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STATEMENT
by Representative of the Russian Federation in the Sixth Committee of the 59-th session of the UN General Assembly M.Zabolotskaya on item 144 of the agenda "Report of the International Law Commission"

November 9, 2004

Mr. Chairman,

In this presentation we would like to touch in brief upon three topics now under discussion in the Commission **"Reservations to Treaties", "Unilateral Acts" and Fragmentation of International Law".**

We would like to express gratitude to professor A. Pellet, Special Rapporteur on the topic **"Reservations to Treaties"** for the concise but informative Report.

In our view, support should be given to the formulations of paragraphs 2.3.5 "Widening of a scope of a reservation", 2.4.9 "Modification of an interpretative declaration", 2.5.12, "Withdrawal of an interpretative declaration", 2.5.13 "Withdrawal of a conditional interpretative declaration", of the Guidelines on Practice (hereinafter "Guidelines") approved by the Editing Committee on the second reading. So far, we are having no specific difficulties in their respect. The same goes true for the formulation that the Commission has proposed for paragraph 2.6.2 "Objection against a subsequent formulation or widening of the scope of the reservation" which, in our view, could be included into the uniform definition of the "objection" laid

down in paragraph 2.6.1 “Determination of objections to reservations” mentioned in the draft.

We have certain questions with regard to paragraph 2.4.10 of the draft “Guidelines” on limitation and widening of the scope of a conditional interpretative declaration. Modification of the scope of a conditional interpretative declaration may, obviously, take place in practice only after a consent has been expressed with regard to the obligation of the treaty (the finality of which is put into condition through a conditional interpretative declaration). In case of a limitation of the scope of a conditional declaration on interpretation no particular difficulties should seem to arise. Things, though, may look different in case of a widening of the interpretative declaration. Thus, it is not fully clear what would happen to the treaty if not all of its other members accept the proposed widening of the scope of the conditional interpretative declaration. We are not also sure that it will be obvious in all cases that a State’s declaration on only widening or limitation of the interpretative declaration it made earlier. For instance, what is to be done if the declaration contains both the “widening” and “limitation” elements.

In the light of aforementioned a question arises, to what extent the proposed regime of widening of the scope of conditional interpretative declarations meets the interests of ensuring a stability of legal relationship within the framework of the treaty.

Moreover, it seems to us that the scheme under which the question regarding the rules subject to be applied with respect to widening or limitation of conditional interpretative declarations is dealt with through a reference to paragraph 2.3.5 “Widening of a scope of a reservation”, which later refers us to paragraph 2.3.1 “Late formulation of a reservation”).

We consider that the definition of the “objection to reservation” should be structured and complemented with commentaries in such a way that a clear distinction

could be made between legal objections to a reservation, and political declarations States use to express negative attitude to a reservation but which have not legal repercussions. In addition, definition of an objection to a reservation should not, in our view, draw only on consequences of an objection directly provided for by the 1969 Vienna Convention.

Mr. Chairman,

We expect with great interest the next report of prof. Pellet who as we see it will be devoted to the topic of acceptability or validity of reservations. We intend to present a written commentary on the topic raised by the Commission on this account.

Unilateral acts of states

We thank Mr. Rodriguez Sedeño for the presented report, which contains numerous examples of unilateral acts of States. We find very useful the work, that has been started at the last session by the Working Group chaired by professor A. Pellet and hope that it will be continued.

The content of the report, in our view, vividly shows a broad variety and heterogeneneity of unilateral acts. This largely shows why the Commission until now, in fact, has not succeeded in advancing in its work on the topic.

We like the idea of preparation by the Commission of a detailed topical study or a survey. We believe that the decision of the Commission to focus at this phase on the analysis of a certain set of unilateral acts aimed at analyzing their form, content, procedure and other circumstances of accomplishment.

On the whole, in our opinion, there are certain indications to prove that codification is an extremely complicated and hardly possible task. The main problem that the Commission will be bound to confront is such a definition of unilateral acts the use of which would allow in every single case to tell a unilateral legal act from an act of a purely political nature giving rise to no legal repercussions.

We are not sure that the definition of unilateral acts may be given on the basis of a criterium of an intention of a State. It seems to be very subjective. In this respect, it seems that the decision of the International Court in the case on nuclear tests should not be used as an unconditional basis for the Commission' activities in this area. A great deal, for example, depends on the subject of a unilateral act. If judging by the content of a unilateral act such a subject may be clearly defined and if it is of an explicit legal nature then we have to do with a unilateral act of a legal nature. A typical example is a unilateral and explicit waiver of a State from a right inherent to it.

In considering *criteria for the validity* of unilateral legal acts, it is worthwhile to understand whether these acts can deviate from disposition rules of international law, as is the case with treaties.

With regard to the terms for modification or withdrawal of an obligation assumed by a state unilaterally, we doubt that it would be justified to use a direct analogy with treaties. This, for instance, applies to a "threshold" for the application of the rule on a fundamental change of circumstances as a ground for termination of an obligation.

In conclusion we would like to note that we are looking forward to continuing the study initiated by the Commission at the last session. We believe that the prospects for the work on this topic have improved.

Fragmentation of international law: difficulties arising from the diversification and widening of the scope of international law.

Russia closely follows the discussion on this topic which, in our view, is directly linked to the ways for further development of international law. We are pleased to note that the study on the fragmentation of international law has been committed to the International Law Commission which has the necessary special knowledge and experience.

We believe that the "threat" of fragmentation of international law is rather hypothetical which, however, does not at all mean that the states should not pay close attention to this matter.

We positively estimate the results of the discussion on fragmentation at the 56-th session of the ILC and, on the whole, support the general conclusions of the Research Group that lay a solid base for future work. In this regard, let me express our gratitude to Mr. Martti Koskenniemi, Chairman of the Research Group, and all the members of the Commission whose work has been of great help to the Group.

We would like to dwell on a number of areas in the work of the Group.

As you might know, a special attention has been paid to the discussion of studies dealing with the functions and scope of the *lex specialis* rule and the issue of "autonomous regimes", as well as of studies related to Articles 30,31 (3c) and 41 of the Vienna Convention on the Law of Treaties and on the hierarchy of rules in international law.

We support the conclusion of the Research Group that behind special rules and regimes we always have international law against the background of which special regimes are built and put in practice. General international law and special regimes do not operate separately, but make elements of a single system of rules in international law which, irrespective of their specific features, have a common legal nature.

The fact that in some cases *lex specialis* prevails over *lex generalis* does not mean that a special regime can be considered apart from the general one. Moreover, functional purpose of special rules within the system of rules of international law is determined by its ability to change or modify the functioning of general rules based on a given legal relation and the need for a certain regulation. At the same time, the abrogation of a special rule does not automatically cause a gap in legal regulation because in this case the respective general rule is to be applied.

In this regard we would like to emphasize that none of the existing treaty regimes, be that “autonomous” or “self-supporting”, including a set of rules in human rights area and WTO rules, are autonomous because they do not entirely exclude the application of general international law. Neither the practice of the European Court for Human Rights (in the cases of Belios, Loisidu, etc.), nor the practice of bodies established on the basis of universal treaties in this area, in our view, witness to their autonomous, self-supporting nature or isolation from general international law. We believe that this conclusion is also proved by the WTO practices.

We share the opinion of the Research Group that the hierarchy of rules in international law does not, as a rule, result in its fragmentation, but, on the contrary, serves as an inalienable attribute of its integrity as a system and of its internal structure. Certainly, we are not suggesting a direct analogy with the rules of national law which has a strict, formalized system of hierarchy of legal rules. At the same time, we consider it beyond doubt that there are peremptory and generally recognized principles and rules of international law that constitute the framework of its system and, within it, have primary authority and legal force. Along with these *jus cogens* principles and rules there are “sectoral” principles of international law the scope of which is mainly limited to the respective areas of regulation.

Regarding the interpretation of Article 31 (3)(c) of the 1969 Vienna Convention on the Law of Treaties, we share the general view that the reference it contains applies both to treaty rules and general rules. We support further study with a focus on the way common law should be applied in such cases.

Thank you, Mr. Chairman.