Relativities in Unilateralism and Bilateralism of the International Law of Antiquity

Péter Kovács

Professor, Department of International Law,
Miskolc University, Hungary

Introduction

Ubi societas ibi jus: this well known phrase, often used by the sociological school of international law,¹ is perfectly illustrated by the archaeological treasures displayed in the museums of the world. Nevertheless, historical chapters of treatises on public international law are often neglected by teachers and students. Long lists of historical data and events, the cascade of royal dynasties, battles and the terms of obscure agreements are not always truly appreciated.

Whatever the reasons for this instinctive refusal, one thing is certain: contemporary scholars of international law scarcely delve into the history of international law. And yet knowledge of historical practice and historical investigations are called for in cases submitted to adjudication, when contemporary consequences have to be drawn from a longstanding practice, or vice versa when a judge tries to avoid pronouncing upon the merits of a claim because of historical uncertainty.

Going back into history is therefore often useful, and it can be particularly interesting to know both how and where to find historical antecedents for current legal problems. In this short article, the author follows the functional method from among three possible approaches (namely, chronological, country related and functional). From this point of view, the dichotomy of unilateralism and bilateralism in international legal commitments of Antiquity is a question of some importance.

Historically, unilateral engagements and bilateral treaties had existed long before the appearance of multilateralism (i.e. the conclusion of multilateral conventions). City-states and empires in Antiquity could live together with two main types of instrument for entering into legal obligations. For the purposes of this study, unilateralism is understood as a legal policy or tendency which is based on the adoption of legal acts by a legislator while the addressee is the neighbourhood, or the outside world. In the context of this article bilateralism means the policy of entering into a contractual

obligation with another subject of international law. These two basic approaches were practised with minor contradictions, mixtures and subtleties: the elasticity of interstate law in Antiquity is called relativity in the present article.

It is obvious today that, despite the omission of unilateral acts in Article 38 of the Statute of the International Court of Justice, the legal value of a unilateral act and that of a treaty law commitment can be considered equivalent. The same equivalence of treaty law and unilateral obligations can be observed in Antiquity, although both are overshadowed by the phenomenon of relativity.

**Relativity in Bilateralism**

International law has existed for thousands of years. Scholars of international law can proudly refer to the fact that what the Louvre Museum of Paris, in its exhibition dedicated to the beginning of writing, shows in first place are examples of international treaties concluded between cities of Mesopotamia. Even the famous law codes of Antiquity are more recent than these ancient instruments. These instruments, thus contemporary to the birth of the written culture of mankind, were bilateral agreements.

The friendship agreement between the ruler of Lagash and the king of Uruk (ca 2400 BC) was completed later by another, contracted already as an alliance between Entemena, prince of Lagash, and Lugal-Kinishedudu, prince of Uruk (2404-2375 BC).

A kind of relativity of bilateralism can already be felt in the alliance between Naram-Sin, ruler of Agade, and the king of Awan. The document written in the Elamite language but in Akkad cuneiform contains the promise that “Naram-Sin’s friend is my friend, Naram-Sin’s enemy is my enemy”. It is not clear, however, whether Agade was linked by any corresponding obligation and it is in fact the king of Awan who had to take an oath of fidelity for the fulfilment of the alliance – which can remind us of a suzerainty agreement, where the treaty does not maintain the equality of parties pro futuro.

Bilateralism is relative in other historical examples as well.

It is known that the two versions of the alliance and non-aggression treaty concluded between Ramses II and Hattusili III display different contents, especially as to the roots of the previous conflict and the antecedents of the peace treaty. The conclusion of the treaty is estimated at 1269 BC, but 1259, 1283 and 1296 are also proposed in scientific literature as plausible dates. The preparation of authentic copies, immediately after the peace making was on the one hand useful for future historians and archaeologists, but it was also a very important international legal step to have taken. Not only the “archiving” was done in this way but the promulgation (or at least the publication) of the commitment was completed in order to inform the different segments of the population of the two empires. Three Hittite exemplars were found, two of which are exhibited in Istanbul, in the Archaeological Museum, and one in Berlin. A modern copper copy of one of the Istanbul exemplars was donated to the United Nations.³

---

³ The copy was made by Sadi Calik and can also be seen on the treaty collection homepage of the UN.