CHAPTER 15

Waiver in Public International Law

15.1 Introductory Remarks

Chapter 3 presented various lists of types of unilateral acts of states in public international law. While the lists suggested by the several authors differ to a very great extent, one of their common elements is the presence of waiver in each of them.1 Hence there is no possibility to leave it outside the scope of this book as well.

Some initial difficulty is connected with the very name of the act. The works in English use the name ‘waiver’, however R. Jennings and A. Watts prefer the term ‘renunciation’. They note that

Renunciation is often indistinguishable from waiver, it being largely a matter of usage and convenience which term is customarily employed in particular circumstances. ‘Renunciation’ may carry with it a flavour of permanence and comprehensiveness (as in the renunciation of all rights to sovereignty over territory), whereas ‘waiver’ tends to be more specific and related less to the right itself than to its exercise in a particular case (as in the waiver of diplomatic immunity), but no hard and fast distinction on these lines can be maintained.2

In fact, what is at stake here are some loose associations and linguistic intuitions. It is rather impossible to translate them into precise legal terms and construct definitions of two separate acts, i.e. of waiver and renunciation separately. What’s more, such remarks as the one above are hardly translatable into other languages, which also have their own problems. For example, the French term renonciation (meaning renunciation or waiver) may mean also termination of

---


an international agreement. Interestingly enough, Ch. Rousseau starts his considerations on waiver from the analysis of the latter meaning of the French term,\(^3\) which is obviously outside the scope of interest here.

### 15.2 Definition of Waiver

Several definitions of waiver refer both to its legal effects and unilateral character. For example, F. Pfluger writes that waiver in international law (\textit{der völkerrechtliche Verzicht}) is a unilateral legal transaction (\textit{Rechtsgeschäft}) of a subject of international law, a transaction which usually does not require the determination of an addressee and which is aimed at giving up (\textit{Aufgabe}) subjective rights.\(^4\) The unilateral character of waiver is underlined by other authors,\(^5\) as well as the special rapporteur.\(^6\)

Such definition is not however universally adopted with respect to the unilateral character of waiver. Already D. Anzilotti wrote that waiver could be unilateral but it could be based on a convention as well.\(^7\)

F. Berber defines waiver as a ‘unilateral declaration of will leading to abandonment (\textit{Aufgeben}) of existing rights or expectations (\textit{Anwartschaften}), or an agreement with another state containing abandonment of rights (\textit{das Einverständnis mit einer von einem fremden Staat vorgenommenen Entziehung eigener Rechte erklärt wird}).’\(^8\)

Interestingly enough, E. Suy attempts to separately define ‘waiver as a unilateral act.’\(^9\) This could be understood as a sign that waiver is not by definition a unilateral act. Hence it is little wonder that a definition which does not refer expressly to it as having a unilateral character is the safer course. So for example in the Polish literature R. Bierzanek and J. Symonides write that ‘waiver is an act by which a state gives up its rights.’\(^10\)

---