CHAPTER 2

Classification of Unilateral Acts

1 Introduction

This chapter purports to examine the different classifications of unilateral acts to be found in legal literature with a view to arriving at a typology that best reflects the variety of circumstances in which such acts occur in practice. The chapter will begin by discussing the difficulties inherent in the classification of unilateral acts. It will be argued that the lack of a widely agreed definition is the most serious obstacle to their systematisation. A number of definitions of unilateral acts that have been proposed in theory will be critically analysed and rejected on the ground that they are too narrow. The chapter will then provide an alternative definition of unilateral acts on the basis of the essential elements of their legal nature (unilateralism and the intention to create legal effects). Against this backdrop the chapter will continue by exploring different classifications of unilateral acts that exist in the literature. It will be argued that a classification on the basis of the legal context in which unilateral acts occur is preferable since it takes into account both the circumstances surrounding the making of the act and the effect of relevant legal rules.

At this point, one ought to bear in mind that the exploration of typologies of unilateral acts herein is by no means exhaustive; there is a considerable amount of literature on the different types of unilateral acts and almost every author who dealt with the phenomenon proposed a different classification, or, at least, a variation of the existing ones. However, due to space constraints, this chapter will focus on the typologies most commonly encountered in the literature.

2 The Difficulties of Classifying Unilateral Acts

From the outset, it should be noted that there is a degree of difficulty inherent in any attempt of systematizing such a heterogeneous group of acts as

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1 For a comprehensive account of the different classifications of unilateral acts to be found in the literature, see V. Rodríguez Cedeño, Fifth Report on Unilateral Acts of States, UN Doc. A/CN.4/525, p. 91.
unilateral acts. In international law unilateral acts are as various as they are numerous.\(^2\) States frequently use unilateral acts in the form of declarations, *communiqués*, or otherwise, to convey to other States or to the international community at large, a wide array of factual or legal situations. There are unilateral acts pertaining to the law of international personality, such as recognition of States or proclamation of independence; unilateral acts pertaining to the territorial status of States, such as acts of territorial or sea delimitation; unilateral acts pertaining to the judicial settlement of international disputes, such as declarations accepting the compulsory jurisdiction of the ICJ, or declarations made in the course of judicial proceeding. In light of the great diversity in which unilateral acts manifest themselves in international law, the hurdles of identifying common denominators upon which the grouping of such acts could be based become apparent. More particularly, the fact that unilateral acts are so diverse, both in terms of content and effects, and in terms of formulation, allows for only a few general criteria to be discerned.

Another corollary to the heterogeneity of unilateral acts that further frustrates the task of classification is the lack of an all-encompassing definition. International jurisprudence is of no avail in this matter. The ICJ, far from dwelling on issues of definition, has been more concerned with the particular circumstances under which binding force may be attributed to a unilateral act. Doctrine has also largely failed to produce a precise and all-embracing definition. At best, most definitions have been too general in scope to provide any degree of orientation. As Fiedler observes “attempts to reach a general definition by way of abstraction have failed because of the versatility of the various categories that need to be summarized under a common heading.”\(^3\) Thus, for example, Regaldies describes unilateral acts as “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.”\(^4\) For Jacque unilateral acts “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.”\(^5\)

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