; F.R. Germany/The Netherlands)
- ILC, Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations,adopted in the ILC 2006 session.

In the absence of any codified law on the sources of international law, article 38 of the statute of international Court of Justice has become relevant which directs the court to apply:

a) International conventions, whether general or particular, establishing rules expressly recognised by the contesting States;

b) International custom, as evidence of a general practice accepted as Law;

c) The general principles of law recognised by civilised nations;

d) Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. This provision shall not prejudice the power of the Court to decide a case ex aequo et bond, if the parties agree thereto.

The above is the text of highest authority. It is generally regarded as a complete statement on the sources of International law, despite the fact that the Article does not refer any where the expression ‘sources’. They are applied not only by the international Court of Justice but also represent the practice of tribunals. A point which is relevant to note is that the court is expected to apply the above sources in

order in which they appeal. Thus, the international convention shall be given preference by the court in deciding a case which the parties refer to it. In those cases where conventions are not available, they will be decided in accordance with international customs. General Principles of law recognised by civilised nations shall find place only where conventions and customs are not available. Judicial decision and the teachings of the most highly qualified publicist of the various nations have been regarded as subsidiary means for the determination of rules of law and shall be taken into account only when the source is referred to in clause (a), (b) and (c) are not available. It is to be noted that while source (d) has been regarded as subsidiary means for the determination of rules of law, nothing has been stated to the sources mention under clause (a), (b) and (c). Thus, the source (d) is different from the rest of the sources.

It is submitted that the list enumerated in the above Article is not exhaustive. For

instance, Article 38 makes no reference to resolutions of the General Assembly of the United Nations or to diplomatic correspondence, both of them figure prominently in the Court's judgments. Further, if Article 38 be simply declaratory, it clearly cannot inhibit the emergence of new sources of law, brought into being by the development of the international community and its progressive organisation. International Law is dynamic and fast changing with the passage of time. The growing scope of International Law has widened the scope for the creation of new methods of law making so that it can serve the needs of international community more effectively. It may be mentioned that as and when new methods of law making come into use, they will be the result of the application of legal rules created by operation of sources already recognised : of treaties and of custom. Thus, every new source is indirectly envisaged in the list under Article 38 Para 1 and is simply the product of the law emanating from the sources which are mentioned in the list.

Following are the sources of International law:

1. Customs
2. Treaties
3. General Principles of law recognised by the civilised nation
4. Judicial decisions
5. Writing of jurists
6. Equity
7. Resolution of the General Assembly

Customs

Custom is the original and the oldest source of International Law and at a time it was the most important amongst the sources. Custom is the foundation stone of the modern International Law. It was so because a large part of International Law consisted of customary rules. International custom may mean a kind of qualified practice, distinguished from others (for example, from usage) by the existence of a corresponding legal obligation to act according to this practice, hence by the existence of a corresponding rule of International Law. They evolve through the practices of and usages of nations and their recognition by the community of nations. As such, they are not the creatures of the sovereign or a State.

Customary rules are referred to those rules which are practised by most of the States, if not by all through ages by way of habit. Westlake defines custom as that line of conduct which the society has consented to regard as obligatory: The obligation is based upon the common consent of nations extending over a period of time of sufficient duration. Thus, custom is not merely a habit or usage. A usage is a general practice which does not reflect a legal obligation. But custom is more than mere practice. Custom is referred to those habits which are regarded as binding upon the States. Thus, when a habit or usage becomes obligatory on a State to practice, it is known as custom.

Custom and Usage. – Practice of States has two stages : usage and custom.
The term usage originating in Roman law is also very often used alternatively for practise. Usage is meant a practice of a certain uniformity and consistency, such that i is possible to presume a duty to act accordingly, although this duty is not of a legal character, but a moral one, or of courtesy.
A usage therefore becomes custom when it has received legal recognition. In the absence of legal recognition, a habit or usual course of action is regarded as usage, and it does not acquire the status of custom. Starke has very rightly stated that usage represents the initial stage of custom. Custom begins where usage becomes general.

Formation of a Customary Rule:

Customary International Law results from a general and consistent practice of States which is followed by them from a sense of legal obligation. A question arises as to when a general practice or usage is regarded as to have transformed into customary rule ?

It order to establish the existence of an international custom. primarily three elements are required to be present which are duration continuity and generality.

a) **Duration-**When a particular user is practised by the States for a long duration, it has a tendency to become custom, How much time usage takes to transform into custom is a question which is difficult to answer. A usage may become custom event in a short time. All depends on the circumstances of the case and the nature of the nile involved. Practice relating continental shelf and rules relating to air space have become custom in a short time. The concept of continental shelf was introduced in 1945 and by 1958 had become a customary rule of International Law. In the North Sea Continental Shelf Can the definition of continental shell was considered by the International Court of Justice to have been one of those regarded in 1958 as 'reflecting, or as crystallising, received or at least emergent rule of customary law relative to the continental shelf'.

b) **Uniformity or consistency. -** A practice is required to be followed consistently by the States, In the words of the Permanent Court of International Justice in the Lotus case, the practice should be constant and uniform. While complete uniformity is not required, uniformity should be substantial. The above implies that while substantial inconsistencies of the practice prevent the creation of a rule of customary International Law, minor inconsistencies do not Thus occasional violation of a principle do not detract that principle from acquiring the legal character. Instances of (minor) State practice inconsistent with the principle should generally be treated as breaches of that principle. In Anglo Norwegian Fisheries case the Court refused to accept the existence of a ten-mile rule for bays

because the practice was not substantially consistent. It was also stated in this case that the degree of consistency required may vary according to the subject matter of the rule in dispute.

c) **Generality:** It is essential that a usage should be practised by most of the States in order to transform into a custom. The above implies that there is no rule which prescribes that the consent of all States is a necessary condition to the formation of a customary rule. In West Rand Central Gold Mining Co. Ltd. v. R.. it was held that it must be proved by satisfactory evidence that the alleged rule is (V. of such a nature, and has been so widely and generally accepted that it can hardly be supposed that any civilised State would repudiate it. In the Fisheries Jurisdiction case the Court used the expression generally accepted' which may mean that a general customary rule is required to be accepted generally by the States. It follows that if a usage is practised only by a limited number of States it will not transform into custom.

Kinds of Customary Rules.-

Customary rules of International Law may be either general or particular.

General customary rules are those which are binding generally on all the States such as the basic rules of the law of treaties, of diplomatic intercourse or of the law the sea. However, customary rules of general International Law shall not apply to a State which consistently refuse to recognise it, and has, throughout the period of its creation, resisted its application. But such opposition may not necessarily prevent the recognition of the rule in question as a rule of general International Law. However, firm opposition of a number of States, especially if they constitute an appreciable section of the international community or comprehend one or more of the great Powers, may no doubt obstruct the formation of a general customary rule.

Particular customary rules or local customary rules are those where a practice has developed between the two States. Thus, such rules are binding only on two States. Such customary rule is also sometimes called 'bilateral custom’.

GENERAL PRINCIPLES OF LAW RECOGNISED BY THE CIVILISED NATIONS

Although custom and treaties are in practice the principal sources of International Law, they cannot be regarded as its only sources. Paragraph (1)(c) article 38 of the Statute of the International Court of Justice constitutes an important landmark in the history of international Law inasmuch as the States o the Statute did expressly recognise the existence of a third source of International Law independently of custom and treaties.

By the term general principles of law recognized by civilised nations is meant those principles which have been recognised by civilized nations of the World community in their domestic law. Such rules, of course, are more developed, and therefore, could be adopted in International Law. However, it is not clear whether the general principles referred to in clause (c) must be recognised by all, and if not by all, by how many civilised nations in order to be made applicable by the Court. Further, use of the term "civilised' under Article 3SNC) appears to be superfluous and has no meaning. Rather, it impression that there are States which are uncivilized as well. Truly speaking, no State can be called uncivilized. Even the States belonging to Axis Powers of Second World War are not uncivilized because most of them, at present, have become members of the United Nations Organisation. The term civilized nations s included perhaps to exclude primitive or underdeveloped legal system Presently, the term is irrelevant and can be ignored.

It is to be noted law as one of the the rationality for the inclusion of general principles of sources of International Law lies in the fact that a principle which has been found to be generally accepted by certain civilized legal systems may fairly presumed to be so reasonable as to be necessary to the maintenance of justice under any system. Thus well recognised municipal law principles can be employed by international judicial tribunal, i.e., the Court. It has been included as a source in order to provide an

additional basis for a decision in case the other material should prove unhelpful. Examples of such principles which have been recognised are good faith, reciprocity, presumption, estoppel and res judicata. It is significant to note that the principles of law recognised by many States do not become principles of International Law automatically. They are required to be recognised by the World Court. Before any such principle is applied by the Court, certain considerations are taken into account. Firstly, a rule is a general principle of law, that is, it is not limited in scope. Secondly, the rule is recognised by the States. The word 'recognised' presupposes the existence of the rule in the municipal law. Thirdly, the rule is recognised by most of the States, if not by all the States of the World community. When the above three elements are present in any principle of law, the World Court may apply it in international disputes as well.

Although general principles of law recognised by the civilized nations was expressly recognized for the first time as a source of International Law under the Statute of the Permanent Court of International Justice, certain such principles were adopted in a few cases earlier by the tribunals. Later, the Permanent Court applied them on many occasions. For instance, the principle of judicata was applied in the case of Diversion of Water from Meusel and the Chrozow Factory (Indemnity Jurisdiction) case. In the case of Diversion of Water from Meuse, the Court also applied the principle of estoppel. Later, the International Court of Justice also applied certain general principles of law. For instance, the principle of estoppel was applied in the case of Barcelona Traction case (Second Phase) and in the case concerning Temple of Preah Vihar. Further, the principle f res judicata and the circumstantial evidence was applied by the International Court of Justice in the Corfu Channel case (Assessment of Compensation). As the circumstantial evidence the Court stated that this indirect evidence is to admitted in all systems of law and its use is recognised by international decisions.

Resolutions Of The General Assembly

Resolution of the General Assembly of the United Nations do not possess legal character, and as such are not binding on the States. They do not create any legal obligations on its members irrespective of the fact that they have been adopted unanimously or by overwhelming votes or even if their contents are a matter of common interest to all the States. However, if a resolution is adopted unanimously or by two-third majority of the members, and if the same resolution finds reflections in many other subsequent resolution, it must not be lightly weighted. The International Court of Justice in the advisory opinion given in the Legality of the Threat or Use of Nuclear Weapons stated that the Court notes that General Assembly resolutions, even if they are not binding may sometimes have normative value. They can, in certain circumstances, provide evidence important for establishing the existence of a rule or the emergence of an opinio juris Rosalyn Higgins has rightly stated that resolutions with similar contents repeated through time, voted for overwhelming majority giving rise to a general opinio juris, have created the norm in question. They may contribute to the formation of customary rule or be evidence that it is already formed.

It is important to note that the General Assembly performs the functions of law-making in two ways. Firstly, it makes international agreements and commend them, for signature and ratification through the normal treaty making practices of States. The Genocide Convention, 1949, the International Covenants on Human Rights 1966, the International Convention on the Rights of the Child 1989 and a number of disarmament treaties are the examples of such method. Secondly, the Assembly makes treaty through its subsidiary law-making bodies such as the International Law Commission (ILC) and the U.N. Commission on International Trade Law (UNCITRAL). These treaty drafting bodies are given topics by the General Assembly for making laws and they report to the Assembly yearly. The laws made by the Assembly through the above two ways are of immense importance and they have

been well recognised by the States. They are the rule which international community must take into consideration at the time of the determination of law.

Unilateral declarations: A treaty, a customary practice or an independent source?

Unilateral statements and declarations by state representatives can create obligations under international law. These are described as declarations of will made in public by an authority vested with the power to do so; they are unilaterally binding on the state who makes them and can be executed both orally and in writing. Unilateral declarations can be made by ahead of state, a head of government and ministers of foreign affairs, and other authorised officials.

The legal status of unilateral declarations has interesting features. Similar to a promise in the contract law of Scotland (as distinguished from an offer), it does not require any quid pro quo acceptance or reply from other states for it to be legally binding. Only if said with both an intention to bind andclear terms, unilateral declarations will have a legal effect and will be binding on the state who makes the declaration. For example, in the *Eastern Greenland* case (Denmark v Norway) PCIJ Series A/B No 53), the Court interpreted the declarationof a Norwegian Foreign Ministeras a statement that was legally binding onNorway. In that case, during the course of a bilateral Danish-Norwegian dialogue on the status of Eastern Greenland, the Foreign Minister of Norway, in response to Danish claims to Greenland, stated that Norway "would not make any difficulties in the settlement of this question." When Norway later contested Danish sovereignty over the area, the Court found that earlier statement "unconditional and definitive" and therefore binding on Norway.

Although unilateral declarations are binding, the question remains whether they are a distinct source of law as opposed to that categorised under article 38. Thirlway argues that unilateral declarations can be categorised as an inchoate treaty. This claim can be supported by various arguments: a treaty is usually unilaterally ratified; states bind themselves by unilaterally ratifying a treaty; and this ratification also binds other states. In comparison, like the unilateral ratification of a treaty, unilateral acts also bind the state itself and enable other states to enforce the unilateral act. This unilateral

binding was seen in the leading case of the nuclear tests when Australia and New Zealand raised an action before ICJ concerning France's radioactive fall-out on their respective territories from French nuclear tests. The proceedings were based on the unilateral announcements of the French government. Here the Court held that:

"An undertaking of this kind, if given publicly, and with an intent to be bound, even though not made within the context of international negotiations, is binding. In these circumstances, nothing in the nature of a quid pro quo, nor any subsequent acceptance of the declaration, nor even any reply or reaction from other States, is required for the declaration to take effect, since such a requirement would be inconsistent with the strictly unilateral nature of the juridical act by which the pronouncement by the State was made."

However, despite its similarity to a treaty, it can be argued that unilateral declarations cannot be categorised as treaties under article 38(1). This is because a treaty is a binding obligation which requires efforts from both sides, whereas unilateral declarations create obligations only for one side. Furthermore, it is possible for a state to withdraw from a treaty, but a unilateral declaration that has created legal obligations on the state making the declaration cannot be revoked arbitrarily. Therefore, it is unreasonable to categorise unilateral acts as treaties.

Interestingly, it can also be asserted that unilateral declarations can be made a part of article 38(1) as a customary rule of unilateral promise. But in order to legitimise this, it is necessary to establish that unilateral declarations comply with the facets of customary law. To identify a customary rule, the elements of state practice and *opinio juris* need to be established. In the context of a unilateral declaration, the requirement for state practice can be satisfied but it is hard to establish the element of *opinio*

juris. In addition, it also fails when considering the principle of the persistent objector which cannot apply because a unilateral obligation does not bind other states.

As such unilateral declarations cannot be conventions because they are not an agreement between two or more states. The lines between customary law and unilateral declarations are also blurred: customary law requires state practice and *opinio juris*, which binds other states, whereas in a unilateral declaration the State binds itself. Therefore, article 38 is not a complete reference point for international law.

The Hierarchy Of The Law Sources And The Hierarchy Of The Rules In The International Juridical System.

Considering that the authority of the O.N.U. Book such as the International Court of Justice Statute and in mainly universal vocation of .ON.U.; we report in the field of international law sources; to enumerate form the article 38 of the C.I.J. Statute; according which the main sources of international law are the treaty; the custom and the law general principles to which are added the auxiliary means of determination of law rules; namely sentences and international law doctrine. In the article 38 from the C.I.J. Statute can't be surprised a hierarchy of the international law sources. That's why the doctrine has promoted the idea of equality between the main international law sources; being said like example that, "An international treaty doesn't have a priori a superior value over the one of a unilateral document or over a customary rule".

Regarding the law sources can be concluded that in the positive international law doesn't exist a recognizing rule of the formal source preeminence over another; here not being an hierarchy of the formal sources. Totally different is the situation regarding the international law rules. Any rule of international law which implies the obligation to respect certain conduct rule establish through the will agreement of the states will be respected regardless the ways which express her. An international rule can be analyzed after the importance of the domain but also after the scale of the will agreement necessary to his adoption. Or; from that point of view; the doctrine promoted the idea of the existing of a hierarchy between different categories of norms belonging to the international law. The existence of that hierarchy implies the deepen of some aspect related by the relation between the provisions of the U.N. Charter and the dispositions of others treaties; as that between the general treaties and the bilateral or regional ones; also will be taken in view the rapport treaty-custom and the statute and the importance to the jus cogens norms. International concerns for peace and security in relations between states has based the idea of the rule of the UN Charter

provisions on treaties concluded by various subjects of international law. Article 103 of the UN Charter emphasizes that “in case of conflict between the obligations of members under this charter natiunilro united and obligations under any international agreement; obligations under the Charter shall prevail”. This article was inspired by Article 20 of the League of Nations Covenant which contained the provision that: This pact repeals all obligations and agreements inconsistent with its provisions. Primary role of regulations contained in the UN Charter in relation to those contained in any other international agreement is in one of the strongest arguments in promoting the idea of the existence of a hierarchy among many categories of rules of international law. Hierarchy of norms of international law; so commented but finally accepted in theory but is supported by conventional plan and agreement of will of international community members who promoting the interests of the entire humanity have created the premises of the International Public Order; which currently presents a complex and dynamic configuration whose existence is recognized and accepted as a guarantee of balance in the conduct of international relations. It is currently regarded as the “formation of new rules of international law; development and prediction of existing regulatory process is a complex contribution of all the ad states; using the many means by which legal; the spring meant to achieve and will express agreement on the regulation of various issues and areas of cooperation.

ICJ, North Sea Continental Shelf Case (F.R. of Germany/Denmark; F.R. Germany/The Netherlands)

These cases concerned the delimitation of the continental shelf of the North Sea as between Denmark and the Federal Republic of Germany, and as between the Netherlands and the Federal Republic, and were submitted to the Court by Special Agreement. The Parties asked the Court to state the principles and rules of international law applicable, and undertook thereafter to carry out the delimitations on that basis. By an Order of 26 April 1968 the Court, having found Denmark and the Netherlands to be in the same interest, joined the proceedings in the two cases. In its

Judgment, delivered on 20 February 1969, the Court found that the boundary lines in question were to be drawn by agreement between the Parties and in accordance with equitable principles in such a way as to leave to each Party those areas of the continental shelf which constituted the natural prolongation of its land territory under the sea, and it indicated certain factors to be taken into consideration for that purpose. The Court rejected the contention that the delimitations in question had to be carried out in accordance with the principle of equidistance as defined in the 1958 Geneva Convention on the Continental Shelf. The Court took account of the fact that the

Federal Republic had not ratified that Convention, and held that the equidistance principle was not inherent in the basic concept of continental shelf rights, and that this principle was not a rule of customary international law.

ILC, Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations,adopted in the ILC 2006 session.

The International Law Commission 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.**

The wording of Guiding Principle, 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. 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".

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

Just as "every State possesses capacity to conclude treaties", 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.

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.

The wording of Guiding Principle 3 is also inspired by a passage in the ICJ Judgments in the Nuclear Tests cases; allusion is made to this jurisprudence in the Judgments of 22 December 1986 in the Frontier Dispute (Burkina Faso v. Republic of Mali) case and of 3 February 2006 in the Armed Activities on the Territory of the Congo case. 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". 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 and circumstances in which the declarations were made in the case of the Swiss statements concerning the privileges and immunities of United Nations staff, the Egyptian declaration of 1957 and Jordan's waiver of claims to the West Bank territories.

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.

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 the similar customary rule in the law of treaties, that "in

accordance with its consistent jurisprudence (Nuclear Tests (Australia v. France), 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".

State practice shows that unilateral declarations creating legal obligations for States are quite often made by heads of State or Government or ministers for foreign affairs 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. 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, was confirmed by subsequent domestic acts.

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

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 in its Judgment in the Temple of Preah Vihear case in connection with unilateral conduct. 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, 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"

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

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, the Cuban declarations concerning the supply of vaccines to Uruguay, the protests by the Russian Federation against Turkmenistan and Azerbaijan and the Ihlen Declaration.

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.

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. This understanding has been adopted without change by the Court in the case concerning Armed Activities on the Territory of the Congo. 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". 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.

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

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. In its Judgment in the Armed Activities on the Territory of the Congo case, the Court did not exclude the possibility that a unilateral declaration by Rwanda 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.

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.

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. 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. In the circumstances, the State or States concerned are in fact bound by their own acceptance.

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.

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”. This does not, however, exclude any power to terminate a unilateral act, only its arbitrary withdrawal (or amendment). 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.