CHAPTER 4

The Unilateral Nature of Unilateral Juridical Acts

1 Introduction

The first chapter of this book dealt with the problematics of conceptualising unilateral acts in the context of the sources of international law. It was argued therein that the problem of the relation of unilateral acts to the recognised sources of international law may not be answered without first establishing the legal nature of such acts. The second chapter focused on the questions of definition and classification of unilateral acts. It was argued that a definition of unilateral acts, rather than attempting to cover all situations in which such acts may occur, should concentrate on the essentials of their legal nature, namely on the element of unilateralism and on the element of the intention to create legal effects. Furthermore, it was claimed that a typology of unilateral acts based on the criterion of context would be preferable, since this criterion best reflects the variety of circumstances in which such acts occur in practice. The third chapter focused on the work of the International Law Commission on unilateral acts. It was established therein that, despite the commendable efforts of the Commission's Special Rapporteur and members, the final product (the 2006 Guiding Principles) falls short of providing any real assistance to the problem of ascertaining the legal character of a unilateral act in practice.

Against this backdrop, this chapter aims to explore the first element of the legal nature of unilateral acts, namely the element of unilateralism. The question of the unilateral nature of acts commonly designated as unilateral has been a fiercely debated one. As will be explained below, a number of international lawyers have questioned the extent to which legal effects may arise from acts of strictly unilateral origin. For them, the binding force of an act of seemingly unilateral origin does not stem from the act per se, but from the reciprocal relationship of which the act forms part. In this vein, opponents of the concept of unilateral juridical acts in international law have treated all instances of such acts in State and judicial practice as borderline examples of international agreements or estoppel.

On this basis, this chapter aims to answer two main questions: First, are unilateral acts, or some of them, of strictly unilateral origin, or could such acts be considered as resulting in the formation of international agreements, or as instances of estoppel? Secondly, if it is proven that some unilateral juridical acts may not be convincingly brought under the umbrella of international treaties or estoppel, then what is the legal definition of unilateralism? With respect to these questions, the chapter argues the following: it will be argued that by way of contrast to international agreements and estoppel where a degree of mutuality, consent or reliance is needed for the legal effects to arise, international law does not prescribe any such requirements in the case of some unilateral acts. Therefore, this chapter claims that a number of unilateral acts with legal effects on the international plane are of strictly unilateral origin.

Furthermore, it is argued that, while in the case of acts of a contractual nature the emphasis is on the interlocking of intentions, in the case of unilateral acts, the intention of the author State is, subject to certain conditions, autonomous in the production of the ensuing effects. Thus, this chapter defines unilateralism in terms of the autonomy of the act to produce legal effects in international law irrespective of any kind of acceptance or reliance on behalf of the addressee. Finally, while this chapter puts primary emphasis on the element of autonomy as the determinant factor in establishing the truly unilateral nature of an act, it is also supported here that the context in which the act occurs, i.e. the factual circumstances and the legal environment surrounding the making of the act, plays an important role in ascertaining the existence of the element of autonomy in practice.

The structure of this chapter is based on the idea that a clear distinction must be drawn between unilateral juridical acts and other phenomena in international law before defining the element of unilateralism. Thus, this chapter is conceptually divided in two parts. The first part aims to prove that unilateral acts constitute a legal institution distinct from international agreements or estoppel and the second part aims to establish a legal definition of unilateralism.

Finally, a note on the terms used in this chapter needs to be made. The terms ‘unilateralism’ and ‘unilateral nature of unilateral juridical acts’ are used interchangeably throughout the chapter. Although unilateralism, as mentioned in the introduction, is a broad concept that encapsulates a whole array of actions, political, philosophical and legal choices, it is used here to refer to the unilateral nature of unilateral acts.

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2 See generally P.M. Dupuy, The Place and Role of Unilateralism in Contemporary International Law, in “Unilateralism in International Law: A United States-European Symposium” held by