
The Place and Role of Unilateralism in Contemporary International Law

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Abstract

Unilateralism includes recourse to juridical unilateral acts but may also denote the general tendency prevailing among some powerful states or groups of states to act without regard to respect for the equal sovereignty of their partners. The recent period shows a recrudescence of such behaviour. It raises the issue of the threat posed to the whole international system established after World War II as reflected in the UN Charter, in which one of the basic principles is the general obligation of cooperation. It is therefore necessary, first, to review the scope of the general obligation to cooperate, and second the consequential residual place of unilateral action in relation to the new wave of unilateralism as well as to the questions raised.

1 Introduction

The decade just finishing offers a striking contrast between its opening and its end. For it began with the celebration of a United Nations Organization at long last reconciled with itself, tendering the prospect, offered by the allied victory over the Iraqi aggressor, of a 'New World Order'. Yet it is ending in the doubtful position of the action, collective but nonetheless unilateral, of the NATO member countries in Kosovo, with no UN mandate, and the complete freedom left Russia to crush innocent civilian populations in Chechnya.¹

In the meantime, the same decade brought the renewal of unilateral trade sanctions and bombings in decisions made by the United States against Iraq, and it maintains pressure within the UN Security Council for it not to remove sanctions against that country despite the deplorable situation of the civil population.

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¹ One might seek to say that the Chechen conflict, played out within the Russian Federation, does not concern the international community. It will however very quickly be noted that this argument no longer holds after a decade marked specifically by the international treatment of internal conflicts, the latest illustrations being the Kosovo and East Timor crises.

what is meant by ‘unilateralism’. Like the god Janus of old, the notion seems to have two faces: one properly legal, the other more deliberately political, in the sense it is possible to talk of ‘foreign legal policy’.²

From the strictly legal angle, unilateralism denotes the taking of unilateral legal actions. By contrast with treaty actions, unilateral acts express the will of only one subject of law (*individual unilateral acts*) or a single group of subjects together in a collective body, generally itself endowed with legal personality (*collective unilateral acts*). Whether aimed at establishing the opposability of a legal position vis à vis those engaging in the acts (recognition, or instead protest), at exercising sovereign rights (such as the delimitation by a state of its territorial waters) or creating legal commitments, as the International Court of Justice found in 1974,³ they generally fall within the framework of the application of international law. Their proper legal nature cannot be doubted.⁴

Unilateralism includes recourse to such acts. But from a political viewpoint the concept also designates the use that a state or group of states acting collectively makes of it for certain definite goals, for instance aiming at influencing the outcome of multilateral negotiations. An example is the desire of the United States, after refusing to sign the Convention on the Law of the Sea, to alter its balance and even certain of its most decisive substantive aspects, while, even after adoption and entry into force of the 1994 supplementary agreement, maintaining its position as third party outside the main convention.

Unilateralism undeniably has a strong pejorative connotation. A little as in football, the state regarded as guilty of unilateralism is the one that does not play the collective game; the one that ‘plays personally’; in short, the one that puts the triumph of its interests before that of the collective interest, without even speaking of the ‘common good’. Moreover, to defend themselves against an accusation, many states have recourse to the explanation that if they act unilaterally, it is not or not only for themselves, but in the interest of all. This has notably been the case with Canada, which on several occasions has adopted domestic laws allowing it to intervene outside its area of jurisdiction to protect certain marine biological resources.

This ‘unilateralism’ has undoubtedly been on the up in the immediately contemporary epoch, in various areas we shall go on to highlight. Let us clarify that since the point here is to consider unilateralism in the context of a Euro-American colloquium, it is not for me, a European lawyer, to pretend that such practices are an exclusive province of the United States. Some states outside the European Union, for instance, might very well assert that the latter too practises unilateralism in several areas. It is true they will often mean the Union’s protectionist actions in customs areas, though that is part of the essence of the Common Market. But after all, it is the very essence of international politics to be animated by the confrontation of national or inter-regional interests.

² See G. de Lacharrière, *La politique juridique extérieure* (1983).

³ *Nuclear Tests Case*, ICJ Reports (1974) 267, at para. 43.

⁴ See e.g. P. M. Dupuy, *Droit international public* (4th ed., 1998) 308–315.

The fact remains that the United States is *the* superpower of the moment. This is not just in the military and strategic area but also, and perhaps especially, in the economic sphere: the Chairman of the US Federal Reserve and the managers of the biggest American multinationals exert prime influence over the whole world economy; and it is undoubtedly due to the United States that that economy was able to emerge without too much damage from the severe economic crisis it was going through barely a year ago, in 1998. It might be explained that this eminent service rendered to the international collectivity has a psychological tendency to enhance the self-satisfaction of US Congressmen. Additionally, in political terms, the United States often points out to Europeans the absence of any very coherent European Union foreign policy, to justify a greater commitment than they might have wanted.

The fact remains that though (along with a few others) Americans were initiators of the international institutions set up after the Second World War, starting with the UN itself, the United States has sometimes given the impression of wishing to assert itself above international law, in sharp contrast with the respect for the 'rule of law' they remain so attached to in their internal order. The US Congress in particular often seems animated by a paradoxical mixture of isolationism and hegemonic desire that impels it to recall that the United States is not prepared to pay arrears to the United Nations in order to gain better control over it.

The Supreme Court itself does not seem very impressed, to say the least, by the interim orders and measures taken by the International Court of Justice to ask the authorities concerned to spare from execution foreign nationals under sentence of death who had been unable to enjoy the rights the Vienna Convention on Consular Privileges and Immunities nonetheless confers on them.

Contemporary Europe, for its part, in growing awareness of its economic power and desire to protect its nationals, also lets itself be tempted by unilateralism. But being in any case less homogeneous, it knows it owes its very existence to international law. The institutions that structure it and enabled it to reconstitute itself after the war derive directly from international law, and each of the states that make it up has a very strong sense of its dependence on the others, something for which there is no equivalent in the United States, perhaps wrongly.

For the second time in three years, accordingly, *EJIL* editorial board members thought it of interest to encourage a meeting between European and American internationalists, to have them compare their analyses of the most contemporary manifestations of unilateralism. They will be able to do so this year (after meeting in 1997 at the Paris Institut des Hautes Etudes Internationales⁵) thanks to the dynamism of the International and Comparative Legal Studies Department of Michigan University Law School, co-organizer and host of this two-day colloquium.

The place of unilateralism in today's international law is undoubtedly highly dependent on political factors, already briefly mentioned; but it depends first and

⁵ Université Panthéon-Assas, Paris 2. The proceedings of that colloquium were published in the *EJIL* under the title *Symposium: The Changing Structure of International Law Revisited* 8 (1997) Nos. 3 and 4, and 9 (1998) No. 1.

foremost on the conditions in which the international legal order determines recourse to unilateral acts, as defined earlier. From this first viewpoint, one substantive rule of positive international law seems to throw light on the whole area. This is the major, fundamental, importance the positive law accords to the general obligation of cooperation. It is in the light of the scope of this obligation that the questions raised by today's recrudescence of unilateralism should be examined.

2 Scope of the General Obligation to Cooperate

According to Article 1 of the UN Charter, the organization's three purposes are to 'maintain peace and international security', 'develop friendly relations among nations based on respect for the principle of equal rights of peoples' and finally to 'achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights. . . '.

These three principles are not isolated from each other. Indeed, they are perfectly congruent: peace is secured through developing friendly relations among states, which are established specifically through cooperation; cooperation is thus designated by the Charter as the main instrument for promoting truly peaceful international relations.⁶

It should be added that respect for the principle of the sovereign equality of states, taken up again in Article 2(1) of the Charter, can perfectly accommodate the taking of unilateral legal acts by each state within the legal framework of its competency, even though hard to reconcile with the legal-political unilateralism mentioned earlier. At this stage, we may then take it without hesitation that the principle of cooperation is one of the three constitutive pillars of the UN Charter, which is itself the basis for the whole post-war international legal order.

It remains to consider, as the International Court of Justice did in 1986 in connection with the principle of non-use of force, whether this principle, a treaty principle since it is laid down in the Charter, also has the nature of a general custom.⁷ It seems particularly easy to answer this question in the affirmative. The Court, as we know, concluded that the rule of non-use of force has a customary nature despite the very considerable number of cases in which practice shows disregard for the Charter principle.

Had it had occasion to speak on the nature of the principle of cooperation, it can hardly be doubted that it would have been in a much more comfortable position, in concluding in the same way that the principle was of a customary nature. For that, it is enough to consider the very considerable mass of bilateral, regional or universal treaties concluded at least since 1945 with the avowed aim of specifically establishing and reinforcing cooperation among the states concerned. The bulk of these

⁶ See Wolfrum, Article 1, in B. Simma (ed.) *The Charter of the United Nations, A commentary*, 49 ff. Cf. Bedjaoui and Lachs in J.P. Cot and A. Pellet, *La Charte des Nations Unies, commentaire article par article* (1991) 24–38.

⁷ ICJ Reports (1986) 99–100, §§188–190.

cooperation treaties are themselves underpinned by an even more voluminous quantity of non-treaty legal instruments asserting the same obligations of cooperation. The whole set ends up confirming that the practical implementation of the general cooperation obligation in all sectors and at all levels of international life is the expression of a truly universal *opinio juris*.

All these legal instruments, all the international institutions that many of them establish, all the areas that they cover, attest, as Wolfgang Friedmann already said in the early 1960s, that today's international law is conceived of, if not always practised as, the international law of cooperation.⁸ This is the alpha and omega of United Nations law, but also of general international law. What state, however powerful, would today dare dispute it, and on the basis of what legal argument? But it does not have the effect of breaching state sovereignty. On the contrary, as we have just said, the general principle of international cooperation is founded on the fact that no state may unilaterally impose its will on others, nor substitute a diktat for concerted action. The cooperation obligation and respect for the sovereign equality of states are closely linked. The former derives from the latter, since an obligation or situation involving its interests cannot be unilaterally imposed on a state without its consent.

The relationship between the obligation to cooperate and the obligation to negotiate remains to be clarified, with the latter in reality appearing as one of the translations of the former, certainly the most immediate one. The outcome is that the place reserved for unilateral action through legal acts bearing that name is both residual and conditioned.

3 The Residual Place of Unilateral Action

The constitutive nature of the general cooperation obligation does not mean that states can no longer have recourse to unilateral legal acts, as we listed them above, to apply international law by taking a position regarding the opposability in particular positions, exercising their sovereign powers or making commitments of a normative nature. This part of classical positive international law, the *international law of coexistence* to use Friedmann's terminology again, has lost nothing of its topicality. On the contrary, the assertion of the fundamental nature of the general cooperation obligation has precise legal implications as to the legality of the unilateral behaviour of states from other viewpoints.

The first logical implication seems to be that of restricting recourse to the classical legal institution of reprisals. This means of course armed reprisals, the bar on which is rooted in Article 2(4) of the Charter and the corresponding general customary obligation. But it is also the case for non-military reprisals, in particular economic ones. Already, as the arbitration ruling in the *Nautilaa* (1928) case showed, subject to the general condition of reciprocity, they are also subject to other conditions, of which

⁸ W. Friedmann, *The Changing Structure of International Law* (1964) 410. For a comparison of Friedmann's ideas with recent developments in international law, see the four symposia published in the *EJIL*, *loc. cit. supra*, and in particular, Dupuy, 'International Law: Torn between Coexistence, Cooperation and Globalization', 9 *EJIL* (1998) 278–286.

Article 47 of the International Law Commission's draft on state responsibility effectively retraces the main features. Nor is it a coincidence either that adoption of the UN Charter was followed in 1947 by the adoption of the GATT, Articles XXII and XXIII of which, as we know, themselves subject adoption of economic countermeasures by states parties to precise substantive and procedural conditions, even if it has to be recognized that these provisions, today taken over and considerably developed in the 'Memorandum of Agreement on the Rules and Procedures Governing the Settlement of Differences', remain subject to the relative effect of treaties (*res inter alios acta*).⁹

The restriction of the space left for legal unilateralism emerges in positive international law in many other ways, being supported on rules some of which are, moreover, very old. One might mention in particular the ban on unilateral denunciation of a treaty, again verified in the International Court of Justice's recent case law,¹⁰ or the strict nature of recourse to actions claimed to be based on 'circumstances ruling out wrongfulness', including, in particular, invocation of the state of necessity, even if the Court's case law in the *Gabcikovo-Nagymaros Project* case recognized, and rightly, the conditional invocability of the notion of a 'state of ecological necessity'.¹¹

To finish this broad-brush sketch of the features if not the legal scheme of the general cooperation obligations,¹² we shall set out the following benchmarks:

- In reference to the typology of international obligations, one might say that the cooperation obligation, like the obligation to negotiate that is part of it, is an obligation on conduct and not of result, in the sense, as I have already had occasion to state elsewhere, that it is an 'obligation to endeavour' (*obligation de s'efforcer*), not an obligation to arrive at an expected result at all costs.¹³ In other words, it places a duty on states to seek in good faith to find through dialogue a solution compatible with the interests of all states concerned. It obliges them, of course, where cooperation and negotiation structures have been opened to them through treaties and the creation of international institutions, to have recourse to these norms and these institutions, on pain of incurring, if they are ignored, international liability vis à vis the states concerned. It does not necessarily oblige states to reach a conclusion, if the diligence that might reasonably be expected of them has nonetheless not been enough to reach a mutually acceptable solution. Nor can it oblige a state to consent to a solution, even if negotiated, that departs too radically from the concessions it would be prepared to make to adhere to that

⁹ See J. Jackson, *The World Trading System* (2nd ed., 1997) 112–127; E. Canal-Forgues, *L'institution de la conciliation dans le cadre du GATT* (1993) 687.

¹⁰ In *Gabcikovo-Nagymaros Project*, ICJ Reports (1997) §§98–115.

¹¹ *Ibid.* §§49–59.

¹² In speaking of the general cooperation obligation here, we distinguish it from the special obligations whose content and implementation framework are laid down by particular treaty rules, by definition applying only to the parties to the agreement establishing them.

¹³ See Dupuy, 'Reviewing the Difficulties of Codification: On Ago's Classification of Obligations of Means and Obligations of Result in Relation to State Responsibility', 10 *EJIL* (1999) 371–387.

same type of solution. The assessment of the reasonability of such behaviour depends, of course, on a case-by-case evaluation by the partners, or, possibly, by the judge. The upshot is that we are here very close to what the WTO Appellate Body recently posited in the *Shrimp/Turtle* case, which might be stated as follows: no state may have recourse to the taking of unilateral measures before first exhausting means of international negotiation.

- In reference to the theory of the substantive plenitude of international law, which enables apparent lacunae to be filled, the existence of the general cooperation obligation allows the following to be concluded: placed in a position approachable either unilaterally or by means of cooperation, every state is led by a key principle of the law of coexistence, namely respect for the sovereign equality of states, as well as by the very essence of the law of cooperation, to renounce unilateralism and choose the path of compromise and negotiated settlement. However, one must perforce consider that neither the antiquity, the solidity nor the breadth of the implications of the general duty of cooperation have in recent years been able to prevent return to a new era of unilateralism.

4 The New Wave of Unilateralism

Some of the most salient manifestations of the phenomenon of return to unilateralism will be considered below, before going into the questions it raises.

A *The Phenomenon*

It was undoubtedly the affair caused by the agreement on air services of 27 March 1946 (the *Aerial Incident* case) and the arbitration ruling handed down between France and the United States to which it gave rise on 9 December 1978 that marked a new inclination to look on the unilateral reflex with favour.¹⁴ The arbiters said in it that states are likely to resort to 'countermeasures', 'subject to the general rules of international law regarding armed constraint', when confronted with a situation that in their view involves breach by another state of an international obligation towards them. This statement by the arbiters is all the more open to criticism for seeming to care not a whit for the scope and implications of the general cooperation obligation considered above. And it has been, moreover, heavily criticized by legal scholars. In particular, the ruling accepted the American conception that a state can have recourse to unilateral countermeasures without even waiting for resumption or even the outcome of negotiations embarked on with the partner was felt to be at fault. This conception has since, fortunately, been implemented by Article 40(1) of the Draft adopted in its first reading by the International Law Commission in 1996.

The above ruling, however, echoed a provision proposed by the special rapporteur to the International Law Commission on the law of international liability of states. Considering the circumstances precluding wrongfulness, Professor Roberto Ago, in his reports, initially spoke of 'sanctions' rather than unilateral countermeasures by a

¹⁴ Text in *Revue française de droit aérien* (1979) 486.

state which alleged that another was guilty of a wrongful act towards it. At his invitation, Article 30 of the Draft was adopted by the Commission. This provision establishes that the wrongfulness of such a 'countermeasure' disappears to the extent that it itself constitutes a response to an initial wrongful act committed by another state against its perpetrator.

It is in the area of international trade law that the rise of unilateralism has been most perceptible. The United States took the initiative with the well-known section 301 of the Trade Act, subsequently strengthened, which gave the US President the opportunity for taking unilateral sanctions, totally ignoring the conditions laid down by the 1947 GATT system, or the later 1995 WTO one. There are abundant instances of the practice of these measures, even recently.

In the same vein, one must deplore the multiplication of cases where the domestic legislator does not hesitate to give extraterritorial scope to national legislation. The most recent cases, though some, we feel wrongly, have disputed their extraterritorial nature, are constituted by the Helms-Burton and d'Amato laws, both adopted in 1996, practice with which has shown to be both intellectually confused and in practice very hard to use, something the State Department itself was apparently always convinced of, though it could do nothing.¹⁵ The very vivid response aroused by the entry into force of the two laws cited shows the general rejection by states of the American initiatives to be confirmed. The European Union, the Inter-American Law Committee, the states taking part in the June 1996 G7 summit in Lyons, the OECD, the NATO secretariat, all clearly and quickly indicated their refusal to accept the undoubted extraterritorial consequences of the two Acts. Canada, Mexico and the EU Council additionally adopted legislation intended to counter any extraterritorial measure adopted by a foreign state.

The European Community, partly in response to the previous American initiatives, had nonetheless itself had recourse to thoroughly questionable practices from the legal viewpoint over the previous decade, with their potential for extraterritorial application. This is illustrated in particular by the questionable case law of the Court of Justice of the European Communities in the *Woodpulp* judgment of 27 September 1988, examining a Commission Decision of 19 December 1984.¹⁶ The Commission had in fact not hesitated to use its sanctioning powers against foreign firms with headquarters outside the Community, on the ground that they had engaged in a tariff agreement with competition-distorting effects within the Community, contrary to the Community rules.

In the area of peace maintenance, cases are equally numerous where the provisions of Chapter VII or resolutions taken pursuant to it have been interpreted very extensively, or quite simply ignored. This is particularly the case with unilateral

¹⁵ See especially Lowenfeld, 'Congress and Cuba: the Helms-Burton Act', *AJIL* (1996) 419–434; Clagett, 'The Cuban Liberty and Democratic Solidarity Act, continued, a Reply to Professor Lowenfeld', *AJIL* (1996) 641–644; Stern, 'Vers la mondialisation juridique? Les lois Helms-Burton et d'Amato-Kennedy', *Revue Générale de Droit International Public*, 4 (1996) 979–1003.

¹⁶ See J. Dutheil de la Rochère, *Réflexions sur l'application 'extra-territoriale' du droit communautaire* (1991) 281–295.

military initiatives by the United States, either alone or in conjunction with the United Kingdom, consisting in the bombing of Iraqi territory to compel its government to disarm. These initiatives, incapable of being authorized by any United Nations mandate, are clearly illegal in the light of the law of the United Nations and international law in general.¹⁷

The case of the joint action by NATO Member States in Kosovo is more complex. In summary, it may be said, taking up a particularly illuminating theoretical distinction we owe to Norberto Bobbio, that it was valid from the substantive viewpoint, but invalid from the formal viewpoint. That means that the objectives assigned to the military intervention were clearly in accordance with the defence of some of the most fundamental principles of humanitarian international law and of human rights.¹⁸ By contrast, the formal validity of the action was equally manifestly nonexistent, since it was carried out outside of the organic framework laid down in Chapter VII. Nor was it in application of the provisions of Chapter VII. Putting things differently, the NATO initiative as it were put the organic and the substantive aspects of the Charter back to back. It should further be noted that this raises one more question, this time bringing out the shortcomings of the Charter. This question, to which the resolution called 'Union for the Maintenance of Peace' had already sought to bring an answer in 1950, is what to do where the Security Council is paralysed by the veto of one or more permanent members, although the peace, or in the specific case the dignity or even the survival of a people are very severely threatened. The problem posed by this unilateralism is, then, whether it is a legitimate substitute for concerted action to maintain peace, as laid down in the UN Charter. In any case, here too it could at best be a last recourse. The NATO action, whatever one's judgement might be on its legality, clearly shows a weakening of the system of collective security and of the United Nations, much praised as they were just a few years ago.

Finally, without making the list in any way limiting, we must also point out how the area of environmental protection has in recent years encouraged some states to have recourse to unilateralism, albeit in the name of the interests of the international community. We shall give only one example here. This is the Canadian action taken in 1995 against a Spanish fishing boat, the *Estai*, pursuant to its national law for the protection of certain species of large migratory fish.¹⁹ But this action was carried out outside the area of Canada's maritime jurisdiction. It was against a Spanish ship even though, as the Canadian authorities themselves admitted, the Spanish fishers' catches had not exceeded the quotas set under the NAFO Treaty. Additionally, it was carried

¹⁷ See e.g. Condorelli, 'A propos de l'attaque américaine contre l'Irak du 26 juin 1993: lettre d'un professeur désemparé aux lecteurs du JEDI', 5 *EJIL* (1994) 135–145.

¹⁸ See especially Simma, 'NATO, the UN and the Use of force: Legal Aspects', and Antonio Cassese, 'Ex injuria jus oritur: Are We Moving towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?' 10 *EJIL* (1999) 1–22 and 23–31.

¹⁹ This case gave rise to a complaint by Spain against Canada before the International Court of Justice. Canada had however taken the precaution just before adopting the law pursuant to which it seized the Spanish ship to amend its declaration recognizing the Court's jurisdiction to exclude the type of act it was planning to commit. The Court declared itself incompetent in its ruling of 4 December 1998 on competence fisheries matters (*Spain v. Canada*).

out although that international organization offered a permanent negotiating framework specifically adapted to this purpose. This is the very type of unilateral action that counts as a breach of special and general cooperation obligations incumbent on the state that committed it.

The list might be lengthened, but given that the phenomenon exists, it is perhaps better to address the fundamental questions it raises.

B Questions Raised by the Growth of Unilateralism

Two series of questions in particular may be put. The first concerns the effect of this increased return to unilateralism on the international institutional system, starting with the United Nations. The second goes further in examining the concept that partners in international relations have of the regulation of these relations within an international community dominated by globalization.

One cannot pretend to ignore the very marked loss of prestige for the United Nations after 1994–1995. It has been felt all the more because its effectiveness had been exaggeratedly celebrated by official propaganda following the Gulf War. In fact it was the difficulty of the situation in ex-Yugoslavia, especially in Bosnia, that marked the decline of the organization. The Western countries' political responsibility was decisive in this connection. Russia's and China's are however no less, since it was they who paralysed the Security Council. On the one hand, European Union countries were not able to display their unity clearly enough, and it will be for history to ascertain whether the United States really did wish to encourage the search for effectiveness of European foreign policy, particularly in Yugoslavia. I personally have serious doubts in this connection. On the other hand, Richard Holbrooke's talented mission to begin negotiating the Dayton–Paris agreements was based on deliberately setting aside the UN, admittedly in accord with the wishes of several partners to the negotiations.

It is still against this background that the unilateral NATO action a little over three years later in the Kosovo affair stands out so sharply. Its initiative finally showed that, for the Western permanent members of the Security Council, the UN is no longer necessarily the main organization for keeping peace, even if very patent differences of feeling, particularly between France on the one hand and the United States and Great Britain on the other, emerged in the way the various heads of state and government justified the intervention.

Whatever the great difficulties of the legal questions raised by the Kosovo affair, mentioned above, we must here stress the serious consequences that confirmation of the UN's sidelining, still worse dismissing, would have when it comes to international peacekeeping. The system of collective security is founded on the cooperation of all for the unilateralism of only one. All means all the Member States of the organization, starting with the permanent members of the Security Council. One alone means the UN itself, which through its 'chief peacekeeping organ', the Security Council, should be brought to intervene to restore situations harming or threatening the maintenance of peace. This is, then, a centralized system, even if not exclusive. Recourse to regional agreements or institutions is itself subordinate to monitoring by the organization under Chapter VIII.

The question is, therefore, whether this centralized system can stand up to competition not provided for in the UN's founding texts without the organization being greatly devalued. One may well have doubts in this connection. The danger is that if collective unilateralism takes the place of collective action under the Charter, we may see reappearing the reign of 'sphere of influence' or of 'backyards' in which some parties are barred from intervention. The new developments in the Chechen crisis of autumn 1999 seem to show this. This means that it is the dismantling of the whole system of collective security that we risk seeing. But the United Nations Charter does not just set up organs and procedures. It also asserts basic principles. By weakening or marginalizing the former we also risk reducing the scope of the latter. The responsibility here is certainly collective, but primarily concerns the five permanent members of the Security Council, without whose agreement the system itself provides for its own paralysis.

Relocated in the still broader context of globalization, the phenomenon we have just been talking about seems still more worrying. One may no doubt ask whether there does not at present exist, according to one particular conception of globalization, a sort of long-term strategy consisting in replacing the legal norms and procedures set up after the Second World War by the predominant reign of market forces, in the sense that the tradition of economic liberalism inherited from Adam Smith has always given to that expression. This means globalization as an undertaking to deregulate the international system, as it were! The substitution of the laws of the market for legal norms is, admittedly, partial; but for the reasons mentioned above, the international system established in 1945, at least as regards peacekeeping, is a monopolistic system. It cannot for long bear competition without either triumphing again or sinking with all hands. Ultimately, the debate on the respective roles of unilateralism and cooperation raises the fundamental question of the present and future regulation of the international system. The institutional system established after 1945 is certainly showing its age and needs renewal. But the solution cannot consist in universal acceptance of the hegemony of just one, whatever be the services it is undoubtedly at present rendering to the international economy.

One of the dominant features of the difference between the United States on the one hand, and the countries of Western Europe, including the United Kingdom, on the other, lies perhaps just in the different evaluation they make of the need to restore the authority of the United Nations system. The European countries cannot see any real substitute for it. Many in the United States seem on the contrary to consider that it is perhaps time for an overall reconsideration of the system. The question of the legitimacy of American leadership reappears, therefore, especially when we come to consider specifically legal effects or reflections. On either side of the Atlantic, there is perhaps too much of a tendency to favour only one side of the matter, and perhaps what I myself have just said to you is itself witness to that; it must be offered, along with all the rest, to collective criticism.