Legal Effects of Unilateral Declarations

(a) LEGAL STATUS OF EASTERN GREENLAND (NORWAY v. DENMARK)

Permanent Court of International Justice, 1933
[1933] P.C.I.J. Ser. A/B, No. 53, 71.

[This case concerned a dispute between Denmark and Norway over sovereignty in Eastern Greenland. During negotiations, Denmark had offered certain concessions on another matter (Spitzbergen) important to Norway. In this context, and after careful consideration, the Norwegian Foreign Minister had made the "Ihlen Declaration", as to which the PCIJ stated:]

What Denmark desired to obtain from Norway was that the latter should do nothing to obstruct the Danish plans in regard to Greenland. The Declaration which the Minister for Foreign Affairs gave on July 22nd, 1919, on behalf of the Norwegian Government, was definitely affirmative: "I told the Danish Minister to-day that the Norwegian Government would not make any difficulty in the settlement of this question".

The Court considers it beyond all dispute that a reply of this nature given by the Minister for Foreign Affairs on behalf of his Government in response to a request by the diplomatic representative of a foreign Power, in regard to a question falling within his province, is binding upon the country to which the Minister belongs.

(b) NUCLEAR TESTS CASE (AUSTRALIA & NEW ZEALAND v. FRANCE)

International Court of Justice, 1974
1974 I.C.J. 253, 457.

[Australia and New Zealand brought applications to the I.C.J. demanding cessation of atmospheric nuclear tests being carried out by France in the South Pacific. While the case was pending, the French government announced that it had completed its series of tests and did not plan more tests. In deciding to dismiss the applications, the Court considered the relevance of the statements by the French authorities.]

43. It is well recognized that declarations made by way of unilateral acts, concerning legal or factual situations, may have the effect of creating legal obligations. Declarations of this kind may be, and often are, very specific. When it is the intention of the State making the declaration that it should become bound according to its terms, that intention confers on the declaration the character of a legal undertaking, the State being thenceforth legally required to follow a course of conduct consistent with the declaration. 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.

44. Of course, not all unilateral acts imply obligation; but a State may choose to take up a certain position in relation to a particular matter with the intention of being bound-the intention is to be ascertained by interpretation of the act. When States make statements by which their freedom of action is to be limited, a restrictive interpretation is called for.

45. With 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. As the Court said in its Judgment on the preliminary objections in the case concerning the *Temple of Preah Vihear*:

> Where ... as is generally the case in international law, which places the principal emphasis on the intentions of the parties, the law prescribes no particular form, parties are free to choose what form they please provided their intention clearly results from it. (*I.C.J. Reports 1961*, p. 31.)

The Court further stated in the same case: "... the sole relevant question is whether the language employed in any given declaration does reveal a clear intention ..."(*ibid*., p. 32).

46. One of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith. Trust and confidence are inherent in international co-operation, in particular in an age when this co-operation in many fields is becoming increasingly essential. Just as the very rule of *pacta sunt servanda* in the law of treaties is based on good faith, so also is the binding character of an international obligation assumed by unilateral declaration. Thus interested States may take cognizance of unilateral declarations and place confidence in them, and are entitled to require that the obligation thus created be respected.

… The Court must however form its own view of the meaning and scope intended by the author of a unilateral declaration which may create a legal obligation, and cannot in this respect be bound by the view expressed by another State which is in no way a party to the text.

49. Of the statements by the French Government now before the Court, the most essential are clearly those made by the President of the Republic. There can be no doubt, in view of his functions, that his public communications or statements, oral or written, as Head of State, are in international relations acts of the French State. His statements, 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 these statements were 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.

50. The unilateral statements of the French authorities were made outside the Court, publicly and *erga omnes*, even though the first of them was communicated to the Government of Australia. As was observed above, to have legal effect, there was no need for these statements to be addressed to a particular State, nor was acceptance by any other State required. The general nature and characteristics of these statements are decisive for the evaluation of the legal implications, and it is to the interpretation of the statements that the Court must now proceed. The Court is entitled to presume, at the outset, that these statements were not made *in vacuo*, but in relation to the tests which constitute the very object of the present proceedings, although France has not appeared in the case.

(c) CASE CONCERNING SECTIONS 301-310 OF THE TRADE ACT OF 1974 (EUROPEAN UNION v. USA, 1999)

[In this case, a dispute settlement panel of the World Trade Organization addressed the legal significance of unilateral statements made by U.S. representatives, in connection with a complaint initiated by the European Union claiming that certain U.S. legislation was incompatible with GATT-W.T.O. commitments. The U.S. Trade Representative had stated that official U.S. policy was to implement the challenged legislation in a manner consistent with W.T.O. obligations, and had reaffirmed that policy before the panel. The panel said:]

> 7.118 Attributing international legal significance to unilateral statements made by a State should not be done lightly and should be subject to strict conditions. Although the legal effects we are ascribing to the US statements made to the DSB [Dispute Settlement Body] through this Panel are of a more narrow and limited nature and reach compared to other internationally relevant instances in which legal effect was given to unilateral declarations, we have conditioned even these limited effects on the fulfilment of the most stringent criteria. A sovereign State should normally not find itself legally affected on the international plane by the casual statement of any of the numerous representatives speaking on its behalf in today's highly interactive and inter-dependent world [citing Nuclear Test Case, excerpted above, para. 43, and other authorities] nor by a representation made in the heat of legal argument on a State's behalf. This, however, is very far from the case before us. …
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> 7.121 The statements made by the US before this Panel were a reflection of official US policy, intended to express US understanding of its international obligations as incorporated in domestic US law. The statements did not represent a new US policy or undertaking but the bringing of a pre-existing US policy and undertaking made in a domestic setting into an international forum.

> 7.122 The representations and statements by the representatives of the US appearing before us were solemnly made, in a deliberative manner, for the record, repeated in writing and confirmed in the Panel's second hearing. There was nothing casual about these statements nor were they made in the heat of argument. There was ample opportunity to retract. Rather than retract, the US even sought to deepen its legal commitment in this respect.
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> 7.123 We are satisfied that the representatives appearing before us had full powers to make such legal representations and that they were acting within the authority bestowed on them. …

United States – Sections 301-310 of the Trade Act of 1974, WT/DS152/R, Report of the Panel (Dec. 22, 1999) (citations omitted).