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- згодна на перевірку моєї роботи на відповідність критеріям академічної доброчесності, у будь-який спосіб, у тому числі порівняння змісту роботи та формування звіту подібності за допомогою електронної системи Unicheck.
- даю згоду на архівування моєї роботи в репозитаріях та базах даних університету для порівняння цієї та майбутніх робіт.

25.05.2022 Хоменко В.В.

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LIST OF ABBREVIATIONS

ECtHR	European Court of Human Rights
G.A.U. N	General Assembly of the United Nations
Guiding Principles	Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations
ICJ	International Court of Justice
ILC	International Law Commission
p./pp.	page(s)
para/paras	paragraph(s)
PCA	Permanent Court of Arbitration
PCIJ	Permanent Court of International Justice
UN	United Nations
v	versus
VCLT	Vienna Convention on the Law of Treaties
vol.	volume

INTRODUCTION

There is the global trend among politicians all over the world, to make promises through social media to reach a larger audience. While recently Twitter, Facebook and Telegram were mainly used for entertainment and informal communication, now they are actively applied by state authorities for professional purposes. Almost all politicians of democratic States open-handedly promise to provide economic assistance to the developing States, supply military equipment to Ukraine, impose sanctions on Russia and limit greenhouse gasses emissions. Nevertheless, the majority of these promises remain unperformed.

The question that arises regarding this situation is whether the doctrine of unilateral declaration applies to the promises of State officials made through the social media platforms and how those rules could be implemented. The aim of this work is to provide an answer to that question.

This aim could be achieved through the below mentioned steps:

- examining and analyzing the judgements of international courts in cases related to the unilateral declarations;
- examining and analyzing legal doctrine of recognized publicists of the various nations;
- examining the practice of States related to the unilateral declaration;
- analyzing the existing international conventions related to the unilateral declarations;
- identifying and examining the practice of international bodies and institutions regarding unilateral declarations;
- proposing assumptions and answers to the research questions, relying on the analyzed materials.

The subject-matter of this analysis is the legal relations of the subjects of international law in the field of unilateral promises.

The focus of the present work is made upon the regulation of the issues of the unilateral promises made through the social media platforms under the public international law at the present stage of its development.

While working on the present master thesis, we applied numerous methods of legal research and analysis, in particular the below mentioned ones:

- historical method (in terms of research and examination of historical events of the XIX centuries in relation to the emergence of the legal norms applicable to unilateral declarations);
- dialectical method (for equal and impartial consideration of legal arguments of both opponents and proponents of the bindiness of unilateral declarations and the conditions of their bindiness);
- hermeneutic method (for interpretation of court practice, statements of authorized representatives of states, regulation of States - to establish the recognition of the ability of competent State representatives to issue binding unilateral declarations as the opinio juris);
- synthesis and analysis method (for crystallization of international custom regarding the ability of competent State representatives to issue binding unilateral declarations through the initial separation and individual analysis of two elements of international custom: (i) state practice, (ii) opinio juris, and their subsequent synthesis as international custom);
- comparative method (for comparing various position of scholars, international courts, international and domestic bodies for crystallization the position of the unilateral declarations among the sources of public international law and conditions of its bindiness);
- legally formal method (in terms of determining the hierarchy among the rules of public international law for their subsequent application to the unilateral declaration);

During the preparation of this master thesis, we researched among the different legal sources. Specifically, we examined the case-law of international courts: International Court of Justice, Permanent Court of International Justice, European Court of Human Rights, Permanent Court of Arbitration and other tribunals. We also analyzed the documents of various international bodies, such as the International Law Commission, General Assembly of the United Nations, and a number of international conferences.

While there is no groundfull legal doctrine about unilateral promises made through the social media platforms, the guidelines and inspiration for the present work were drawn from the general legal doctrine about unilateral promises. Inevitably, due to the emphasis of this work at the social media platforms, they also were analyzed for the purpose of this thesis.

CHAPTER 1. DELIMITING THE SUBJECT: PROMISE MADE THROUGH THE SOCIAL NETWORKING SERVICE AS A UNILATERAL ACT

State authorities have made oral promises with respective legal effect for as long as States have existed.[1] With the popularization of new forms of communication - through the social media platform, politicians and world leaders also started to use it. While 8 years ago, 76% of world leaders had official accounts on Twitter and/or Facebook,[2] now that number has become even larger. State authorities use their accounts to make a variety of promises to its own population, to other authorities and States.

To determine whether the promises made through the social networking service falls under the scope of «unilateral declarations», it seems methodologically needed to begin with the overall definition of the latter, their place among the sources of public international law and types. Due to that, the above-mentioned categories will be described below.

Sub-Chapter 1.1 Drawing from the Definition of Unilateral Declaration

The unilateral declaration of State constitutes and qualifies as one of the most controversial and unsettled matters in contemporary public international law. The same also refers to their definition. Both PCIJ, ICJ and ILC tried to define the unilateral declarations.[3]

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[1] Garner J. (1933) The International Binding Force of Unilateral Oral Declarations, pp. 493, 494.
[2] Barberá P., Zeitzoff T. (2017) The New Public Address System: Why Do World Leaders Adopt Social Media?, pp.121-124
[3] PCIJ, Judgment of 25 May 1926, Certain German Interests in Upper Polish Silesia (Germany v Poland), para. 27; PCIJ, Judgment of 26 March 1925, Mavrommatis Jerusalem Concessions case, para. 90; PCIJ, Judgment of 5 April 1933, Legal Status of Eastern Greenland, para. 192; ICJ, Judgment of 20 December 1974, Nuclear Tests (Australia v France), para. 43; ICJ, Judgment of 22 December 1986, Frontier Dispute (Burkina Faso v Mali), para. 39; ICJ, Judgment of 3 February 2006, Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Rwanda), para. 46; ILC, Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, with commentaries thereto, A/61/10 (2006), p. 370

Apart from that, there were other efforts made by scholars. For example, Jacques defined unilateral declarations as acts that «*emanate from a single expression of will and create norms intended to apply to subjects of law who have not participated in the formulation of the act*».[4] For Rigaldies unilateral declarations are «*an expression of will envisaged in public international law as emanating from a single subject of law and resulting in the modification of the legal order*».[5] However, those definitions are too broad and put the intention of States as the main indicator of its bindiness, which is far from truth, as intention is not even needed for certain types of unilateral declaration as will be explained in detail in Part 1.3. Due to that the above-mentioned definitions received no or a little recognition on the international plane.[6]

Therefore, since PCIJ, ICJ and ILC are respectable authorities as such and their ruling on unilateral declarations were generally perceived as reliable, only the definition provided by them will be analyzed below.

1.1.1. PCIJ and the definition of unilateral declaration

In *Mavrommatis' Jerusalem Concessions*, PCIJ firstly dealt with the issue of unilateral declaration. That case concerned concession agreements for the supply of water and electricity at Jerusalem between Ottoman authorities and Mr. Mavrommatis, the Greek citizen.[7] The First World War led to the change of government, i.e. from Turkey to the United Kingdom, and new authorities concluded concession agreements with another supplier - Mr. Rutenberg.[8] Due to the change of supplier, Mr. Mavrommatis asked for compensation.[9]

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[4] Jacques, J. (1981) A Propos de la Promesse Unilaterale, p. 239 as quoted in Cedeño R., Fifth Report on Unilateral Acts of States A/CN.4/525 (2002),p. 99, para. 57

[5] Rigaldies, F. (1980) Contribution à l'étude de l' acte juridique unilatéral et droit international public, p. 417, as quoted in in Cedeño R., Fifth Report on Unilateral Acts of States A/CN.4/525 (2002),p. 99, para. 57

[6] Cedeño R., Fifth Report on Unilateral Acts of States A/CN.4/525 (2002),p. 99; Kassoti, E. (2015)The juridical nature of unilateral acts of states in international law, p. 31

[7] PCIJ, Judgment of 26 March 1925, Mavrommatis Jerusalem Concessions case, para.17

[8] Ibid, para.28

[9] Ibid, para.41

During the proceeding, the British representative was asked to comment on that situation and explain how it plans to resolve it.[10] In response, he stated that «*there can be no question of our acting on any request to expropriate M. Mavrommatis. If M. Rutenberg ask to expropriate him after declaring that he has no such intention, we should not act upon that request*».[11] In that case, PCIJ considered the above-mentioned promise of a British representative made before PCIJ as binding.[12] Nevertheless, PCIJ did not go into detailed reasoning of such a decision and simply stated that «*the binding character of which [the statement] is beyond question*».[13]

In the next year, in *Certain German Interests in Upper Polish Silesia*, PCIJ again dealt with the declaration of the state representative made before PCIJ. That case, similarly to *Mavrommatis' Jerusalem Concessions*, concerned the legality of expropriation of individuals property.[14] During the proceeding, the representative of Poland promised not to expropriate certain parts of the individuals' property.[15] PCIJ treated that statement as binding, following the same line of reasoning as in Mavrommatis' Jerusalem Concessions case.[16] In particular, it established that the statement was binding, simply explaining that «*the Court can be in no doubt as to the binding character of all these declarations*».[17]

Later, in *Free Zones*, there was also an issue of unilateral declaration. For the better understanding of PCIJ judgment, the facts of that case would be described further. Under a bilateral treaty between France and Switzerland, the free customs zone was created on the frontier of France for the benefit of

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[10] Ibid, para.88
[11] Ibid, para.89
[12] Ibid, para.90
[13] Ibid
[14] PCIJ, Judgment of 25 May 1926, Certain German Interests in Upper Polish Silesia (Germany v Poland), para.10
[15] Ibid, para. 26
[16] Ibid, para.27
[17] Ibid

Switzerland.[18] Later, France became a party to the 1920 Versailles Treaty, that canceled already existing free customs zones and recommended parties to reach a mutual agreement on the status of those territories.[19] Since France and Switzerland did not agree on that matter they referred to PCIJ asking to interpret the relevant provision of the 1920 Versailles Treaty.[20]

During the proceeding, the representative of Switzerland made a statement where offered France to conclude an agreement regarding the status of territories which were previously free customs zones.[21] PCIJ not just treated that statement as binding, but stated «*having regard to the circumstances in which this declaration was made*»,[22] and, accordingly explained that the bindiness of declaration depends on the surrounding circumstances of its formulation.

The most prominent case, where the PCIJ dealt with the unilateral declaration is *Eastern Greenland*. As to the facts of that case: Denmark claimed sovereignty over Greenland and the Danish Minister asked Norway for its position regarding such a claim.[23] Mr Ihlen, who served as the Norwegian Minister for Foreign Affairs, promised the Danish Minister «*that the Norwegian Government would not make any difficulties in the settlement of this question*».[24] When Norway, 10 years later, published a proclamation in which it declared that it had proceeded to occupy Eastern Greenland, Denmark brought a claim before the PCIJ asking whether the promise of Norwegian Minister Ihlen bound Norway.[25]

In *Eastern Greenland*, PCIJ not just declared that the statement of Mr Ihlen is a binding declaration but made efforts to explain its decision even deeper than in *Free Zones*. In particular, PCIJ stated that

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[18] PCIJ, Judgment of 7 June 1932, Free Zones of Upper Savoy and the District of Gex (France v Switzerland), para. 1
[19] Ibid
[20] Ibid
[21] Ibid, para.230
[22] Ibid, para.233
[23] PCIJ, Judgment of 5 April 1933, Legal Status of Eastern Greenland, para. 58
[24] Ibid
[25] Ibid, para.90

> 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 power, is binding upon the country to which the Minister belongs.[26]

PCIJ tried to define the unilateral declaration through its characteristics, namely: «*given by the Minister for Foreign Affairs»*- made through the proper authority; *«a question falling within his power»* - competence to make such a statement; «*on behalf of his Government* «and «*in response to a request by the diplomatic representative»* - these parts refers to the circumstances of formulation of declaration. That explanation shedded light on the concept of the unilateral declarations, however the questions remained. In particular, whether the Minister for Foreign Affairs is the only authority that may make a binding declaration and is it obligatory requirement to the declaration, that it is to be made «*in response to a request by the diplomatic representative».*

Therefore, in its two last cases on unilateral declarations: *Free Zones* and *Eastern Greenland* - PCIJ moved forward in explaining its decision, although that reasoning was too specific, i.e. could be applicable only to those particular cases, to serve as a general definition of the unilateral declaration.

1.1.2. ICJ and the definition of unilateral declaration

ICJ also dealt with the issue of unilateral declarations. In its most prominent judgment on this matter - *Nuclear Tests*, ICJ made an effort to define the unilateral declaration. That case concerned the series of nuclear testing performed in 1966-1972 by France in the South Pacific Ocean.[27] Australia opposed that testing and claimed that they were harmful for the environment and therefore must have been stopped.[28] Numerous officials of France, such as the President of the Republic, the Minister of Defense and the Minister of Foreign

[26] Ibid, para.192
[27] ICJ, Judgment of 20 December 1974, Nuclear Tests (Australia v France), para. 16
[28] Ibid, para. 18

Affairs announced their intention in 1974 following the completion of the 1974 series of atmospheric tests, to cease the conduct of such tests.[29]

ICJ stated that those declarations were binding on France since: «*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»*.[30]

That definition is a bit too general and leaves a space for guess. Specifically, it is not clear what ICJ meant for «*unilateral acts»*: if the act must be pronounced or even silence could be recognized as a unilateral declaration. Nevertheless, that judgment made the concept of unilateral declaration clearer and proposed a definition, which even though not ideal, could be practically used.

The next case, where ICJ dealt with unilateral declaration, was the *Frontier Dispute*. That case concerned the territorial dispute between Burkina Faso and Mali as to the area of Agacher, possessing valuable mineral deposits.[31] Burkina Faso argued that the statement of the head of State of Mali made during the Mediation Commission of the Organization of African Unity regarding the delimitation of the frontier between Mali and Burkina Faso bound Mali.[32]

ICJ did not accept that declaration as binding.[33] It followed its previous position on the definition of unilateral declaration and simply referred to its dicta in *Nuclear Tests «such declarations «concerning legal or factual situations «may indeed «have the effect of creating legal obligations» for the State on whose behalf they are made, as the Court observed in the Nuclear Tests cases».*[34]

Frontier Dispute was not the last time when ICJ interpreted rules on unilateral declarations and at the beginning of 21st century it must have done that again in *Armed Activities on the Territory of the Congo*. In that case Rwanda contended that ICJ has no jurisdiction to adjudge the DRC's claim on Rwandan

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[29] Ibid, para. 28
[30] Ibid, para. 43
[31] ICJ, Judgment of 22 December 1986, Frontier Dispute (Burkina Faso v Mali), para. 16
[32] Ibid
[33] Ibid, para.39
[34] Ibid

violation of the Genocide Convention because Rwanda put a reservation to the article imposing such jurisdiction.[35] DRC argued that such reservation was withdrawn by the relevant statement of the Rwandan Minister of Justice.[36]

ICJ did not accept that statement as binding, however emphasized that

> 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.[37]

In principle, only the words «*unilateral acts having the force of international commitments»* describes the unilateral declaration as such, while the others merely refer to the persons who are empowered to issue such declarations - which is more of the criteria on the bindiness of the declarations than about their definition. Consequently, in that case ICJ neither changed nor developed its definition of the unilateral declaration made in *Nuclear Tests* but rather omitted to include it into the judgment.

Thus, there exists the only one definition of the unilateral declaration made by ICJ, and it proceeds to apply it.

1.1.3. ILC and the definition of unilateral declaration

ILC is a body of experts, recognized for their expertise and qualifications in international law. According to Article 13 (1) (a) of the Charter of the United Nations, ILC is responsible for development and codification of international law.[38]

Under Article 20 of the ILC Statute, its power is limited to the preparation of drafts in the form of articles, which serves as the basis for the adoption of international conventions.[39] Nevertheless, in some instances, if the work of ILC

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[35] ICJ, Judgment of 3 February 2006, Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Rwanda), para. 37
[36] Ibid
[37] Ibid, para.46
[38] United Nations Charter, 1945, Article 13 (1) (*a*)
[39] Statute of the International Law Commission, 1947, Article 20

is not intended to be the ground for binding instruments, it may create draft principles, guidelines or conclusions.[40]

As for the history of ILC on the Guiding Principles, the work on this document started in 1996 by resolution of the General Assembly by which it asked the ILC to examine this topic. In 2006, after 9 reports of the Special Rapporteur on this matter - Mr. Víctor Rodríguez Cedeño and 11 resolutions of ILC, the Guiding Principles, were published.[41] Additionally, it is important to emphasize that the status of norms that are enshrined in this document are very debatable, as clearly not all the provisions reflect customary.[42]

Proceeding to the definition of the unilateral declaration, while working on the Guiding Principles, ILC also faced the complexity of this assignment. At the very beginning of their study, the ILC itself recognized that although the concept of unilateral declaration had «*been touched upon by several judgments of the ICJ, and especially in the Nuclear Tests cases, . . . the celebrated dicta leave room for uncertainties and questions*».[43]

Nevertheless, after more than a decade from the beginning of their work on unilateral declarations, ILC ended up with the definition of unilateral declaration mainly inspired by ICJ reasoning in the Nuclear Tests case.[44] In particular, the Guiding Principles, prepared by ILC, defines the unilateral declaration in the following way: «*declarations publicly made and manifesting the will to be bound*».[45]

That definition is far from being clear and complete. The lack of any reference to the unilateral nature of such acts is the main disadvantage of this proposal. Another one, is posing an intention of states and publicity as central

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[40] ILC, Organization, programme and methods of work, (2019) https://legal.un.org/ilc/methods.shtml#a18
[41] ILC, Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, with commentaries thereto, A/61/10 (2006)
[42] Kassoti, E. (2015) The juridical nature of unilateral acts of states in international law, p. 31; Eckart, C. (2012) Promises of States under International Law, p. 183
[43] ILC, Report of the Working Group, A/CN.4/SER.A/1996/Add.l (1996), addendum 3, para 3(b)
[44] ILC, Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, with commentaries thereto, A/61/10 (2006), p. 370
[45] Ibid

features of binding declaration. However, as may be seen from ICJ and PCIJ practice, that criteria are not crucial for determining the binding force of such acts. This and other criteria on bindiness of unilateral declaration will be further explained in Chapter 2.

The definition proposed by ILC, despite having certain defects from the practical point, sheds light on the concept of unilateral declarations and together with criteria on its bindiness fully meets the needs of this work. Unfortunately, there are no better alternatives to this one. Therefore, for the purpose of this work, the definition proposed by ILC will be used.

Sub-Chapter 1.2. Unilateral Declaration and The Sources Of Public International Law

There are several ways to categorize the sources of public international law,[46] but for the purpose of this work, the one proposed in the Article 38 of ICJ Statute will be used. According to that approach, there are three main sources of public international law: international conventions, international custom, and the general principles of law.[47] To distinguish the place of the unilateral declaration, all of them would be analyzed in turn.

1.2.1. Unilateral declaration and the international conventions

Generally, unilateral declarations are not and need not be based on a provision of international conventions to be binding.[48] However, there are exceptions and in certain conditions the treaty itself contains the provision enabling parties to make some commitment by way of unilateral declaration. For instance, the Paris Agreement obliges parties to «*undertake and communicate»* nationally determined contributions to the mitigation of climate change.[49] That wording - «*communicate»* indicates the possibility of usage of unilateral

[46] Shaw, M. (2008) International Law, pp.69-70; Currie, J. (2008) Public International Law, pp.80-85
[47] Statute Of The International Court Of Justice, 1945, Article 38
[48] Eckart, C. (2012) Promises of States under International Law, p. 177
[49] Paris Agreement, 2015, Article 3

declarations and this way of making commitment under the Paris Agreement was used by some of its Member States.[50] Nevertheless, the cases when the treaty itself enables parties to make the relevant unilateral declarations are extremely rare and, accordingly, could not be accepted as a generally accepted rule.[51]

Thus, international conventions cannot be considered as a source of the binding force of unilateral declarations.

1.2.2. Unilateral declaration and the general principles of law

It seems logical to begin the study of interconnection between the unilateral declaration and the general principles of law with the definition of the latter. The general principles of law are the legal norms that provide a mechanism to address international issues not already subject either to treaty provisions or to binding customary rules.[52] This concept has its roots in the municipal law and most of them refers, in principle, to the judicial process.[53]

One of the most famous general principles of law is a good faith and certain scholars derive the binding force of the unilateral declarations from this principle.[54] That scholars base their position on the ICJ judgment in *Nuclear Test*, where it was stated that:

«*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».*[55]

However, that position has certain deficiencies. It is not disputable that «good faith« is binding as the general principle of law, but it is questionable that

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[50] Mayer, B. International law obligations arising in relation to Nationally Determined Contributions, 2018, pp. 1-3

[51] Eckart, C. (2012) Promises of States under International Law, p. 178; Kassoti, E. (2015) The juridical nature of unilateral acts of states in international law, pp. 18-20

[52] Shaw, M. (2008) International Law, pp.69-70; Currie, J. (2008) Public International Law, pp.80-85

[53] Ibid

[54] Kolb, R. (2000) La bonne foi en droit international public. Contribution à l'étude des principes généraux de droit, p.154 in Eckart, C. (2012) Promises of States under International Law, p. 178

[55] ICJ, Judgment of 20 December 1974, Nuclear Tests (Australia v France), para. 46

if something is based on this principle it also obtains the same legal force. ICJ in the above-mentioned quotation stated that good faith governs «*the creation and performance of legal obligations»* and from this wording it is clear that ICJ interpreted this principle merely as one of the rules applicable to the legal obligation. Especially that is obvious from the further ICJ frase «*whatever their source»*, that indicates that ICJ by itself distinguishes the good faith from the sources of legal obligations.

In Border and Transborder Armed Action, ICJ clarified its position on this matter even more and with express reference to the above-mentioned paragraph from Nuclear Test, stated that «t*he principle of good faith is, as the Court has observed, 'one of the basic principles governing the creation and performance of legal obligations', it is not in itself a source of obligation where none would otherwise exist».*[56]

That wording makes it clear that 'good faith' cannot be a source for any obligation and therefore completely undermines the theory that the bindiness of unilateral declaration is based on that principle.

Thus, the general principles of law, such as 'good faith' are just rules applicable to the creation and performance of unilateral declarations but not the source of their obligatory character.

1.2.3. Unilateral declaration and customary law

Likewise with the general principles of law, it seems logical to begin the study of interconnection between the unilateral declaration and the customary law by clarifying the concept of customary law.

According to Article 38 of the ICJ Statute, international custom is defined as «evidence of a general practice accepted as law«.[57] Therefore, for the practice of states to be determined as custom, it must correspond to the two

[56] ICJ, Judgment of 20 December 1988, Border and Transborder Armed Action (Nicaragua v Honduras), para 94.
[57] Statute Of The International Court Of Justice, 1945, Article 38

above-mentioned requirements: be general and be accepted as law, which is also called opinio juris.[58]

As for the requirement of generality, that means that the state's practice must include that of the States whose interests are particularly affected and be sufficiently widespread and representative, as well as consistent.[59] Nevertheless, in *Military and Paramilitary Activities* ICJ emphasized that complete conformity is not needed for establishment of custom, and it is sufficient that States' conduct was «*consistent with such rules, and that instances of State conduct inconsistent with a given rule should generally have been treated as breaches of that rule».*[60]

Applying the above-mentioned rules to the unilateral declaration, both PCIJ and ICJ have repeatedly dealt with unilateral declarations made by numerous States. Those parties were: Greece,[61] United Kingdom,[62] Germany,[63] Poland,[64] France,[65] Denmark,[66] Norway,[67] Switzerland,[68] Australia,[69] Congo,[70] Rwanda,[71] Burkina Faso,[72] Mali[73] - and therefore their practice may be viewed as widespread and representative.

Furthermore, in absence of the opposite cases, i.e. when States insisted on non-bindiness of unilateral declarations, that practice must be viewed as

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[58] Shaw, M. (2008) International Law, pp.69-70; Currie, J. (2008) Public International Law, pp.80-85
[59] ICJ, Judgment of 20 February 1969, North Sea Continental Shelf, paras. 73-74; ICJ, Judgment of 20 November 1950, Asylum case (Colombia v Peru), p. 276; ICJ, Judgment of 27 June 1986, Military and Paramilitary Activities in and against Nicaragua (Nicaragua v US), para. 186
[60] ICJ, Judgment of 27 June 1986, Military and Paramilitary Activities in and against Nicaragua (Nicaragua v US), para. 188
[61] PCIJ, Judgment of 26 March 1925, Mavrommatis Jerusalem Concessions case
[62] Ibid
[63] PCIJ, Judgment of 25 May 1926, Certain German Interests in Upper Polish Silesia (Germany v Poland)
[64] Ibid
[65] ICJ, Judgment of 20 December 1974, Nuclear Tests (Australia v France); PCIJ, Judgment of 7 June 1932, Free Zones of Upper Savoy and the District of Gex (France v Switzerland)
[66] PCIJ, Judgment of 5 April 1933, Legal Status of Eastern Greenland
[67] Ibid
[68] PCIJ, Judgment of 7 June 1932, Free Zones of Upper Savoy and the District of Gex (France v Switzerland)
[69] ICJ, Judgment of 20 December 1974, Nuclear Tests (Australia v France)
[70] ICJ, Judgment of 3 February 2006, Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Rwanda)
[71] Ibid
[72] ICJ, Judgment of 22 December 1986, Frontier Dispute (Burkina Faso v Mali)
[73] Ibid

consistent.[74] Since the practice of States in relation to the unilateral declarations were both consistent and widespread it satisfied the requirement of generality.

Nevertheless, there are critics to this approach. In particular, they argue that practice of ICJ and PCIJ is not relevant since «it is court practice rather than that of states«.[75] That remark is arguable, since reference was made not at the ICJ or PCIJ interpretation of legal rules, but at the practice of States that made such a declaration and, accordingly, realized that such instrument as unilateral declaration exists. Therefore, that argument cannot shake the above-mentioned position.

Another group of critics of generality of state practice on unilateral declarations refers to the words of the Special Rapporteur before the ILC on this matter: «*the doctrine which had developed in this area was far from being consistent and that progressive development and not mere codification was necessary in this area of law*».[76] However, as may be seen from the reports of this scholar, his words rather refers to the definition, criteria on bindiness of declaration and cases of their revocation, than to the fact that states are empowered to bind themselves with unilateral declarations.[77] Thus, there is no valid opposite argument that the practice of states on their ability to make obligations through the unilateral declarations is general.

Proceeding to the opinio juris, i.e. that the state practice must be undertaken with a belief that something is law.[78] Opinio juris may be demonstrated, inter alia, through public statements made on behalf of States, official publications, government legal opinions, decisions of court and conduct in connection with resolutions adopted by an international organization or at an intergovernmental conference. Furthermore, the fact that States were able to react to certain

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[74] Shaw, M. (2008) International Law, pp.69-70; Currie, J. (2008) Public International Law, pp.80-85
[75] Saganek, P. (2016) Unilateral acts of states in public international law, pp. 320-323
[76] ILC, First report on unilateral acts of States, by Mr. Víctor Rodríguez Cedeño, Special Rapporteur, A/CN.4/486 (1998), paras. 9, 15
[77] Ibid, paras, 10-14
[78] ILC, Draft conclusions on identification of customary international law, with commentaries, A/73/10 (2018), Conclusion 9

practices and the surrounding circumstances called for some reaction, but they failed to do so, may also indicate the acceptance by them of such practices as law.[79]

Officials of several States repeatedly acknowledge that it is law that unilateral declaration may be binding on them under certain conditions. For instance, the representative of the United Kingdom during the public hearing before the ECtHR in the case of Republic of Ireland v United Kingdom stated that they could «*make a statement…so as to enable the Court to hold at this stage that that statement constitutes an undertaking possessing legal effect*».[80]

Similarly, German Federal Constitutional Court indicated that: «*no discernible reasons for the assumption that the Declaration of the Federal Government would be ineffective under international law and hence could not bind the Federal Republic of Germany*»[81]

The wording of the abovementioned statements: «*We are convinced*»

and «*no discernible reasons*» indicates that those States believe that bindiness of unilateral declaration is the legal rule.

Furthermore, world leaders in certain situations treat posts on social media as those one having legal effect. For instance, in 2017 the Minister of Foreign Affairs of North Korea stated that the post of Tramp on Twitter : *«If North Korea echoes thoughts of Little Rocket Man, they won't be around much longer!»* was a declaration of war, stating that *«Given the fact that this came from someone who holds the seat of the US presidency, this is clearly a declaration of war»*.[82] It is doubtful whether those statement was a unilateral declaration stricto sensu, however the reaction of the Minister of Foreign Affairs of North Korea to it as to the possible source of binding promise may be seen as

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[79] Ibid, Conclusion 10

[80] ECtHR, Verbatim report of the public hearings held on 7, 8 and 9 February 1977, Republic of Ireland v United Kingdom, para. 344

[81] German Federal Constitutional Court, Judgment of 16 December 1983, Cruise Missiles Deployment, para. 371

[82] The Guardian, North Korea's foreign minister: Trump has declared war on our country, 26 September 2017 [Online]

opinio juris regarding possible legal effect of promises made through the social media. Moreover, the fact that US refuted the essence of that message: that it was not the declaration of war, but not the ability of the President to make binding promises through the twitt,[83] may be treated as the failure to react on time and, accordingly, may also be seen as the evidence of opinio juris regarding unilateral declaration.

To sum up, both of criteria on customary law are present: there is a general practice of States on the bindiness of unilateral declaration and it is accepted by them as law. Thus, it is an international custom that unilateral declarations may be binding on States.

Sub-Chapter 1.3 Distinguishing Promises from Other Types Of Unilateral Declarations

It should be noted from the outset that there are certain difficulties with systemization of unilateral declarations. That is partly caused by the absence of the clear definition of what should be considered as such declaration - the one, described in **Sub-Chapter 1.1** refers mainly to the criteria on its bindiness, rather than explains what particular acts fall under its scope.

Under the existed definition, a variety of different acts may be seen as unilateral declaration, such as: communiqués, aimed at informing others of certain situations; recognition of the status of territories; proclamation of independence; acts relating to the judicial procedure, for instance accepting the jurisdiction of international court as to the particular dispute or declarations made during the proceeding.[84] Moreover, the terms of declarations, their formulating circumstances, purpose of making and effect are also very different. Due to a great diversity of unilateral declarations, it is exceptionally hard to find a common denominator by applying which, all that acts could be grouped.

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[83] Ibid

[84] Kassoti, E. (2015) The juridical nature of unilateral acts of states in international law, pp. 30-33

Generally, authors who wrote on unilateral declarations, classified them based on their content.[85] Heilborn derived such types of unilateral declarations as recognition, protest and renunciation.[86] Cassese, Pellet, Daillier and Echart similarly distinguish the above mentioned types, adding to them promise as a separate category.[87] Other authors generally also derived these four types.[88] While some of them tried to introduce other subcategories, those efforts received little or no recognition on the international plane.[89] Therefore, only four types of declarations regarding existence of which there is the consistent agreement of scholars, would be explained below.

1.3.1. Recognition

Recognition, according to the doctrine, is defined as act:

> By which a state acknowledges the existence of certain facts, which may affect its rights, obligations or political interests, and by which it expressly states or implicitly admits that these facts will count as determining factors when future legal relations are established, on the lines laid down by the same act.[90]

In public international law recognition is often mentioned in the context of the recognition of States.[91] However, recognition is not limited to those situations and also covers a lot of other cases, such as recognition of rights or a national liberation movement.[92] For instance, the Palestine Liberation Organization was recognized by the General Assembly in 1974 as the sole legitimate representative of the Palestinian people and provided with the observer status within the UN.[93] Recognition could also cover the legal status of

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[85] Kassoti, E. (2015) The juridical nature of unilateral acts of states in international law, p. 34; ILC, First report on unilateral acts of States, by Mr. Víctor Rodríguez Cedeño, Special Rapporteur, A/CN.4/486 (1998), paras. 30-35; Eckart, C. (2012) Promises of States under International Law, p. 23

[86] Heilborn, P. (1896) Das System Des Völkerrechts, Entwickelt aus den Völkerrechtlichen Begriffen,p. 105 in Kassoti, E. (2015) The juridical nature of unilateral acts of states in international law, p. 34

[87] Kassoti, E. (2015) The juridical nature of unilateral acts of states in international law, p. 34; Eckart, C. (2012) Promises of States under International Law, p. 23

[88] Ibid

[89] Ibid

[90] Ruda, J. (1991) Recognition of States and Governments, p.449 in Eckart, C. (2012) Promises of States under International Law, p. 29

[91] Kassoti, E. (2015) The juridical nature of unilateral acts of states in international law, p. 34

[92] Kassoti, E. (2015) The juridical nature of unilateral acts of states in international law, p. 35; Eckart, C. (2012) Promises of States under International Law, p. 30

[93] G.A.U.N.: A/RES/3210 (1974); A/RES/3237 (1974)

certain towns. For instance, in 2017 Trump unilaterally declared that the US recognizes Jerusalem as the capital of Israel.[94]

The legal effect of recognition differs from the promise, whose force depends on the intention of those who formulate it. In particular, the intention of the State that recognizes the other State is to confirm the existence of the latter. However, even if the State is recognized by others, it still must have certain material features, such as government, territory to obtain international legal personality.[95]

Apart from the untypical legal effect of recognition, it has another specific feature - estoppel, i.e. a State is prohibited to challenge the recognition it has previously made.[96] In this regard it also differs from promises, to which estoppel could be applicable.

1.3.2 Protest

Protest is a unilateral act by which a State objects to the conduct of another State.[97] It differs from recognition, renunciation, notification and promise, as it is the only type of unilateral declaration that does not bind the formulating state in any way.[98] In principle, protest is opposite to recognition, because through it, a state demonstrates its intent not to recognise something against which it protests.

Protest may be used almost in any context, but for the applicability of rules of customary international law they are especially significant. In particular, the State can successfully claim that it is not bound by a customary norm if it has consistently objected to the existence of such a norm at the stage of its formation. For instance, in the Asylum Case, ICJ agreed that there was customary rule in Latin America allowing the State granting the asylum the right

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[94] US Federal Register, Proclamation 9683 of December 6, 2017
[95] Eckart, C. (2012) Promises of States under International Law, p. 30
[96] Ibid
[97] Eckart, C. (2012) Promises of States under International Law, p. 30; Kassoti, E. (2015) The juridical nature of unilateral acts of states in international law, p. 33
[98] Ibid

to unilaterally qualify an offense in matters of diplomatic asylum.[99] However, that custom could not be invoked against Pery, who constantly objected to the existence of such a rule.[100] Another example, is the tweet of the French President Macron, where he rejected claims that Russia is commiting genocide in Ukraine.[101]

The protest has another two specific features by which it differs from promises. First one is no need for the interpretation of state's intent, which is crucial for promises.[102] Second is simple revocation of protest, i.e., the state may easily recognise whatever it has just objected to, in contrast promises may be revoked only under specific circumstances.[103]

1.3.3 Renunciation

Renunciation is a unilateral act by which a State abandons its right which subsequently either ceases to exist or is transferred to another State.[104] However, for the second way «*transferred to another State»* to arise, the unilateral action of one State is not enough, but the agreement of a State, to which the right is being transferred is needed. Additionally, such a waiver of a right cannot be presumed, but must be expressly declared as ICJ pointed out in *Certain Norwegian Loans*.[105]

The result of the act of renunciation is that a formulating State is no longer a holder of the right from which it waived.[106] In this regard, an act of renunciation is clearly distinguished from promises, since the effect of the latter is that the State which made a promise, while having an obligation not to use the rights, remains the holder of that right. In theory it sounds clear, but in practice it

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[99] ICJ, Judgment of 20 November 1950, Asylum case (Colombia v Peru), p. 280
[100] Ibid, para.281
[101] Euronews, French President Macron avoids accusing Putin of genocide, 13 April 2022 [Online]
[102] Ibid
[103] Ibid
[104] Eckart, C. (2012) Promises of States under International Law, p. 34; Kassoti, E. (2015) The juridical nature of unilateral acts of states in international law, p. 37
[105] ICJ, Judgment of 6 July 1957, Certain Norwegian Loans, p.26
[106] Eckart, C. (2012) Promises of States under International Law, p. 35

may be complicated to distinguish a promise not to use certain rights from the relevant renunciation.

CHAPTER 2. TIGHTENING THE SUBJECT: CONDITIONS FOR THE LEGAL EFFECT OF PROMISES MADE THROUGH THE SOCIAL MEDIA

Promises is the most frequently used and researched form of the unilateral declarations. *Certain German Interests in Upper Polish Silesia,*[107] *Mavrommatis Jerusalem Concessions,*[108] *Eastern Greenland,*[109] *Nuclear Tests,*[110] *Frontier Dispute,*[111] *Armed Activities on the Territory of the Congo*[112] - all those judgments concerned promises. It seems that the Guiding principles of ILC also was mainly about promises,[113] since many of its provisions are not applicable to other types of declarations, such as recognition, protest, and waiver.

Looking at the above-mentioned practice on promises, it is logical to suppose that this theme has already been well researched and, accordingly, its rules are clear and precise. Unfortunately, that is not true: promises remain a white spot in the public international law and neither its definition, nor characteristics are well established.

As for the definition of promise, for Góralczyk it is «*unilaterally accepted obligation with respect to one or more subjects of international law*».[114] Cassesse proposes that promises are «*a unilateral declaration by which a State undertakes to behave in a certain manner*».[115] Angelet and Suy followed the

[107] PCIJ, Judgment of 25 May 1926, Certain German Interests in Upper Polish Silesia (Germany v Poland), para. 27
[108] PCIJ, Judgment of 26 March 1925, Mavrommatis Jerusalem Concessions case, para. 90
[109] PCIJ, Judgment of 5 April 1933, Legal Status of Eastern Greenland, para. 192
[110] ICJ, Judgment of 20 December 1974, Nuclear Tests (Australia v France), para. 43
[111] ICJ, Judgment of 22 December 1986, Frontier Dispute (Burkina Faso v Mali), para. 39
[112] ICJ, Judgment of 3 February 2006, Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Rwanda), para. 46
[113] ILC, Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, with commentaries thereto, A/61/10 (2006), p. 370
[114] Góralczyk, W. (1989) Prawo międzynarodowe publiczne w zarysie, p. 170 in Saganek, P. (2016) Unilateral acts of states in public international law, p. 378
[115] Cassese, A. (2005) International Law, p. 185 in Saganek, P. (2016) Unilateral acts of states in public international law, p. 378

same line of explanation as did Cassesse.[116] Those definitions are too broad to clearly explain what a promise as a separate type of unilateral declaration is. In fact, the above-mentioned proposals mixed the features of promise, waiver, protest and recognition and suit rather for the definition of unilateral declaration than to promise as such.

Degan proposed a more specific definition of promise, in particular he wrote that it is «*a kind of act by which a State, unilaterally assumes on its charge new legal obligations in regard to others*».[117] Promises were defined in the similar way by Echart, who explained this concept as «*a unilateral manifestation of a state's will by which it undergoes a legally binding commitment to do or refrain from doing something in the future*».[118] That definition sheds light on the concept of promises and jointly with their characteristics fully satisfies the needs of this work.

Proceeding to the characteristic of promises and conditions which may indicate its bindiness. Such factors as form of the promise, intent of the formulating State to be bound by promise, competence of the oralist, publicity of issuance of promise and reaction of the addressee State were often discussed in the literature.[119] To determine which of those factors are crucial for the bindiness of promises, they will be examined in turn.

Sub-Chapter 2.1 Form of the promise

To determine whether the promises could be made through the social media platforms it seems necessary to investigate the requirements in the form of unilateral acts. To achieve that purpose, the practice of international tribunals and existing customary rules will be analyzed.

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[116] Suy, E., Angelet, N. (2001) Rechtsgeschäfte, einseitige; in: I. Seidl-Hohenveldern, Lexikon des Rechts, p. 320 in Saganek, P. (2016) Unilateral acts of states in public international law, pp. 378

[117] Degan, V. (1994) Unilateral act as a source of particular international law, p. 188 in Saganek, P. (2016) Unilateral acts of states in public international law, p. 378

[118] Eckart, C. (2012) Promises of States under International Law, pp. 27-28

[119] Eckart, C. (2012) Promises of States under International Law, pp. 208-250; Saganek, P. (2016) Unilateral acts of states in public international law, pp. 378-400; ILC, Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, with commentaries thereto, A/61/10 (2006), pp. 370-385

ICJ and PCIJ repeatedly stated on various occasions that the formalities are not a crucial factor in international disputes.[120] In the Mavrommatis Palestine Concessions, PCIJ emphasized that due to its international jurisdiction it was not obliged «*to attach to matters of form the same degree of importance which they might possess in municipal law».*[121]

ICJ applied the same way of interpretation in the Nuclear Test in relation to the unilateral declaration of France concerning the cessation of nuclear testing in the Pacific Ocean.[122] In particular, ICJ stated that «*the question of form is not a domain in which international law imposes any special or strict requirements. Thus, the question of form is not decisive»*.[123]

State practice also shows that unilateral promises could be made in different forms, such as diplomatic notes, communication in person, statements during the press conference and others.[124] Furthermore, the fact that States were able to question the form of particular unilateral promise when they were first formulated, but they failed to do so, indicates the existence of opinio juris regarding non importance of form for the legal effect of unilateral promises.[125] Since there are both consistent state practice and opinio juris, it is a customary rule of international law that unilateral promises could be made in any form.

Thus, the question of form is not crucial for unilateral promises, and they could be made even virtually through the social media platforms.

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[120] PCIJ, Judgment of 30 August 1924, The Mavrommatis Palestine Concessions, p. 34; ICJ, Judgment of 11 July 1996, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina v Yugoslavia), para.24

[121] PCIJ, Judgment of 30 August 1924, The Mavrommatis Palestine Concessions, p. 34

[122] ICJ, Judgment of 20 December 1974, Nuclear Tests (Australia v France), para. 48

[123] Ibid

[124] ICJ, Judgment of 20 December 1974, Nuclear Tests (Australia v France), para. 48; PCIJ, Judgment of 5 April 1933, Legal Status of Eastern Greenland, para. 192; ICJ, Judgment of 22 December 1986, Frontier Dispute (Burkina Faso v Mali), para. 39

[125] ILC, Draft conclusions on identification of customary international law, with commentaries, A/73/10 (2018), Conclusion 10

Sub-Chapter 2.2 Publicity

In the *Nuclear Test*, ICJ emphasized that «*an undertaking of this kind, if given publicly…is binding*».[126] Later, ILC followed the same line of explanation of the characteristics of binding declaration and stated that «*declarations publicly made…may have the effect of creating legal obligations*».[127]

To clarify the essence of publicity, its ordinary meaning may be useful. According to the Merriam-Webster Dictionary, publicity is «*in a manner observable by or in a place accessible to the public*».[128] Therefore, it seems logical that only statements made during the press conferences or certain crowded international or domestic bodies, such as parliaments may be considered as «*the place accessible to the public*» and, accordingly, fulfill the requirement of publicity. In this vein, all posts made by the State authorities at their official pages are accessible to the public and, accordingly, fulfill the above-mentioned requirement.

However, there are also promises made not directly at the official pages, but through the private messages on the social media platforms. Such promises do not comply with this interpretation of publicity, although, interestingly, not all binding declarations were made at «*the place accessible to the public*». For instance, the diplomatic notes and recordings from diplomatic meetings are usually not accessible to all interested persons but exceptionally for a limited group of individuals.[129] However, certain binding promises were made in this way. In *Eastern Greenland*, the Norwegian Minister promised not to make any difficulties in the settlement of Denmark sovereignty over Greenland during the diplomatic meeting with the Minister of Denmark.[130] Those meetings were conducted in person and neither broadcast nor distributed in any other way so as

[126] ICJ, Judgment of 20 December 1974, Nuclear Tests (Australia v France), para. 43
[127] ILC, Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, with commentaries thereto, A/61/10 (2006), p. 370
[128] Garner B, (2009) Black's Law Dictionary, p.321
[129] Saganek, P. (2016) Unilateral acts of states in public international law, p. 385
[130] PCIJ, Judgment of 5 April 1933, Legal Status of Eastern Greenland, para. 190

to be accessible to the public. Nevertheless, PCIJ still had stated that the promise of the Norwegian Minister created an obligation for Norway to comply with that statement.[131]

Similarly, in *the Nuclear Test*, certain promises of France to cease the conduct of nuclear testing in the South Pacific Ocean were made through the diplomatic notes.[132] Indeed, only part of the promises of France were made through the diplomatic notes, while others were issued at press-conferences.[133] Due to that ICJ also considered publicity of those promises but not as a separate requirement but rather as a circumstance from which the intent of France to be bound by those promises could be derived.[134]

This conclusion is also supported by the fact that ICJ did not state that all binding declarations must be issued publicly and considered all statements of France regarding cease of testing as binding without even considering that some of them were made through the diplomatic notes and, accordingly, not public in the ordinary meaning of this word.

The scholars, who researched the promises also pointed to publicity as the requirement for the legal force. However, they understood this factor in the meaning different from ordinary. Waldkirch wrote that publicity means that declarations need «*receiving in this sense that the addressee-subject must know their content*».[135] Suy similarly stated that «*it is required that its [declaration] content arrives to the beneficiary*».[136]

The ILC also discussed the issue of publicity during their work on unilateral declarations. In the First report to ILC on unilateral declarations the Special Rapporteur Cedeno referred to publicity as a factor influencing the

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[131] Ibid, para.192
[132] ICJ, Judgment of 20 December 1974, Nuclear Tests (Australia v France), paras. 34-35
[133] Ibid
[134] ICJ, Judgment of 20 December 1974, Nuclear Tests (Australia v France), para. 43
[135] Waldkirch,E (1926) Das Völkerrecht in seinen Grundzügen dargestellt, p. 215 in Saganek, P. (2016) Unilateral acts of states in public international law, p. 384
[136] Suy, E., Angelet, N. (2001) Rechtsgeschäfte, einseitige; in: I. Seidl-Hohenveldern, Lexikon des Rechts, p. 150 in Saganek, P. (2016) Unilateral acts of states in public international law, pp. 384

bindiness of declaration.[137] That decision was highly criticized by members of ILC, Ian Brownlie, for instance, emphasized that previously many binding declaration were made in camera and, accordingly the criterion of publicity is not an obligatory requirement and only «*relevant in terms of evidence and of the identification of those to whom the act was addressed».*[138]

Cedeno considered that commentaries and changed the course of explanation in his Third report on unilateral declaration, where he wrote that the statement is binding when it 'is known' to the addressee.[139] While certain members of the ILC were satisfied with that wording, others were not because «*shifting the focus to the factual knowledge of the addressee in order to hold a promise to be binding would only introduce a factor of uncertainty, as the moment of factual knowledge is usually not known to the declarant»*.[140] Additionally, such an approach, as Gaja stated «*could give the impression that the knowledge might have been acquired through espionage»*.[141]

Cedeno considered those commentaries and in his Ninth report omitted the mentioning of publicity, instead focusing on the intention of the formulating State.[142] Surprisingly, despite the criticism of publicity factor and evolution in the reports of Cedeno, ILC withdrew all that work and in the Guiding principles simply referred to the dicta of ICJ in Nuclear Test and included publicity requirement in the definition of the unilateral declaration.[143]

Apart from the doubtful decision of ILC, neither ICJ nor any reputable scholars consider publicity as the obligatory separate requirement for the bindiness of promises. Thus, in the absence of convincing evidence for the

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[137] ILC, First report on unilateral acts of States, by Mr. Víctor Rodríguez Cedeño, Special Rapporteur, A/CN.4/486 (1998), para.170
[138] Eckart, C. (2012) Promises of States under International Law, p.240
[139] ILC, Third report on unilateral acts of States, by Mr. Víctor Rodríguez Cedeño, Special Rapporteur, A/CN.4/505 (2000), para.80
[140] Eckart, C. (2012) Promises of States under International Law, p.241
[141] Saganek, P. (2016) Unilateral acts of states in public international law, p. 384
[142] ILC, Ninth report on unilateral acts of States, by Mr. Víctor Rodríguez Cedeño, Special Rapporteur, A/CN.4/569
(2006), p.135
[143] ILC, Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, with commentaries thereto, A/61/10 (2006), p. 370

opposite, publicity is not the crucial factor for promises made through social media. Accordingly, both the promise of a certain world leader made at the public page and his private message could have legal effects depending on the fulfillment of other requirements.

Sub-Chapter 2.3. Authorized representative of the State

It seems clear even without any further explanation that States could be bound only by promises which are attributable to them. To be attributable such a promise must be issued by a competent representative of a State. On this point the practice of PCIJ is clear as may be evidenced by the dicta in *Eastern Greenland*, where it was emphasized that proper authority is the important factor for assessment of the binding nature of promise, in particular PCIJ stated that «*a reply given by the Minister for Foreign Affairs… in regard to a question falling within his province, is binding»*.[144] ICJ practice also clearly indicates the importance of the competent representative for the bindiness of promise. For instance, in *Armed Activities on the Territory of the Congo*, ICJ stated that:

«*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…for the performance... of unilateral acts»*.[145]

ILC in its work on unilateral declarations followed the same line as did ICJ and PCIJ and considered the proper authority requirement as binding for legal force of declarations.[146] In particular in the Guiding Principle 4 it clearly stated that only competent authority could issue a binding unilateral act on behalf of the State and «*By virtue of their functions, heads of State, heads of Government and ministers for foreign affairs are competent to formulate such declarations»*.

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[144] PCIJ, Judgment of 5 April 1933, Legal Status of Eastern Greenland, para. 192

[145] ICJ, Judgment of 3 February 2006, Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Rwanda), para. 46

[146] ILC, Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, with commentaries thereto, A/61/10 (2006), p. 372

Therefore, it is generally recognised that binding promises must be made by proper authorities and such authorities are, at least, «troika»: heads of State, heads of Government and ministers for foreign affairs.

The promises of «troika» are binding when they are made within the sphere of their competence.[147] The competence of «troika» is determined by the national legislation and, accordingly, differs among States.[148] However, in general the functions of «troika» are similar in most States.[149]

Heads of State usually are empowered to make peace or war, to acquire or cede territories and to recognise States or Governments.[150] As for the heads of Government, who are generally the head of the executive authority, their functions, under domestic law, may be different from those of the heads of States.[151] Nevertheless, from the point of view of international law, they are entitled to perform the full scope of a State's international activities as well as the heads of State and,[152] accordingly, to bind States within those activities. The functions of ministers for foreign affairs were clearly described by ICJ in Arrest Warrant, where it stated that:

> He or she is in charge of his or her government's diplomatic activities and generally acts as its representative in international negotiations and intergovernmental meetings…and there is a presumption that a Minister for Foreign Affairs, simply by virtue of that office, has full powers to act on behalf of the State.[153]

Therefore, heads of State, heads of Government and ministers for foreign affairs are automatically considered as the proper representative of their States for the purpose of making binding promises.

The list of competent authorities is not limited to «troika» and promises of other State authorities could be determined as binding. ICJ in *Armed*

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[147] PCIJ, Judgment of 5 April 1933, Legal Status of Eastern Greenland, para. 192; ICJ, Judgment of 3 February 2006, Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Rwanda), para. 46;ILC, Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, with commentaries thereto, A/61/10 (2006), p. 372

[148] Eckart, C. (2012) Promises of States under International Law, p.236

[149] Ibid

[150] Foakes J.(2014)The Position of Heads of State and Senior Officials in International Law, p. 31

[151] Dörr,O.,Schmalenbach, K. (2012) Vienna Convention on the Law of Treaties. A Commentary, p.138

[152] Ibid

[153] ICJ, Judgment of 11 April 2000, Arrest Warrant (DRC v Belgium), para 53

Activities on the Territory of the Congo examined the promise of the Rwandan Minister of Justice and while not considering it as binding declaration, ICJ stated that the Minister of Justice, by virtue of her functions, is entitled to issue such statements.[154] In that case ICJ emphasized that «*with increasing frequency in modern international relations other persons representing a State in specific fields may be authorized by that State to bind it by their statements in respect of matters falling within their purview*».[155] Similarly, ILC, in Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations stated that: «*other persons representing the State in specified areas may be authorized to bind it, through their declarations, in areas falling within their competence*».[156]

Thus, binding declarations must be issued by the authorities empowered to represent the State at the international area. Nevertheless, it remains doubtful how the absence of such competence may affect the binding force of promises.

There were situations when the authorities made unilateral declarations without necessary competence and that statements bound them. For instance, the King of Jordan waived Jordan's claims to the West Bank territories, although under the Constitution of the Kingdom he had no such power.[157] The Colombian Minister for Foreign Affairs also made a declaration by which he recognized Venezuelan sovereignty over the Los Monjes archipelago, despite he was not empowered to do so under domestic legislation.[158]

Furthermore, in Free Zones PCIJ evaluated the promise of the representative of Switzerland to conclude an agreement with France regarding the status of territories which were previously free customs zones.[159] In that

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[154] ICJ, Judgment of 3 February 2006, Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Rwanda), para. 47
[155] Ibid
[156] ILC, Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, with commentaries thereto, A/61/10 (2006), p. 372
[157] Ibid., p.373
[158] Ibid
[159] PCIJ, Judgment of 7 June 1932, Free Zones of Upper Savoy and the District of Gex (France v Switzerland), para 230

case, PCIJ affirmed that the Swiss representative had no power to make such an offer by virtue of his function, PCIJ however considered it as binding because of the surrounding circumstances of its formulation i.e., it was made during the proceedings of PCIJ and Switzerland did not contest its validity.[160]

ILC, during their work on unilateral declarations, also considered this issue and discussed the possibility of application of rules of the law of treaty to this issue.[161] In particular, it was proposed to invalidate the declaration if authorities were not allowed to do that under their domestic legislation.[162] After numerous debates on this issue, ILC decided not to include such a provision in the Guiding Principles. They reasoned that by the fact that the force of declaration is derived from the relevant intention of a State, and if States do not challenge the validity of the declaration made by the authority not empowered under the domestic law for that, it remains binding.[163]

Therefore, promises must be made by the authorized representatives of States. While there is an exception to that rule, they refer rather to the situation when formulating a State does not challenge the validity of such a statement. Nevertheless, for the purpose of this work the opposite situation is considered: whether formulating States could be forcefully bound by their statement. Thus, the abovementioned exception is irrelevant, and an authorized representative is the crucial factor to be considered for determining the bindiness of the promise.

Sub-Chapter 2.3. Reaction of the addressee State

ICJ has been very consistent in stating that positive reaction of the addressee State is not needed for the bindiness of the declaration. In the *Nuclear Test*, ICJ expressly stated that «*nothing in the nature of a quid pro quo nor any*

[160] Ibid
[161] ILC, Report on the Work of its Fifty-second Session, A/55/10, para 602
[162] Ibid
[163] Ibid

subsequent acceptance of the declaration, nor even any reply or reaction from other States, is required for the declaration to take effect».[164]

Later, in the *Frontier Dispute*, Burkina Faso, the addressee of a statement made by Mali, claimed that the statement was legally binding.[165] Nevertheless, ICJ emphasized that it is not the addressee of the unilateral declaration, who is empowered to assess such declaration, but it is for the ICJ to «*form its own view of the meaning and scope intended by the author of a unilateral declaration which may create a legal obligation»*.[166]

While ICJ practice is consistent as to the non-importance of the addressee reaction on the bindiness of the unilateral declaration, ILC still contend the opposite. According to the Guiding Principle 3, «*the reactions to which they [unilateral declarations] gave rise»* are important for the determination of the legal effect of the declarations.[167]

Unfortunately, ILC did not elaborate on how such a reaction may influence the effect of the declaration. Such details are exceptionally important especially in view of the practice of ICJ, which has consistently ignored the reaction of the addressee States.

Certain light on the role of the reaction may be spilled by the ILC further reference to the significance of such reactions as cognizance of commitments undertaken and objection to their bindiness.[168] As for the cognizance, simple acceptance of the addressee State of the promise could not influence the bindiness of the declaration due to its unilateral character.

However, theoretically, reaction may influence the bindiness of declaration if the addressee State started to perform certain positive actions in reliance on the promise and formulating State failed to disprove it timely. Such bindings

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[164] ICJ, Judgment of 20 December 1974, Nuclear Tests (Australia v France), para. 43
[165] ICJ, Judgment of 22 December 1986, Frontier Dispute (Burkina Faso v Mali), para. 39
[166] Ibid
[167] ILC, Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, with commentaries thereto, A/61/10 (2006), p. 371
[168] Ibid

arise from the principle of estoppel, which precludes a State from revoking its unilateral declaration, if that revocation leads to a detrimental change of position of other States, which relied on this declaration.[169]

For instance, in *Kardassopoulos v Georgia*, the ICSID tribunal found that Georgia was estopped from rescinding the joint venture agreement with the claimant since the latter had already made an investment, relying on the officials' assurance of that agreement's validity.[170] Although such detriment does not extend to promises of a future conduct as evidenced by *Československa Obchodní Banka v Slovakia*, in which the claimant relied on plans, rather than previous or actual cooperation, to substantiate its claim concerning estoppel.[171] Thus, if the addressee State practically relied on the promise, it could be declared as binding under the estoppel doctrine.

Second possible scenario is objection by the addressee State of the bindiness of promise. Promises, as any other types of unilateral declarations, are based on the principle of good faith, namely that formulating State should adhere to the given promise because it raised the legitimate expectations in the addressee.[172] Accordingly, if the addressee has no legitimate expectations, the formulating State is not obliged to perform that promise under good faith principle.

Thus, the reaction of address is of a limited value for the bindiness of the promise. It covers only situations of estoppel and rejection of the promise. Due to such rare applicability, reaction of the addressee State could not be considered as the crucial factor for promises.

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[169] ILC, Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, with commentaries thereto, A/61/10 (2006), p. 380; Eckart, C. (2012) Promises of States under International Law, p.228

[170] ICSID, Judgment of 3 March 2010, Ioannis Kardassopoulos v the Republic of Georgia, para. 192

[171] ICSID, Judgment of 29 December 2004, Československa Obchodní Banka, A.S. v the Slovak Republic, para. 102

[172] Eckart, C. (2012) Promises of States under International Law, p.250

Sub-Chapter 2.3. Will/Intent of the formulating State to be bound by promise

The intention of the formulating State was repeatedly considered as the basic requirement to the unilateral declarations. This idea comes from the auto-limitation theory created in the 1910s by Jellinek, who proposed that international law is a bunch of rules by which a State limits itself.[173] Accordingly, under this theory all obligations in the international law come from the intent of the relevant states to perform such obligations.

In the Nuclear Test, ICJ followed the logic of the abovementioned doctrine and expressly proclaimed that:

> 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.[174]

In Frontier Dispute, ICJ came to the same conclusion, expressly citing its judgment Nuclear Test:

> Such declarations «concerning legal or factual situations» may indeed "have the effect of creating legal obligations» for the State on whose behalf they are made, as the Court observed in the Nuclear Tests cases (i.c.j. Reports 1974, pp. 267, 472). But the Court also made clear in those cases that it is only «when it is the intention of the State making the declaration that it should become bound according to its terms» that «that intention confers on the declaration the character of a legal undertaking» (ibid.). Thus, it all depends on the intention of the State in question.[175]

Even more, in the above cited paragraph from the Frontier Dispute, ICJ by adding the word «only» emphasized the crucial value of intent for the bindiness of unilateral declarations.

The Special Rapporteur of the ILC on unilateral declarations also included in his first report the intention as the basis of the legal force of the declarations.[176] In particular, he proposed that «*the State which formulates the declaration is bound to fulfill the obligation which it assumes, not because of*

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[173] G. Jellinek. (1911) L'État Moderne et son Droit in E. Kassoti. (2015) The Juridical Nature of Unilateral Acts of States in International Law, pp.169

[174] ICJ, Judgment of 20 December 1974, Nuclear Tests (Australia v France), para. 43

[175] ICJ, Judgment of 22 December 1986, Frontier Dispute (Burkina Faso v Mali), para. 39

[176] ILC, First report on unilateral acts of States, by Mr. Víctor Rodríguez Cedeño, Special Rapporteur, A/CN.4/486 (1998), para.160

the potential juridical interest of the addressee but because of the intention of the State making the declaration».[177]

The proposal of Victor Cedeno was highly criticized by the ILC members, as may be evidenced by the Pambou-Tshivenda comments that «*the intention was a tendency, a viewpoint. To draw up a definition on the basis of a viewpoint did not seem adequate because the rule thus obtained would be merely indicative rather than peremptory»*.[178] Rao also criticized that word choice, stating that:

> The legal effect produced by an act did not necessarily, or always, indicate the original intention of the State formulating the act. A State was a political entity whose intentions could be equivocal or unequivocal, depending on the context. In his view, the criterion of the effect actually produced had always to be assessed in order to determine the nature of the intention. A contextual examination of policy considerations played a very important role in assessing the intention underlying an act. An inductive approach taking account of policy considerations was called for.[179]

Due to such criticism, Victor Cedeno changed the word «intention« to «will«, as the latter seemed to be more general and neutral.[180] This formulation was adopted in the Guiding Principles: *«Declarations ...manifesting the will to be bound may have the effect of creating legal obligations».*[181]

Therefore, without considering the debates regarding the word choice (intention/will), this factor is generally recognised as groundful for the bindiness of the unilateral acts.

While the will of the formulating State is important it cannot be assessed in vacuum, without other external factors. PCIJ, while assessing the promise of the Minister Ihlen which was treated by Denmark as recognition of its sovereignty in Greenland, considered «*the words used and of the circumstances in which they were used»*.[182] ILC in the Guiding Principles and ICJ in Nuclear Tests,

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177 Ibid

178 Yb.ILC, 2000, vol. i, 2628. meeting, p. 127, para. 28.

179 Yb.ILC, 2000, vol. i, 2629. meeting, p. 138, para. 79.

180 ILC, Third report on unilateral acts of States, by Mr. Víctor Rodríguez Cedeño, Special Rapporteur, A/CN.4/505 (2000), para.80

181 ILC, Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, with commentaries thereto, A/61/10 (2006), p. 370

182 PCIJ, Judgment of 5 April 1933, Legal Status of Eastern Greenland, para. 188

Frontier Dispute and Armed Activities on the Territory of the Congo also emphasized that content of the declarations and the context of their formulation must be taken into account for their interpretation on the presence of will of the formulating State.[183]

Thus, terms and context of declarations could indicate the will of the formulating State. To better understand the requirements to such factors, they will be described in turn.

2.3.1. Content of promise

One may derive the State's intent to be bound by the unilateral declaration from its content.[184] In the Nuclear Test, ICJ held that clear and specific terms of the declaration may indicate the will of the formulating State to be bound by that declaration.[185] To the same conclusion ICJ came into the Armed Activities on the Territory of the Congo, while assessing the statement of the Rwandan Minister of Justice regarding withdrawal of reservation to the Genocide Convention.[186]

Neither PCIJ, ICJ or ILC has ever distinguished the requirements of clear and specific. Nevertheless, scholars tried to make such a division. For instance, Klabbers wrote that text is clear if it speaks of its own entry into force, includes remedies or allows for sanctions where it is breached and is unconditional, namely it has no requirement for entry into force.[187]

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[183] ILC, Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, with commentaries thereto, A/61/10 (2006), p. 371; ICJ, Judgment of 20 December 1974, Nuclear Tests (Australia v France), para. 43; ICJ, Judgment of 22 December 1986, Frontier Dispute (Burkina Faso v Mali), para. 39; ICJ, Judgment of 3 February 2006, Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Rwanda), para. 46

[184] ILC, Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, with commentaries thereto, A/61/10 (2006), p. 377; ICJ, Judgment of 20 December 1974, Nuclear Tests (Australia v France), para. 43; ICJ, Judgment of 3 February 2006, Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Rwanda), para. 46

[185] ICJ, Judgment of 20 December 1974, Nuclear Tests (Australia v France), para. 43

[186] ICJ, Judgment of 3 February 2006, Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Rwanda), para. 46

[187] J.Klabbers (1996)The Concept of Treaty in International Law, pp.160-16

For Echart, the terms are clear if they indicate the intention of the author through the appropriate, straightforward, and unconditional wording, such as «will», «guarantee to», «undertakes to».[188]

As for the specific terms, that requirement is generally understood as the level of detalization. For instance, while States often make promises, they use such phrases as «respond to threat», «move forward», «fight against» do not reach the necessary level of specification as they are too general.[189]

Nevertheless, such a division between clear and specific requirements is more theoretical than practical since in most cases it is very difficult to distinguish them. Accordingly, as ILC and ICJ does, in this work they will be considered jointly.

While determining the clarity and specificity of terms numerous factors should be considered. For example, the Secretariat of UN decided that model declarations called upon member States to reinforce their support of the Declaration regarding torture were not clear and specific.[190] In that case, States just declared their «*intention*», rather than indicated that they «*will*» or «*undertake to*» comply with that declaration.[191] In contrast, the tweet of the UK's Prime Minister Johnson, where he promised that the UK «*will continue to step up military, economic and diplomatic support*» to Ukraine,[192] clearly shows the intent of the author to comply with his statement.

The express representation of the State's authority by an official, e.g. by using the wording «*my State*» or «*on behalf of the State*», may also show an intent to create a binding undertaking.[193] As an example, the President of the US John Biden, through the twitt promised «*using my presidential authority*» to activate emergency security assistance for providing Ukraine with economic

[188] Eckart, C. (2012) Promises of States under International Law, p. 220
[189] Ibid, p.221
[190] UN Juridical Yearbook (1978) 98, para 3
[191] Ibid
[192] Johnson, B. [@BorisJohnson]. (2022, March 20). Twitter
[193] Armed Activities (DRC v Rwanda), para 48; Eckart (2012) 220

assistance.[194] Similarly, Prime Minister of Canada Justin Trudeau promised through Linkedin that «*Canada will continue to support Ukraine with military equipment»*.[195]

Further, the ability of a declaration to be performed independently, i.e. without any additional bilateral agreement, may demonstrate the State's intent to create a binding undertaking.[196] For instance, in Taxation Liability of Euratom Employees, British and Dutch delegations proposed to grant certain officials of the European Communities with tax exemptions.[197] However, these proposals were favorably received by the relevant sub-committees, they had never been performed.[198] Those proposals on tax exemptions were found to be not self-sufficient, failing to specify a particular scope of such exemptions.[199]Due to that the Arbitrator held that declaration was not binding because:

> It seems that the wording is closer to a pure statement of fact. The natural meaning of such a statement is that no agreement has so far been reached and that it will be necessary to conclude a special agreement to establish any new privileges and immunities.[200]

Another factor is the declaration's level of detail, as demonstrated by the Japanese Emperor's declaration on the provision of Afghanistan with the aid package for reconstruction. In that case, the indication of the sum of funding «*16,700 million yen»* and its purpose «*to support the signature policy of President Karzai»* had been clear and specific enough to bind Japan with the obligation.[201] Another example is the declaration of the President of France in relation to the nuclear testing in the South Pacific Ocean: «*we have now reached a stage in our nuclear technology that makes it possible for us to continue our*

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[194] Biden, J. [@POTUS].(2022, March 16). Twitter
[195] Trudeau, J [@justintrudeau]. (2022, March 25). Linkedin
[196] Jecker v Geonafta; Taxation Liability of Euratom Employees 510; Eckart (2012) 219; Crawford (2012) 418
[197] Taxation Liability of Euratom Employees 510
[198] Ibid
[199] Taxation Liability of Euratom Employees 510
[200] Ibid.
[201] Eckart (2012) 220; ILC, Seventh report by Cedeño, reference 37

program by underground testing, and we have taken steps to do so as early as next year».[202]

In this declaration he specified the action to be done «*to continue our program»* and the timeframe for its performance «*as early as next year»*. Due to that ICJ held the terms of declaration were clear and specific enough to demonstrate the will of France to stop the nuclear testing.[203]

Similar issue with the level of digitalization of the declaration's terms, was in the Armed Activities on the Territory of the Congo. In that case Rwanda contended that ICJ has no jurisdiction to adjudge the DRC's claim on Rwandan violation of the Genocide Convention because Rwanda put a reservation to the article imposing such jurisdiction. DRC argued that such reservation was withdrawn by the statement of the Rwandan Minister of Justice:

> Rwanda is one of the countries that has ratified the greatest number of international human rights instruments. In 2004 alone, our government ratified ten of them, including those concerning the rights of women, the prevention and repression of corruption, the prohibition of weapons of mass destruction, and the environment. The few instruments not yet ratified will shortly be ratified and past reservations not yet withdrawn will shortly be withdrawn.[204]

ICJ stated that the above-mentioned promise was not binding because it lacked the specification to which treaty the Rwandan Minister of Justice referred in her statement and precise timeframe for withdrawals from past reservations.[205] Accordingly, ICJ concluded that the promise «*was not made in sufficiently specific terms in relation to the particular question of the withdrawal of reservations……at most, it can be interpreted as a declaration of intent, very general in scope»*.[206]

Most of the twists of the world leaders lack the necessary specification. While President Biden promised «*to provide an additional $500 million in*

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[202] ICJ, Judgment of 20 December 1974, Nuclear Tests (Australia v France), para. 15
[203] Ibid, para.56
[204] ICJ, Judgment of 3 February 2006, Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Rwanda), para. 10
[205] Ibid, paras. 50-51
[206] Ibid, para.51

direct economic assistance to the Ukrainian government»,[207] he did not specify the timeframe for the performance of such a promise and the way for money transferring. The LinkedIn post of Prime Minister of Canada Justin Trudeau was even more general as he promised «*to support Ukraine with military equipment, financial aid, and humanitarian assistance»* without specification neither of time limit for performance, nor of the scope of such help.[208]

To sum up, to indicate the will of the formulating State to be bound by the declaration, the terms of the latter must be clear and specific. The factors to be considered while assessing the terms includes, but are not limited to the level of detalization, unconditional wording and the ability to be performed independently.

2.3.3. Context of promise

Even if the promise of State was made in clear and specific terms, it could still be considered as non-binding due to the context of its making. ICJ has repeatedly emphasized the importance of the formulating circumstances on the validity of declaration. In *the Nuclear Test,* ICJ stated that «*It is from the circumstances attending their making, that the legal implications of the unilateral act must be deduced»*.[209] Similarly, In *the Armed Activities on the Territory of the Congo*, ICJ noted that «*In order to determine the legal effect of that statement, the Court must, however, examine its actual content as well as the circumstances in which it was made»*.[210] In *Frontier Dispute* ICJ also took into account the context of making the declaration «*in order to assess the intentions of the author of a unilateral act, account must be taken of all the factual circumstances in which the act occurred».*[211]

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[207] Biden, J. [@POTUS].(2022, April 21). Twitter
[208] Trudeau, J [@justintrudeau]. (2022, March 25). Linkedin
[209] ICJ, Judgment of 20 December 1974, Nuclear Tests (Australia v France), para. 51
[210] ICJ, Judgment of 3 February 2006, Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Rwanda), para. 49
[211] ICJ, Judgment of 22 December 1986, Frontier Dispute (Burkina Faso v Mali), para. 40

Numerous circumstances may indicate that the formulating State intended to be bound by its promise. One of such factors is the sufficient time for preparation of a unilateral declaration.[212] It means that a state representative has had the time to choose his or her words carefully and reflect upon their impact.[213] Christian Echart provides *the Eastern Greenland* case as an example when the requirement of sufficient time was satisfied.[214] In that case, the Danish representative asked about Norwegian position regarding Danish sovereignty over Greenland, Minister Ihlen did not answer on the spur of the moment, but asked for some time to consider the matter.[215] The fact that Norwegian Minister Ihlen provided his response over a week after the Counsel for Denmark asked him about that, indicated the obligatory effect of that declaration.[216]

Another factor that may indicate the intent of the State to create a binding promise is the consistent conduct of the formulating State regarding its commitment under the declaration and/or immediate performance of such commitment.[217] For instance, in *Qatar v Bahrain*, the unilateral declaration of Bahrain's Foreign Minister was found legally binding as it had been immediately executed.[218] Similar example is Biden's post on Twitter, where he promised to provide 500 mln dollars to Ukraine and immediately fulfilled that promise.[219]

Registration of a declaration with the UN Secretariat may also assist the Court in its considerations.[220] For example, in 1957 Egypt made a declaration regarding free navigation through the Suez Canal.[221] That declaration was

[212] Eckart, C. (2012) Promises of States under International Law, pp. 246
[213] Ibid
[214] Ibid
[215] PCIJ, Judgment of 5 April 1933, Legal Status of Eastern Greenland, para. 78
[216] Ibid
[217] ICJ, Judgment of 20 December 1974, Nuclear Tests (Australia v France), para. 43; Eckart, C. (2012) Promises of States under International Law, pp. 228
[218] ICJ, Judgment of 20 December 1994, Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v Bahrain), para.27
[219] Biden, J. [@POTUS].(2022, April 21). Twitter
[220] ILC, Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, with commentaries thereto, A/61/10 (2006), p. 370; Eckart, C. (2012) Promises of States under International Law, pp. 227
[221] Ibid

registered with the UN Secretariat and considered by ILC in their commentaries to the Guiding Principles as binding.[222]

Repeated pronouncement of the promise by the highest officials of the State is also an important factor for interpreting the intent of the formulating state.[223] For instance, in the Nuclear Tests case, the President of France, the Minister of Defense and the Minister of Foreign Affairs repeatedly promised to stop nuclear testing.[224] Similarly, Biden, Macron, Trudeau and other world leaders repeatedly promised at their official pages on social media to help Ukraine with the different kinds of assistance.

The previous conduct of the formulating State and the express context of the pronouncement of the promise are also valid factors.[225] In the case of promises made through social media, the requirement of the formulating context is of significant importance since such a fact as where the promise was made directly influences its legal effect. As for the place of formulation, there are a variety of social media platforms, although they serve for different purposes and are treated with different levels of severity. While Twitter and LinkedIn are mainly used for formal communication, Instagram and TikTok are used for entertainment and information there is not considered reliable and convincing. Therefore, only promises made through solid platforms like Twitter and LinkedIn could potentially have a legal effect.

Accordingly, there are a lot of factors that may indicate the intent to be bound. Without appropriate context even the «clear and specific« terms don't affect the legal force of the declaration. For instance, in the Frontier Dispute case, Burkina Faso argued that the statement of the head of State of Mali, made during the Mediation Commission of the Organization of African Unity,

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[222] Ibid
[223] Eckart, C. (2012) Promises of States under International Law, pp. 227; ICJ, Judgment of 20 December 1974, Nuclear Tests (Australia v France), para. 49
[224] ICJ, Judgment of 20 December 1974, Nuclear Tests (Australia v France), para. 49
[225] Eckart, C. (2012) Promises of States under International Law, pp. 227

regarding the delimitation of the frontier between Mali and Burkina Faso bound Mali.[226] Particularly, the head of State of Mali declared that:

> Mali extends over 1,240,000 square kilometers, and we cannot justify fighting for a scrap of territory 150 kilometers long. Even if the Organization of African Unity Commission decides objectively that the frontier line passes through Bamako, my Government will comply with the decision.[227]

Such factors as direct wording «*will comply»* and declaring the promise on behalf of the State *«my Government», «we cannot justify»* are clear and specific terms within the meaning of the doctrine of unilateral declaration. Nevertheless, ICJ still contended that the promise was not a binding declaration, but «mere witticism«.[228] ICJ referred to the Nuclear Test case, where the French declarations concerned the whole world and, accordingly, «*in the particular circumstances of those cases, the French Government could not express an intention to be bound otherwise than by unilateral declarations».*[229] ICJ compared that circumstances with the present one and concluded that they are totally different because:

> Here, there was nothing to hinder the Parties from manifesting an intention to accept the binding character of the conclusions of the Organization of African Unity Mediation Commission by the normal method: a formal agreement on the basis of reciprocity. Since no agreement of this kind was concluded between the Parties, the Chamber finds that there are no grounds to interpret the declaration …as a unilateral act with legal implications.[230]

The abovementioned interpretation significantly restricted the requirements for the unilateral declaration since in most cases it is possible to make a promise «*by the normal method»*. Thus, since the decision of ICJ in the Frontier Dispute, it is extremely difficult to prove the bindiness of the unilateral promises either those one made through the social media or the classical examples. On the one hand, such tight requirements significantly limited the number of cases, when the promises made through the social media could be considered as unilateral declarations with the relevant legal effect. On the other hand, softer criteria may

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[226] ICJ, Judgment of 22 December 1986, Frontier Dispute (Burkina Faso v Mali), para. 39
[227] Ibid, para.10
[228] Ibid, para.40
[229] Ibid
[230] Ibid

create additional obstacles for the development of international law. In particular, such a situation could negatively affect political relations by discouraging States to pronounce any far stretched proposition, since the latter could be viewed as a source of their obligations.

Thus, to indicate the will of the formulating State to be bound by the promise made through the social media, there must be appropriate formulating circumstances, such as the sufficient time for preparation of a unilateral declaration, the consistent conduct of the formulating State regarding its commitment under the declaration, registration of a declaration or the repeated pronouncement of the promise by the highest officials of the State.

For the sake of an overall conclusion, authorized representatives, and the will of the formulating State to be bound by the declaration are the crucial factors for determining the legal effect of unilateral promises. Neither of these requirements precludes the possibility of issuing promises through social media and, accordingly, such promises could potentially have a legal effect.

CONCLUSION

The analysis performed in this work allows us to conclude that at this point of development of the public international law, there are no clear and consistent legal rules and state practice regulating promises made through the social media platforms. However, such promises could potentially be viewed as the subcategory of unilateral declarations.

For the purpose of this analysis possibly applicable rules from the doctrine of unilateral declarations were identified and examined. In each chapter of the present thesis, those rules along with the circumstantial inferences were described in detail, due to that in this conclusion we will provide them in brief.

Within the first chapter, for determining the place of promises made through the social media platforms, the doctrine of unilateral declarations was examined. In particular, the definition of the unilateral declarations, their place among the sources of public international law and types were identified and analyzed.

As for the overall definition, we examined the proposals provided by PCIJ, ICJ and ILC, and determined that proposals of PCIJ and ICJ were mostly based on the particular criteria on legal effect of declarations, rather than on describing the declaration as such. Accordingly, the definition proposed by ILC: «*declarations publicly made and manifesting the will to be bound*»,[231] was considered as more useful for the purpose of this work as it gave a general description of the concept.

As for the place of the unilateral declarations among the sources of public international law, we considered the typology provided in the Article 38 of ICJ and analyzed the unilateral declarations in respect to the international conventions, general principles of law and the international custom in order to determine the basis of the legal force of unilateral declarations. In this regard,

[231] Ibid

treaties regulate issues of unilateral acts in the extremely rare cases and, accordingly, cannot be considered as the ground for the legal effect of the unilateral declarations. The general principles of law also do not suit as the source of the legal force of the declarations since they regulate exceptionally the field of their creation and performance. The international custom appeared to be the most acceptable base for the legal force of the unilateral declarations and to the promises made through the social media as its subtype, as there are both the relevant state practice and opinio juris.

As for the types of unilateral declarations, they were examined in order to determine the particular place for the promises made through social media and the applicable criteria for their bindiness. In particular, we analyzed recognition, protest, promise and renunciation and concluded that the promises made through social media falls under the scope of promises and the relevant criteria for the bindiness of promises also applicable to them.

Within the second chapter, we identified and examined possible factors that may influence the legal force of the promises made through social media: form, publicity, proper authority, reaction of the addressee State and intent of the formulating State. We reach a conclusion that form, publicity and reaction of the addressee State are not crucial requirements for the legal effect of the promises made through social media. Such a promises could have a legal force if they are made by heads of State, heads of Government, ministers for foreign affairs or other authorities empowered to represent the State at the international area with the relevant intent to be bound by the promise, which could be determined through the examination of the content of the promise and the context of its formulation.

Therefore, promises made through social media fall under the category of unilateral declarations, their legal effect is based on international custom, and they could be binding for the formulating State if they were made by the proper authority with intent to be bound by the promise.

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2. Statute of the International Court of Justice, San Francisco, 26 June 1945, United Nations Conference for the International Organization
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4. Paris Agreement, Paris, 12 December 2015, 2015 United Nations Climate Change Conference

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