CHAPTER 2

Definition of Unilateral Acts

2.1 Introduction

The aim of the present chapter is to examine the problem of defining a unilateral act of state in public international law. The authors of legal writings on unilateral acts have approached this question differently. Two extremes can be established in this respect. The first was to avoid any definition. In this sense the notion of a unilateral act of state is self-explanatory and does not need a traditional definition (that is definition comprising *definiens* and *definiendum*). The second extreme is to present a very strict and sophisticated definition. Such definitions are found first of all in the French, German and Italian legal literature. The underlying idea is a narrow understanding of a unilateral legal transaction of a state in public international law. Emphasis is put on the concordance of the legal effects of such an act and the will (or intention) of the author-state. A given unilateral activity is treated as a legal transaction only if its effects are covered by the will of the acting state. On the other hand when the effects of a given activity are determined by the law itself, that activity is not qualified as a legal transaction.

It is not surprising that this narrow definition works very well with respect to the classical catalogue of unilateral acts of states in public international law. As has been said several times, this catalogue is comprised of promise, recognition, waiver, and protest (and sometimes notification). The popularity of this catalogue may be viewed as support for a narrow definition of unilateral acts.

My initial plan when constructing this book was to call that definition a classical one. However, it seems it would be an abuse to use this name with respect to an idea which is completely absent in, e.g., the Anglo-Saxon legal literature. That is why the notion of ‘narrow definition’ will be used in the further part of the present work.

As has been said, it would be foolhardy to accept this definition without critical examination. Such examination is one of the aims of the present chapter. It will also discuss various other definitions proposed in the literature and presented during the works of the ILC on the topic of unilateral acts of states in public international law. They form an *acquis* which cannot be ignored.
The second task is more practical. If the idea of the present work is to search for unilateral acts of states in various branches of public international law, the several prerequisites of such an act must be established. These prerequisites (or characteristics) may be either inserted into a one-sentence definition or may be simply enumerated. Of course they will have to respond to the elements present in the very notion of a unilateral act of state in public international law. They must refer namely to the notion of an act, to its unilateral character, and to its connection with (involvement in) international law. These elements are usually inserted into a definition of a unilateral act, hence the present chapter is the best place to examine them.

It is evident at first glance that these elements are quite general. They allow for different interpretations and differing conclusions with respect to more specific aspects. So they must not only be examined, but discussed in more detail.

The main danger in works like the present one is to prejudge the conclusions at the moment of the choice of terminology and/or assumptions. For this reason a more open attitude is adopted as to the choice and understanding of the prerequisites of a unilateral act of a state in public international law. If this may be perceived as a drawback, a kind of compensation will be contained in Part 2, in which this relatively open idea of a unilateral act of state in public international law will be confronted with concrete activities of states.

2.2 Broader Categories Embracing Unilateral Acts of States

2.2.1 Introductory Remarks

Authors writing on unilateral acts of states in public international law (actes juridiques unilatéraux) could be divided into two groups. The first of them presents such acts in a wider context. Some of them even arrive at their definition by means of refining of such wider categories. This group comprises such authors as: D. Anzilotti,1 G. Morelli,2 E. Suy3 or W. Góralczyk.4 The second group of authors does not refer to such wider categories, perhaps with the

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2 G. Morelli, Cours général de droit international public, RCAD1, 1956, t. 1, pp. 584–587.