Statement by Hon'ble Mr. Rajiv Ranjan Singh, Member of Parliament and Member of the Indian Delegation on Agenda Item 152: Report of the International Law Commission on the Work of its Fifty-Fifth Session (Unilateral Acts of States, Reservations to Treaties, Shared Natural Resources and Fragmentation of International Law) at the Sixth Committee of the 58th Session of the UN General Assembly on November 4, 2003

Mr. Chairman,

We thank the Chairman of the International Law Commission, Mr. Enrique Candioti, for his lucid introduction of Chapters VII to X concerning "Unilateral Acts of States, Reservations to Treaties, Shared Natural Resources, and Fragmentation of International Law: difficulties arising from the diversification and expansion of international law".

Mr. Chairman,

We would like to express our appreciation to Special Rapporteur Cedeno for his sixth report which focuses on recognition. The discussions on the topic of Unilateral Acts within the Commission covered several important issues, more particularly general characteristics of the unilateral act of recognition.

We believe that recognition is an important unilateral act, although it is not a homogenous one. It could involve recognition of governments, states and other entities too. The act of according recognition is not regulated by any agreed legal rules or criteria. Once recognition is extended, the legal effects would follow. For these reasons, we do not agree with the view that *"acta sunt servanda"* is the basis for the binding nature of a unilateral act. We would like to reiterate that *acta sunt servanda* cannot be a derivative of the customary rule: "*Pacta sunt servanda*". My delegation is not agreeable to this logic.

Mr. Chairman,

The discussions in the Commission on many of the above points have been inconclusive. Questions continue to be raised regarding the feasibility of proceeding with the study. Doubts have also been expressed on the basic demarcation of the subject limiting it to the autonomous or non-dependent acts. The lack of sufficient state

practice, absence of comments from most of the States and the difficulty of locating new sources of international law have been suggested as reasons for dispensing with the topic. However, we believe that continuation of discussion and further elaboration on this topic would be beneficial only if the focus is on specific issues of unilateral acts such as recognition, promise, waiver, notifications, protest, renunciation, acquiescence, and estoppel, etc.

Mr. Chairman,

On reservation to treaties, my delegation commends the efforts of Prof. Allen Pellet, Special Rapportuer, for the progress achieved at this session. During the current session, the Commission considered the report of the drafting committee which adopted fifteen guidelines relating to withdrawal and modification of reservation of treaties. Some of the draft guidelines are accompanied by model clauses which might be useful for the State to invoke the applicable rules of procedure to suit the circumstances at hand.

On the mode of making and withdrawing reservation, we would like to reiterate that reservation should be made in writing and any communication relating to withdrawal of reservation must also be made in writing. In case of any exigencies, a communication relating to the withdrawal of reservation made by electronic mail or facsimile must later be confirmed either by a diplomatic note or by a depository notification.

The guidelines adopted by the drafting committee more or less reflect the existing State practice on this subject. Therefore, in principle, we agree with these draft guidelines.

Mr. Chairman,

On Shared Natural Resources, we thank Prof. Chusei Yamada, special Rapporteur, for his first report which outlined the topic. The report details all the earlier attempts involving the study of legal regime relating to "ground waters". However, it must be borne in mind that none of them dealt with this topic with sufficient rigour, detail and precision. The first report which is very preliminary in character, made references to several terminologies on ground water such as, "unrelated confined ground waters", "ground waters", "confined trans-boundary ground waters" and so on. Further, the need for the formulation of a precise definition on the basis of a correct understanding of the Hydro-geological characteristics of ground water has also been contemplated. In our view, a deeper study on this matter is required before embarking on a workable definition. Mere assumption that "almost all principles embodied in the Convention and the law of non-navigable uses of international water-courses are also applicable to confined trans-boundary ground waters", would be unhelpful in evolving a more acceptable regime.

We do not agree that the legal regime on non-navigable uses of water-courses is similar to the legal regime on ground water. While the former is woven around well-established principles on sharing of water including the riparian rights, the latter either lacks state practice, or is unclear with regard to diverse practices, and not amenable to any generalisation. This question requires a thorough and careful study that should go

well beyond the analogy of the legal regime concerning non-navigable uses of international water-courses.

Mr. Chairman,

On the fragmentation of international law, we would observe that fragmentation of law is one of the realities of present day international relations. The conflict that arises when a special law deviates from the general law and the conflicts between and within specialized fields of law have been the subject matter of this study.

The phenomenon of fragmentation was clearly seen in the *Tadic* case where the International Criminal Tribunal for the Former Yugoslavia gave a wide interpretation to the "test of effective control", of insurgent action which was laid down by the International Court of Justice in the *Nicaragua* Case to mean "overall control". Such an interpretation is seen to have effectively "broadened the range of circumstances in which State's responsibility may be engaged on account of its action on foreign territory". We feel that fragmentation can lead to overlapping jurisdiction and also 'forum shopping', which may come as stumbling blocks towards fairness and dispensation of impartial justice. Furthermore, we believe that this may lead to conflicting jurisprudence as international law lacks a pyramidal hierarchy of courts normally found under domestic legal systems which resolve the conflicting interpretations.

In our view, the topic at hand is still at a formative stage and the identification of a non-exhaustive list of four broad areas where fragmentation occurs could be very useful. We are confident that further study in these matters would pave way for the reconciliation of conflicting rules.

Thank you, Mr. Chairman.

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