

The Question of Unilateral Oral Statements Made Erga Omnes Without a Pre-Arranged Legal Framework

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Abstract: *This article examines the legal nature and binding efficacy of unilateral oral declarations made erga omnes by sovereign states outside conventional diplomatic negotiations or pre-arranged treaty regimes. Historically, international jurisprudence recognized unilateral acts primarily within a framework of reciprocal bargaining, structural compromise, or bilateral negotiation. Through an evolutionary analysis culminating in the landmark Nuclear Tests Case (Australia v. France) before the International Court of Justice (ICJ), this paper explores how public, un-targeted declarations can independently formulate binding international duties. By evaluating key criteria such as the clear intention to be bound, the principle of good faith (pacta sunt servanda), and the structural irrelevance of a quid pro quo or written form, this study demonstrates how state officials possessing inherent representational capacity can generate long-term cross-border obligations, a doctrine subsequently codified within the International Law Commission's 2006 Guiding Principles.*

Keywords: *oral declarations*

Introduction

Under public international law, a unilateral act of a State is understood as a unilateral declaration formulated by a sovereign entity with the explicit intent of producing specific legal effects (Rodriguez 2006). While traditional international law primarily governs treaties—which are fundamentally bilateral or multilateral expressions of shared state intent—unilateral declarations are uniquely formulated by a single state entity (Csatlos 2010; Nuclear Tests Case 1974).

Because unilateral declarations are generated by an individual state, they do not constitute formal treaties (Triggs 2006). However, a unilateral undertaking voiced by authorized government officials on behalf of their home State can create valid, binding legal obligations under international law (Triggs 2006). Although these standalone declarations are not categorized as independent formal sources of international law, they routinely give rise to clear state rights, operational duties, and binding transnational legal relationships.

Prior to the watershed *Nuclear Tests Case* before the International Court of Justice (ICJ), judicial decisions rendered by both the Permanent Court of International Justice (PCIJ) and the ICJ evaluated unilateral declarations strictly within the context of a *quid pro quo* arrangement or an existing, pre-arranged framework of interstate negotiation; they were fundamentally not examined as expressions made *erga omnes* (toward the international community at large).

In the foundational *Legal Status of Eastern Greenland* case, the Norwegian Foreign Affairs Minister made an oral statement to the Danish Minister in 1919 affirming that the Norwegian Government would not impede Denmark's



sovereign claims over Eastern Greenland (Legal Status of Eastern Greenland 1933). This statement was distinctly targeted by one state toward another single state entity. The *quid pro quo* underpinning this diplomatic statement was explicit: Denmark pledged in return not to raise any structural objections to Norway's competing territorial claim over the island of Spitsbergen at the upcoming Paris Peace Conference. The PCIJ held that an oral statement delivered by a Minister on behalf of his government to a diplomatic representative of a foreign power is legally binding (Legal Status of Eastern Greenland 1933). Crucially, this unilateral declaration was localized and lacked an *erga omnes* character.

Similarly, in the *Case Concerning the Temple of Preah Vihear*, the ICJ emphasized the profound legal significance of the underlying subjective intention driving a state's unilateral declaration (Reisman and Arsanjani 2005). In that dispute, Cambodia relied heavily on a unilateral declaration issued by Thailand in May 1950 as a valid basis for establishing state sovereignty over the Temple of Preah Vihear. The ICJ did not indicate that subsequent "ratifying" or confirmatory conduct was mandatory for such a declaration to maintain international validity (Reisman and Arsanjani 2005). However, this declaration was also not *erga omnes*; it occurred within pre-arranged conventional circumstances where the diplomatic parties were actively negotiating over disputed territory, and the temple area had been clearly included on Cambodia's official territorial maps.

Consequently, early international jurisprudence left several critical questions unaddressed regarding the legal effects of a unilateral undertaking made:

1. In a context entirely devoid of a *quid pro quo*, where the statements are delivered publicly and *erga omnes* with no specific state targeted as the receiving entity;
2. Completely outside the parameters of formal state negotiations, outside a courtroom, or independent of a pre-arranged conventional regime; and
3. Entirely via an oral medium, raising questions of form since the Vienna Convention on the Law of Treaties applies strictly to written instruments (Yearbook of the International Law Commission 1966).

The historic adjudication of the *Nuclear Tests Case (Australia v. France)* directly resolved these ambiguities.

II. The Facts of the Nuclear Tests Case

On 9 May 1973, Australia officially initiated legal proceedings against France in the ICJ regarding a severe dispute over France's atmospheric testing of nuclear weapons in the South Pacific Ocean (Nuclear Tests Case 1974). The definitive object of Australia's legal claim was to secure a formal binding order from the ICJ to prevent further atmospheric nuclear testing in the Pacific region by the French Government.

To establish the jurisdiction of the Court, Australia relied upon two primary international legal frameworks:

1. Article 17 of the *General Act for the Pacific Settlement of International Disputes*, Geneva (1928).
2. The *Statute of the International Court of Justice*, relying specifically on Article 36 (paragraph 1), Article 37, and Article 36 (paragraph 2).

Factually, successive reports submitted by the United Nations Scientific Committee on the Effects of Atomic Radiation to the UN General Assembly confirmed that atmospheric nuclear testing released measurable quantities of radioactive matter, which subsequently dissipated globally (Nuclear Tests Case 1974). Australia asserted that these French tests caused radioactive fallout to be physically deposited upon Australian sovereign territory.

On 22 June 1973, the Court issued interim protection orders under Article 41 of the ICJ Statute, directing that the French Government should actively avoid executing nuclear tests that caused the deposit of radioactive fallout on Australian soil. Despite this instruction, Australia contended that two subsequent atmospheric tests carried out by the



French Government in July 1973 and September 1974 constituted clear, deliberate breaches of the Court's interim order.

However, during the course of 1974, a series of authoritative public statements were made on behalf of the highest echelons of the French Government regarding its future intent to halt atmospheric testing in the South Pacific Ocean:

1. **8 June 1974:** Shortly before the 1974 testing series commenced, the Office of the President of the French Republic issued a public communiqué stating: *"In view of the stage reached in carrying out the French Nuclear defence programme, France will be in a position to pass on to the stage of underground explosions as soon as the series of tests planned for this summer is completed."*
2. **10 June 1974:** The French Embassy in Wellington, New Zealand, transmitted an official diplomatic note to the New Zealand Ministry of Foreign Affairs, affirming that the upcoming atmospheric tests would, *"in the normal course of events, be the last of this type."*
3. **25 July 1974:** During a formal press conference, the President of the French Republic stated directly: *"I had myself made it clear that this round of atmospheric tests would be the last, and so the members of the Government were completely informed of our intention in this respect."*
4. **16 August 1974:** In a live interview broadcast on French television, the French Minister of Defence stated that the government had done its absolute best to ensure that the 1974 tests would mark the final phase of atmospheric testing.
5. **25 September 1974:** The French Minister for Foreign Affairs, while formally addressing the United Nations General Assembly, declared: *"We have now reached a stage in our nuclear technology that makes it possible for us to continue our programme by underground testing, and we have taken steps to do so as early as next year."*
6. **11 October 1974:** The Minister of Defence held a press conference where he stated twice that there would be no further atmospheric testing conducted in 1975, emphasizing that other foreign governments could become fully aware of this definitive stance via the public press and official presidential communiqués.

Faced with these facts, the core legal question emerged: *Did these public, oral unilateral statements by various French authorities, made outside the courtroom and erga omnes, constitute a binding legal undertaking possessing international effect?*

III. The Court's Decision

In its final Judgment dated 20 December 1974, the ICJ determined that the public communications voiced by the President of France—given his status as Head of State—alongside the final supportive statements made by the Minister of Defence, constituted a cohesive and binding engagement of the State (Nuclear Tests Case 1974). The Court observed:

"...the public communications or statements oral or written, as Head of State... and the last statement made by the Minister of Defence (of 11 October 1974) constitute as a whole... an engagement of the State, having regard to their intention and to the circumstances in which they were made. The unilateral statements of the French authorities were made outside the Court, publicly and erga omnes... 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."

The Court concluded that France had clearly conveyed to the world at large, including the applicant state, its true intention to terminate atmospheric tests. Because the objects of these statements were clear and explicitly addressed to the international community as a whole, the Court held that they constituted an undertaking possessing binding legal effect, formally obligating France to hold no further atmospheric nuclear tests in the South Pacific.

Structurally, the Court noted that an active legal dispute must continue to exist at the exact time a judgment is rendered. Because Australia's ultimate objective was to "prevent further nuclear testing," and because the Court found that France had entered into a binding legal commitment to cease such tests on its own initiative, the ICJ observed that it was not its function to contemplate that a sovereign state would fail to comply with its word. By nine votes to six, the Court



concluded that because France's unilateral commitment had caused the dispute to disappear, the claim advanced by Australia no longer possessed an active object. Consequently, there was nothing left upon which to give judgment.

IV. Analysis and Importance of the Decision

The 1974 Judgment holds a foundational place in public international law because it clarified the legal implications of unilateral decisions made publicly, *erga omnes*, and completely outside a formal negotiating table or courtroom. From a procedural perspective, there was no direct precedent for the course the ICJ took, a reality highlighted in the dissenting opinion of Judge Sir Garfield Barwick. The Court based its entire ruling on public, oral statements, some of which were voiced *after* formal oral proceedings before the ICJ had concluded (Reisman and Arsanjani 2005).

The legal reasoning applied by the ICJ to establish that France was bound by its unilateral statements can be broken down into seven core principles:

- **Creation of Obligations:** The Court recognized that declarations made via unilateral acts concerning legal or factual situations can independently create binding legal obligations that are highly specific (Nuclear Tests Case 1974).
- **Erga Omnes Efficacy:** There is no structural requirement for a unilateral declaration to be addressed to an individual state, nor is formal cross-border acceptance or validation required. The public, general nature of the pronouncement is decisive for evaluating its legal weight. While not all unilateral acts imply a mandatory duty, a state can choose to express an intention to be bound, which must be ascertained by analyzing the context and circumstances of the act.
- **The Centrality of Intention:** The subjective intent of the declaring state is the primary catalyst that confers a binding legal status upon the declaration, requiring the state to maintain a course of conduct consistent with its public words.
- **Irrelevance of Quid Pro Quo:** If an undertaking is given publicly and with an explicit intent to be bound, it does not require an international negotiation context, an official response, or a *quid pro quo* to take effect. Demanding a reciprocal response would fundamentally contradict the strictly unilateral nature of the state's judicial act (Csatlos 2010). Thus, obligations are created without any structural need for third-party acceptance.
- **Irrelevance of Form (Oral vs. Written):** Referencing the foundational principles found in the *Case Concerning the Temple of Preah Vihear*, the Court reiterated that international law does not impose strict requirements regarding the physical form of a declaration. Whether a statement is delivered orally or in writing makes no essential difference; the decisive factor remains whether the language deployed reveals a clear, uncompromised intent.
- **Good Faith and Pacta Sunt Servanda:** The Court determined that the principle of good faith—which serves as the ultimate bedrock for the treaty-based rule of *pacta sunt servanda*—serves equally as the legal foundation for the binding nature of unilateral state declarations. Interested states are fully entitled to notice, place confidence in, and demand respect for the obligations created by these public announcements.
- **Inherent Authority of Officials:** In alignment with customary international norms (replicated in Article 7 of the *Vienna Convention on the Law of Treaties*), Heads of State, Heads of Government, and Ministers for Foreign Affairs maintain an inherent capacity to formulate binding unilateral acts on behalf of their nation by virtue of their high office (Csatlos 2010). The public statements issued by the French President and his Defence Minister were acts of the French State that could not be legally separated from the state itself.

Impact on the International Law Commission (ILC)

The jurisprudential legacy of the *Nuclear Tests Case* directly inspired the International Law Commission (ILC) during its drafting of the *Guiding Principles applicable to unilateral declarations of States capable of creating legal*



obligations in 2006 (Yearbook of the International Law Commission 2006). The specific Guiding Principles (GP) drawn from the text of the 1974 Judgment include:

- **GP 1 (Good Faith):** Declarations publicly made manifesting a clear will to be bound create legal obligations based inherently on good faith, allowing other states to rely upon them.
- **GP 3 (Contextual Evaluation):** To determine the precise legal effects of a declaration, courts must look at its specific content, factual circumstances, and the subsequent reactions it generated.
- **GP 4 (Authority):** A unilateral declaration binds a state internationally only if formulated by an authority vested with inherent power, namely Heads of State, Heads of Government, and Ministers for Foreign Affairs.
- **GP 5 (Form):** Unilateral declarations can be validly formulated either orally or in writing.
- **GP 6 (Audience):** Declarations may be addressed to the international community as a whole (*erga omnes*), to multiple states, or to single localized entities.
- **GP 7 (Specificity):** A unilateral declaration creates clear obligations only if stated in specific and unambiguous terms; any lingering doubt must be interpreted in a restrictive manner.
- **GP 10 (Irrevocability):** A valid unilateral declaration that has successfully generated international legal obligations for a state cannot be revoked arbitrarily.

V. Conclusions

The historic adjudication of the *Nuclear Tests Case* clarifies that a unilateral declaration made by a sovereign state *erga omnes*, orally, and completely outside conventional interstate negotiations can generate binding international legal obligations if three clear criteria are fulfilled:

1. The objective intention of the declaring state was to bind its future conduct with respect to a specific legal or factual situation;
2. The statement is given openly, publicly, and reinforced repeatedly by competent state authorities; and
3. Foreign states take notice of these public pronouncements and place legitimate diplomatic reliance upon them.

Once these thresholds are crossed, the principle of good faith transforms the oral statement into an unalterable international engagement that cannot be arbitrarily revoked by the formulating state.

REFERENCES

Articles / Books / Reports

1. Briery, J.L. and Waldock, H., 1963. *The Law of Nations: An Introduction to the International Law of Peace*. 6th ed. Oxford: Clarendon Press.
2. Csatlos, E., 2010. The Legal Regime of Unilateral Act of States. *Miskolc Journal of International Law*, 7(1), pp. 33-53.
3. Don Mackay, 1995. Nuclear Testing: New Zealand and France in the International Court of Justice. *Fordham International Law Journal*, 19(5), pp. 1875-1912.
4. Project Untitled, 2014. *Basic Concepts, Systems – International Public Law*. The Law Site. Available at: <http://www.projectuntitled.com/basic-principles/> [Accessed 12 August 2014].
5. Reisman, M. and Arsanjani, M., 2005. *The Question of Unilateral Governmental Statements as Applicable Law in Investment Disputes*. New Haven: Yale University Law School. Available at: http://www.law.yale.edu/documents/pdf/Article.Reisman.Arsanjani.Ques.Unilateral_Governmental_Stmts_Aplicable_Law_in_Investment_Disputes.pdf [Accessed 12 August 2014].
6. Rodriguez, V., 2006. *Ninth Report on Unilateral Acts of States*. International Law Commission, UN Doc A/CN.4/569. New York: United Nations.



7. Rothwell, D.R., Kaye, S., Akhtarkhavari, A. and Davis, R., 2014. *International Law: Cases and Materials with Australian Perspectives*. 2nd ed. Melbourne: Cambridge University Press.
8. Shaw, M., 2008. *International Law*. 6th ed. Cambridge: Cambridge University Press.
9. Triggs, G., 2006. *International Law: Contemporary Principles and Practices*. Sydney: LexisNexis Butterworths.
10. International Law Commission, 1966. *Yearbook of the International Law Commission*. Vol. II. New York: United Nations.
11. International Law Commission, 2006. *Yearbook of the International Law Commission*. Vol. II, Part Two. New York: United Nations.

Case Law

1. *Factory at Chorzów (Merits) (Germany v. Poland)* [1928] PCIJ (ser. A) No. 17.
2. *Fisheries Case (United Kingdom v. Norway)* [1951] ICJ Rep 116.
3. *German Interests in Polish Upper Silesia (Germany v. Poland)* [1926] PCIJ (ser. A) No. 7.
4. *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (Advisory Opinion)* [1950] ICJ Rep 65.
5. *Legal Status of Eastern Greenland (Denmark v. Norway)* [1933] PCIJ (ser. A/B) No. 53.
6. *Minquiers and Ecrehos Case (France v. United Kingdom)* [1953] ICJ Rep 47.
7. *Northern Cameroons (Cameroon v. United Kingdom)* [1963] ICJ Rep 15.
8. *Nottebohm Case (Liechtenstein v. Guatemala)* [1955] ICJ Rep 4.
9. *Nuclear Tests Case (Australia v. France) (Merits)* [1974] ICJ Rep 253.
10. *The Temple of Preah Vihear (Cambodia v. Thailand) (Preliminary Objections)* [1961] ICJ Rep 17.

Legislation

1. *Statute of the International Court of Justice*.

Treaties

2. *Charter of the United Nations*.
3. *General Act for the Pacific Settlement of International Disputes*, Geneva (1928).

Other Sources

1. Australian National University, 2014. Course Reading materials and guidelines: *Principles of International Law*. Available at: <http://wattle.anu.edu.au/> [Accessed 12 August 2014].
2. Australian National University Library, 2014. *International Law Resource Guides*. Available at: http://www.libguides.anu.edu.au/international_law [Accessed 12 August 2014].
3. International Law Commission, 2006. *Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations – with commentaries thereto*. Geneva: United Nations Publication.
4. United Nations, 2014. *Dag Hammarskjöld Library: International Law Documentation*. Available at: <http://www.research.un.org/en/docs/> [Accessed 12 August 2014].
5. AustLII, 2014. *Australasian Legal Information Institute Database*. Available at: <http://www.austlii.edu.au> [Accessed 12 August 2014]

