
The 'International Community': Facing the Challenge of Globalization

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Abstract

The article seeks to analyse the current state of the 'international community' in the light of different traditions of thought. It finds the distinctive element of 'community' in the prioritization of community interests as against the egoistic interests of individual states. Whereas factual interdependence undeniably exists in the contemporary state system, several traditions of thought shed a different light on the existence of common values and institutions. Modifying a classification coined by Hedley Bull, the article distinguishes four views of the international system: a 'Hobbesian' or 'realist' tradition, a 'Vattellean' or internationalist tradition, a 'Grotian' or 'communitarian' tradition, and a 'Kantian' or universalist tradition. In an analysis of the current state of affairs, the article claims that the classical 'Lotus principle' is giving way to a more communitarian, more highly institutionalized international law, in which states 'channel' the pursuit of most of their individual interests through multilateral institutions. Nevertheless, the authors do not deny the aspirational element of the 'community' concept.

In this brief comment we do not wish to put forward yet another analysis of the state of international affairs in the age of globalization.¹ Instead, our intention here is to

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¹ On globalization see A. Giddens, *The Consequences of Modernity* (1990), at 64 *et passim* (presenting globalization as interdependence without differentiation of time and space); N. Luhmann, *Das Recht der Gesellschaft* (1993), at 571 *et seq.*; *idem*, *Die Gesellschaft der Gesellschaft* (1997), at 148–170, 806–809; Teubner, 'Legal Pluralism in the World Society', in G. Teubner (ed.), *Global Law without a State* (1997) 3, at 23 note 6 (both emphasizing functional instead of territorial differentiation); Alston, 'The Myopia of the Handmaidens', 8 *EJIL* (1997) 435; Delbrück, 'Globalization of Law, Politics, and Markets — Implications for Domestic Law — A European Perspective', 1 *Indiana Journal of Global Legal Studies* (1993/4) 9, at 14–19; Sur, 'The State between Fragmentation and Globalization', 8 *EJIL* (1997) 421, at 428–434.

examine the question of the significance of the term 'international community' from the perspective of several traditions of thought in international law, politics and ethics. We will then seek to draw upon the insights gained for a reflection on the situation of the international community as this century comes to a close.

1 The Meaning of the Term 'Community'

It is no mere coincidence that this symposium on the changing structure of internal law ends with a reflection on the term 'international community'. Resolutions of international conferences, of the UN General Assembly, and even the Security Council have used this term in an almost inflationary way.² The International Court of Justice has also referred to it repeatedly: in one instance, in the case of the *US Hostages in Tehran*, in an appeal to the international community;³ in another, its famous *obiter dictum* in the *Barcelona Traction* case, to characterize obligations *erga omnes* as commitments towards the international community as a whole.⁴ Similarly, Article 53 of the Vienna Convention on the Law of Treaties defines preemptory rules, *jus cogens*, as norms 'accepted and recognized by the international community of states as a whole'.

The notion of 'international legal community' (*Völkerrechtsgemeinschaft*) proceeds from the assumption that it is international law which binds the parts together, affirming the existence of a 'community of states' on the one hand and lending the necessary normative structure to this community on the other: thus, not only '*ubi societas, ibi jus*', but also and above all '*ubi jus, ibi societas*'. From this perspective, the community of states is viewed exclusively as a community under international law, and this legal community is made up exclusively of states.⁵ In our view, such a definition is clearly circular. An analysis of law common to particular social groupings may, of course, indicate 'society' or even 'community' structures, but the assumption that a society/community could be held together by means of legal norms alone overestimates the capacity of law and, conversely, underestimates the necessity of a

² Cf. the examples given by R.-J. Dupuy, *La communauté internationale entre le mythe et l'histoire* (1986), at 12 *et seq*; Tomuschat, 'Die internationale Gemeinschaft', 33 *Archiv des Völkerrechts* (1995) 1.

³ *United States Diplomatic and Consular Staff in Tehran*, ICJ Reports (1980), at 43. Cf. *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* ICJ Reports (1971), at 56. In the 1996 Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, ICJ Reports (1996), the ICJ uses the term seven times, but mostly in the sense of 'all states'. But cf. the Declaration of Judge (then President) Bedjaoui (*ibid.*, at 270) for a use of the term more in line with what we suggest below.

⁴ *Barcelona Traction, Light and Power Company, Limited, Second Phase*, ICJ Reports (1970), at 32. For a pertinent commentary on the relevant jurisprudence of the World Court, see Gowlland-Debbas 'Judicial Insights Into Fundamental Values and Interests of the International Community', in A. S. Muller, D. Raic and J. M. Thuranszky (eds), *The International Court of Justice: Its Future Role after 50 Years* (1996) 327.

⁵ In this sense already A. Verdross, *Die Verfassung der Völkerrechtsgemeinschaft* (1926), at V. Cf. also H. Mosler, 'The International Society as a Legal Community', 140 *RdC* (1974, IV) 1, at 32; M. Virally, 'Panorama du droit international contemporain', 183 *RdC* (1983, V) 9, at 28.

societal consensus as a precondition for the formation of, and particularly respect for, legal rules.

In some of the literature, the term international community is used simply to describe the whole international system, the international actors and their international relations.⁶ But when we look at general usage, the ‘international community’ seems to be more frequently invoked to denote the repository of interests that transcend those of individual states *ut singuli* and are thus not — or, at least, not fully — comprehensible within the classic bilateralist paradigm. In this conception, the element which distinguishes a ‘community’ from its components is a ‘higher unity’, as it were, the representation and prioritization of common interests as against the egoistic interests of individuals.⁷ In this view, a mere ‘society’ (*Gesellschaft*), in contrast, does not presuppose more than factual interdependence among a number of individuals.⁸ Hence, if there is an international community, it needs to have certain interests common to all its members and a certain set of common values, principles and procedures.

However, a ‘community’ does not only possess an inside aspect, but also presupposes an outside, an environment against which it defines and delineates its identity. In the case of an all-embracing community like the international one, it is unclear who or what constitutes this ‘outside’: Does it only consist of those with whom nobody wants to deal, namely, terrorist ‘rogue states’? But even these outcasts are not fully excluded from international relations and institutions. Does the ‘international community’ personify a particular civilization and value system, namely, a ‘Western’ way of life, and therefore exclude groups opposing those values — religious fundamentalists or advocates of ‘Asian values’, to name a few? But if this is the case, how can the international community engage people and peoples from different cultural backgrounds?

⁶ From a historical perspective see Abi-Saab, ‘International Law and The International Community: The Long Road to Universality’, in R. MacDonald (ed.), *Essays in Honour of Wang Tieya* (1994) 31; A. Cassese, *International Law in a Divided World* (1986), at 1 *et seq.*; from a systemic approach McDougal, Reisman and Willard, ‘The World Community: A Planetary Social Process’, 21 *U. C. Davis L. Rev.* (1988) 807, at 809 (emphasizing factual interdependence). N. Luhmann speaks of ‘world society’ and emphasizes interdependence by communication: *idem*, *Das Recht der Gesellschaft* (1993), at 571 *et seq.*; *idem*, *Die Gesellschaft der Gesellschaft* (1997), at 148 *et seq.*

⁷ Cf. from among a rich literature Dupuy, *supra* note 2; M. M. T. A. Brus, *Third Party Dispute Settlement in an Interdependent World* (1995), at 128 *et seq.*; Frowein, ‘Das Staatengemeinschaftsinteresse — Probleme bei Formulierung und Durchsetzung’, in *Festschrift für Karl Doehring zum 70. Geburtstag* (1989) 219; Lachs, ‘Quelques réflexions sur la communauté internationale’, in *Mélanges Michel Virally* (1991) 349; B. Simma, ‘From Bilateralism to Community Interest in International Law’, 250 *RdC* (1994, VI) 217, at 243 *et seq.*; C. Tomuschat, ‘Obligations Arising for States Without or Against their Will’, 241 *RdC* (1993) 195, at 209 *et seq.*; *idem*, *supra* note 2.

⁸ Dupuy, *supra* note 2, at 15 (referring to the famous distinction between the two notions coined by F. Tönnies, *Gemeinschaft und Gesellschaft* (1887)). See also Lachs, *supra* note 7, at 381; Brus, *supra* note 7, at 128 *et seq.* Cf. also the definition of ‘society’ by H. Bull, *The Anarchical Society* (1977, 2nd ed., 1995), at 13: ‘A society of states (or international society) exists when a group of states, conscious of certain common interests and common values, form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another, and share in the working of common institutions.’ (author’s emphasis).

The answer to these questions depends on the assessment of the international political environment and its legal and ethical implications — in short, it depends on the state of 'international community'.

2 Concepts of 'International Community'

There seems to be general agreement that the factual element of a community, namely, a sufficient degree of interdependence and contact, is present in the international system.⁹ But what about common values and institutions? The Australian political scientist Hedley Bull distinguishes three traditions of thought,¹⁰ each of which is connected to a certain reception of the values incorporated in the international system as well as to a specific view of international law.

In the Hobbesian or 'realist' tradition, states are seen as being in a permanent situation of cold or hot war. It is the world of power politics, temporary alliances, and national interest; a world which knows only zero-sum games.¹¹ International law merely duplicates this power structure.¹² A new strand of realism substitutes the rivalry of civilizations for that of states.¹³ Some 'critical' scholars of international law also seem to embrace a view which emphasizes the difficulty of a legal system attempting to bind different cultures, albeit from a completely different angle.¹⁴

On the other side of the spectrum we find a view labelled by Bull as 'Kantian' or universalist: this view 'sees at work in international politics a potential community of

⁹ For an analysis from the point of view of political science, see R. O. Keohane and J. S. Nye, *Power and Interdependence* (2nd ed., 1989), at 1 *et seq.*, 221 *et seq.*; McDougal, Reisman and Willard, *supra* note 6. See also G. Abt-Saab, 'Cours général de droit international public', 207 *RdC* (1987) 9, at 97 *et seq.* (describing the relationship between factual interdependence and solidarity).

¹⁰ Bull, *supra* note 8, at 23 *et seq.* See also *idem.*, 'Society and Anarchy in International Relations', in H. Butterfield and M. Wight (eds), *Diplomatic Investigations* (1968) 35; *idem.*, 'The Importance of Grotius in the Study of International Relations', in H. Bull, B. Kingsbury and A. Roberts (eds), *Hugo Grotius and International Relations* (1992) 65, at 71 *et seq.*; Kingsbury and Roberts, 'Introduction: Grotian Thought in International Relations', in *ibid.*, 1, at 6 *et seq.*; Wight, 'Western Values in International Relations', in Butterfield and Wight, *supra* this note, 89, at 93 *et seq.*

¹¹ Cf. H. Morgenthau, *Politics among Nations* (5th, rev. ed., 1978), at 29: 'International politics, like all politics, is a struggle for power. Whatever the ultimate aims of international politics, power is always the immediate aim.' See also K. N. Waltz, *Theory of International Politics* (1979), at 113 ('International politics is the realm of power, of struggle, and of accommodation'); Grieco, 'Anarchy and the Limits of Cooperation', in R. J. Beck, A. C. Arend and R. D. Vander Lugt (eds), *International Rules* (1996) 147, at 155 *et seq.* A historical overview is given by I. Clark, *The Hierarchy of States* (1989), at 67 *et seq.* For an example of a 'realist' understanding of the post-1989 world see Waltz, 'The Emerging Structure of International Politics', 18 *International Security* (1993) 44.

¹² See Morgenthau, *supra* note 11, at 279 *et seq.* Often, modern realist writers do not mention international law at all.

¹³ See the famous article by Huntington, 'The Clash of Civilizations?', 72 *Foreign Affairs* (1993) 22; *idem.*, *The Clash of Civilizations and the Remaking of World Order* (1996).

¹⁴ Cf. Carty, 'Critical International Law: Recent Trends in the Theory of International Law', 2 *EJIL* (1991) 66, at 68 *et seq.*

mankind'.¹⁵ Writers adhering to this view, although acknowledging that the state is here to stay for quite a while, do not regard the state as an aim in itself—or even as the 'primary unit' of international society. Rather, they tend to underline the role of international 'civil society', multinational cooperation and non-governmental organizations. The systemic value promoted by these authors is justice, which may entail a justification of community intervention for the protection of individuals against their own state.

In the middle, Bull places a view which he refers to as 'Grotian' or internationalist. According to this conception, international society is composed of states. Individuals, in principle, count only as representatives of their collectivity. However, cooperation between states is possible, and even to be encouraged in order to realize common values and interests. Again according to Bull,¹⁶ there are at least two different branches of this school, which we would like to distinguish more clearly.

One view of international society may be called 'Vattelian', or inter-national in the narrow sense. It emphasizes the individual interest of states. Cooperation is the exception, not the rule. In most instances, common interests have to be accommodated in bilateral settings. International institutions may be useful for stabilizing cooperation, but their role is limited by the national interest. This is the view of classical international law, the famous 'Westphalian system'.¹⁷ Its main value is not cooperation, but order.

A truly 'Grotian' (or, because of its modern emphasis on institutions, 'neo-Grotian',

¹⁵ Bull, *supra* note 8, at 23. For a historical overview see Clark, *supra* note 11, at 49 *et seq.* For the different strands of contemporary 'Kantian' perspectives see Slaughter, 'International Law in a World of Liberal States', 6 *EJIL* (1995) 1; Tesón, 'The Kantian Theory of International Law', 92 *Columbia Law Review* (1992) 53. Radical 'Rawlsians' also belong to this group, see Tesón, *ibid.*, at 84, 97; T. W. Pogge, *Realizing Rawls* (1989), 240 *et seq.*; Skubik, 'Two Models for a Rawlsian Theory of International Law and Justice', 14 *Denver Journal of International Law and Policy* (1986) 231. For Rawls' own view see *infra* note 26 and accompanying text.

¹⁶ See Bull, *supra* note 8, at 310, note 2, and Bull, 'The Grotian Conception of International Society', in Butterfield and Wight, *supra* note 10, at 51. The latter version of 'Grotianism' is also represented by the famous article by Lauterpacht, 'The Grotian Tradition in International Law', 23 *BYbIL* (1946) 1. Of course, one can make the point that Lauterpacht's Grotius is more Lauterpacht than Grotius, cf. Koskenneemi, 'Lauterpacht: The Victorian Tradition in International Law', 8 *EJIL* (1997) 215, at 217, 259; Scobbie, 'The Theorist as a Judge: Hersch Lauterpacht's Concept of the International Judicial Function', 8 *EJIL* (1997) 264, at 266 *et seq.* Lauterpacht's individualism even points in a 'Kantian' direction, see 23 *BYbIL* (1946) 1, at 24 *et seq.*

¹⁷ For a discussion of the 'Westphalian system' and its contemporary relevance see Falk, 'The Interplay of Westphalia and Charter Conceptions of International Legal Order', in R. Falk and C. Black (eds), *The Future of the International Legal Order*, vol. 1 (1969), at 32 *et seq.*; Gross, 'The Peace of Westphalia, 1648–1948', 42 *AJIL* (1948) 20; Zacher, 'The Decaying Pillars of the Westphalian Temple: Implications for International Order and Governance', in J. Rosenau and E.-O. Czempiel (eds), *Governance without Government: Order and Change in World Politics* (1992) 58, as well as the contributions in G. M. Lyons and M. Mastanduno (eds), *Beyond Westphalia?* (1995).

'Friedmannian' or 'communitarian'¹⁸) view, on the contrary, sees the international system on its way to an 'organized state community' with an emphasis on common interests, the development of common values, and the creation of common institutions. In the words of Christian Tomuschat, 'it would be wrong to assume that states as a mere juxtaposition of individual units constitute the international community. Rather, the concept denotes an overarching system which embodies a common interest of all states and, indirectly, of mankind.'¹⁹ Hence, we are in the presence of Wolfgang Friedmann's 'law of cooperation', of 'collective security' or of a 'Charter conception' of the international legal order.²⁰ Its paramount value is solidarity between peoples.²¹

Of course, these descriptions are in the nature of ideal-types. Most writers will combine them in their description of the current state of affairs, and in any given moment we can find 'pockets' of each of them in parts of the world. Thus, the relations between Serbia and Croatia, or India and Pakistan, will best fit into the realist paradigm, whereas relations between Europe and the US, for instance, and even more those among the members of the European Union, can be situated somewhere between the 'neo-Grotian' and the 'Kantian' conception.²²

3 Elements of Assessment of the Contemporary International Community

In the light of these positions, let us now relate the different views to some current developments in the international arena. We do not claim to give a definitive answer to all or even some of the questions raised above. Rather, we try to indicate some of the elements of an assessment of the current state of the 'international community'.

A Realism — Old and New

In our opinion, the self-appointed realist, 'Hobbesian' view is to be discarded from the outset. It might have had a place in the Eurocentric world of the nineteenth century,

¹⁸ This 'communitarianism' must, of course, be distinguished from the use of the label 'communitarian' by the advocates of a closer *rational* society based on national values. 'International' communitarianism of the kind alluded to here is not opposed to individualism of human persons, but to state individualism. Cf. the opposition of universalism and individualism in A. Verdross and B. Simma, *Universelles Völkerrecht* (3rd ed., 1984) at para. 21.

¹⁹ Tomuschat, 'Obligations', *supra* note 7, at 227.

²⁰ See Falk, *supra* note 17, at 32; W. Friedmann, *The Changing Structure of International Law* (1964).

²¹ Cf. Macdonald, 'The Principle of Solidarity in Public International Law', in C. Dominicé, R. Patry and C. Reymond (eds), *Etudes de droit international en l'honneur de Pierre Lalive* (1993) 275. See also Abi-Saab, *supra* note 9, at 97 *et seq.*

²² For a 'Kantian' description which could, for instance, be applied to the North Atlantic Community see Slaughter, *supra* note 15, at 526 *et seq.* for an application of some of these views to the European Union see Cornett and Caporaso, "'And Still It Moves!'", State Interests and Social Forces in the European Community', in Rosenau and Cæmpiel, *supra* note 17, at 219.

when a number of states with similar military power competed fiercely in the colonization of the rest of the world. Of course, the distribution of power among states is an important element of any analysis of international politics. But to regard the major state actors of the contemporary system as engaging in a permanent struggle for maximizing their own power and minimizing that of others seems far-fetched.

Warnings against a ‘clash of civilizations’ have to be taken more seriously. An ‘international community’ appears to need a base of shared values. Is the ‘humanity’ invoked by part of the literature²³ a sufficient point of reference, even if there is no agreement on its basic characteristics? Is the international community, for instance, to be understood as one universal collectivity of human beings or as a ‘community of communities’? Is such a diverse society incapable of agreement on some common interests, even if they are vital for the survival of humankind? Is it only capable of adopting some rules for coexistence, but not for cooperation?

Certainly, it is correct that cultural diversity leads to a different understanding of values and the role of law. Nevertheless, there seems to be ground for optimism regarding the development of common values which not only express the interests of the powerful. Let us mention peace, a healthy environment, human rights, economic solidarity, sustainable development. It would be difficult to understand those values and interests as mere expressions of one particular ‘Western’ culture. At least, they may serve as points of reference for a more specific dialogue on a minimal set of common values.²⁴ On the basis of such a minimal consensus on values, the main challenge will consist in the development of institutions capable of finding compromises where values, interests and actors confront — and sometimes clash with — each other, rather than in postulating a common philosophy which would miraculously neutralize the divergence of individual interests and values.

B Kantian Individualism

The Kantian view has a lot more in its favour than Realism with all its sub-concepts. Are non-governmental organizations and multinational corporations not playing an increasingly important role on the international scene? Does the prominence of NGOs at recent world conferences not evidence the fading legitimacy of the state system? Are human rights not steadily eroding domestic jurisdiction? Be that as it may, no one will claim that the bilateralist state paradigm has already been overcome completely by actual developments. Neo-Kantians, in the sense described above, understand Kantianism as an element of global justice rather than as a description of established law.²⁵ It is telling that Rawls, when applying his philosophical model of people establishing an ideal society behind a ‘veil of ignorance’ to the international

²³ See, e.g., Dupuy, *supra* note 2, at 159 *et seq.*

²⁴ Cf. Friedmann’s account of the attitudes of different cultures to international law, *supra* note 20, at 297 *et seq.*

²⁵ See, e.g., Dupuy, *supra* note 2, at 11, 159 *et passim*; Pogge, *supra* note 15, at 240 *et seq.*; Tesón, *supra* note 15, at 96 *et seq.*; Slaughter, *supra* note 15, at 16.

sphere, does not dispense with states,²⁶ and even the more radical of his supporters do not believe in a world state. Rather, it should make us suspicious that some of them use 'Kantian' arguments in favour of unilateral military intervention.²⁷

Certainly, we should not underestimate the influence of 'Kantian' values on the perspective of international actors. The system of universal human rights provides for the monitoring of the implementation of human rights worldwide. But it does not confer a legal capacity upon individuals to enforce these rights. Hence, in most instances, individuals are still 'objects', not subjects of international law. On the other hand, international criminal tribunals attempt to render individuals personally accountable at a global level. Neither should we discard developments towards an 'international civil society', in which non-governmental actors increasingly influence international decisions. The contribution of the International Campaign to Ban Landmines (ICBL) to the speedy adoption of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and their Destruction — which was honoured by the Nobel Peace Prize in 1997 — constitutes only one particularly impressive example of the rising influence of NGOs in the international law-making process. The current efforts of the NGO community to establish consultative relations (not only with the Economic and Social Council but) with the General Assembly, and thus monitor its activities directly, are of considerable political importance.²⁸ In this regard, the various world conferences have established valuable precedents for the positive impact of such private activities on an otherwise intergovernmental setting.

At the same time, the actual influence of non-state actors on decision-making processes within the UN system is rather limited. In economic matters, the impact of decisions of private parties may be considerable but the framework in which these parties act is still largely determined by rules emanating from states or, to a much more limited extent, from intergovernmental — or, in the case of the European Union, partly supranational — institutions. Thus the state remains the basic unit in the world of public international law. State representatives remain the final decision-makers, albeit increasingly influenced by non-state actors and international public opinion. Notwithstanding the development of more, and more universal, human rights instruments, a 'Kantian' consensus on the role of the state as servant of its citizens has

²⁶J. Rawls, *A Theory of Justice* (1971), at 377 *et seq* (representatives of states, not individuals, draft the rules of international relations in the 'original position'); *idem*, 'The Law of Peoples', in S. Shute and S. Hurley (eds), *On Human Rights* (1993) 41, at 53 *et seq* (applying the 'original position' to representatives of liberal societies only). Even more radical 'Kantians', such as Tesón, base their thought upon the existence of sovereign states, see *idem*, *supra* note 15, at 84 *et seq*.

²⁷ Cf. Tesón, *supra* note 15, at 68, 84 *et seq*, with further references.

²⁸ Cf., e.g., Otto, 'Nongovernmental Organizations in the United Nations System: The Emerging Role of International Civil Society', 18 *Human Rights Quarterly* (1996) 107; Schulze, 'Nicht-Regierungsorganisationen und die Demokratisierung der Vereinten Nationen', in K. Hüfner (ed.), *Die Reform der Vereinten Nationen* (1994) 119. See also Thomas Franck's proposal for a representation of individuals through a second chamber of the UN General Assembly: *Fairness in International Law and Institutions* (1995), at 483.

not yet emerged, and the fundamentals of a 'right to democratic governance' are shaky, at best.²⁹

C Society or Community?

At present we remain, therefore, in the broad middle ground between the classical 'international' and a more broadly communitarian concept. The latter has the advantage that it allows us to include 'Kantian' elements without discarding states altogether. There can be little doubt that a classical 'Vattelien' view, in which the intercourse between states is regulated by bilateral ad hoc arrangements, no longer correctly describes the international system. In the current state of affairs, several sectoral and one nearly universal international institution do not only play the role of international conference fora but are also capable of adopting concrete prescriptions and even of enforcing them to a certain extent.

When the first edition of the treatise *Universelles Völkerrecht* was published in 1976,³⁰ the authors were criticized for their treatment of the Charter of the United Nations as the written constitution of the international community. Nowadays, however, such — unwarranted — caution has disappeared and the United Nations Charter has almost universally been recognized as the constitutional document of the international community of states.³¹ As already stated, the very term 'international community' is sometimes used interchangeably with the name of the Organization. The UN has an important impact on the shaping of common values, be it in the General Assembly or in convoking international conferences on a vast array of topics, which bring together non-governmental actors as well as governments. With its human rights regime, the UN also provides an institutional framework for the 'Kantian' elements in the inter-state system. Of course, the Charter system did not abolish the classic, bilateralist international law applicable in inter-statal relations in its entirety. But what the Charter undoubtedly did achieve was the translation of the concept of the 'international community' from an abstract notion to something approaching institutional reality.

Following the 'revitalization' of the Security Council after the end of the Cold War,

²⁹ But cf. Franck, *Fairness*, *supra* note 28, at 83 *et seq.*; *idem*, 'The Emerging Right to Democratic Governance', 86 *AJIL* (1992) 46, with extensive references. Cf. the critique by Marks, 'The End of History? Reflections on Some International Legal Theses', 9 *EJIL* (1997) 449 (criticizing the lack of transformative force of such an approach) and Schachter, 'The Decline of the Nation-State and its Implications for International Law', 36 *Col. J. Transnat'l L.* (1997) 7, at 19 (criticizing the approach as utopian).

³⁰ A. Verdross and B. Simma, *Universelles Völkerrecht: Theorie und Praxis* (1976).

³¹ Cf., e.g., J. A. Frowein, 'Reactions by Not Directly Affected States to Breaches of Public International Law', 247 *RdC* (1994, IV) 345, at 355 *et seq.*; Macdonald, 'Fundamental Norms in Contemporary International Law', 25 *Canadian Yearbook of International Law* (1987) 115, at 119, 120, 128; *idem*, 'The Charter of the United Nations and the Development of Fundamental Principles of International Law', in B. Cheng and E. D. Brown (eds), *Contemporary Problems of International Law. Essays in Honour of Georg Schwarzenberger* (1988) 196; cf. also Tomuschat's concept of the Charter as 'world order treaty', *supra* note 7, at 248 *et seq.* and Abt-Saab's assertion that the UN plays 'un rôle "structurant"', in *supra* note 9, at 452.

the Charter concept has increasingly been put into practice. Community action according to Chapter VII now extends far beyond classic inter-state relations. Thus, many recent Security Council resolutions go beyond simply addressing Member States, but are directed to peoples, liberation movements, guerrilla groups and other de facto entities, or even individual human beings.³² Further, situations arising purely within the territory of Member States are now being considered threats to international peace. Having to rely on the implementation of its decisions by states, however, the Security Council is still sailing between the apologism of hand-wringing exercises and an activism which endangers both its legitimacy and effectiveness.³³

The concrete possibility — or, perhaps, the greater probability — of a community reaction to violations of the 'international public order' also exerts a visible influence on the way in which states employ self-help and reprisals. Of course, the use of such unilateral means to enforce individual interests has not ceased altogether. But such individual actions do not seem to be the rule anymore. What can be observed in a growing number of instances is the employment of the 'authorization' model under which individual states assume the role of agents of the International community represented by the Security Council.³⁴ This authorization model has been successfully tested in the conflict relating to Iraq and Kuwait and has more recently been applied in Somalia, Haiti and Rwanda. Even the United States and France, both countries with a long tradition of unilateral interventions in Latin America and Africa, have recently asked the Security Council for authorization before intervening in Haiti or in Rwanda, respectively.³⁵ In some instances, the United Nations has engaged in 'nation-building' in order to protect the domestic system against complete collapse. What we witness here is an astonishing reversal of the traditional view according to which the development of the international system was to be seen as a progressive gain of authority by international institutions at the expense of state sovereignty. Instead, we are witnessing the United Nations attempting to preserve, reconstitute or strengthen state authority.

This observation on the increased power and capabilities of international institutions is also true for the international economic institutions, both for the Bretton Woods system determining the economic fate of an increasing number of states, and for the newly strengthened GATT/WTO system of international trade.

However, since Wolfgang Friedmann wrote his famous book, belief in the management capabilities of social institutions, whether national or international, has evaporated. In a time when, as Bill Clinton put it, 'the era of big government is over',³⁶ the building of international institutions seems to be at least as problematic as the

³² Cf. Tomuschat, *supra* note 7, at 255.

³³ For a more detailed analysis, see Simma, *supra* note 7, at paras 34 *et seq.*

³⁴ On this development, cf. the contributions in J. Delbrück (ed.), *Allocation of Law Enforcement Authority in the International System* (1994); Freidenschuß, 'Between Unilateralism and Collective Security: Authorizations of the Use of Force by the UN Security Council', 5 *EJIL* (1994) 492.

³⁵ See SC Res. 940 (1994) on Haiti, and SC Res. 929 (1994) on Rwanda. For a commentary see Freidenschuß, *supra* note 34, at 519 *et seq.*

³⁶ S. W. J. Clinton, State of the Union Address of 23 January 1996 (available in the world wide web at the Official Website of the White House, <http://www.whitehouse.gov>, as of 19 February 1998).

preservation of domestic ones. 'Globalization' seems to call for a 'neo-liberal' theory of international law leading away from institution-building towards a belief in solutions reached without regulation by international authorities.³⁷ Apart from all considerations of legitimacy, one wonders, however, not only how the proponents of this model intend to secure other than market values, but also how the economic regulation necessary for the preservation of a competitive market system could be implemented without formal institutions.³⁸

A second qualification of this view of the contemporary international community has to do with the existence of a true 'sense of community', which is rightly regarded by many writers as the most important criterion for the existence of a community.³⁹ For instance, there simply did not arise any tangible, 'operational', as it were, sense of community which reacted forcefully enough to the genocides in Bosnia or Rwanda, or the gang wars in Somalia or Liberia. For an unbearably long time, no effective international action followed the unspeakable atrocities committed in the course of 'ethnic cleansing' in the former Yugoslavia and the open contempt for the United Nations displayed there by all warring factions, for instance when thousands of civilians were simply driven out of the so-called UN 'safe areas'. As a rule, states tend to muster the necessary energy to react forcefully only when 'their own' soldiers or citizens, or members of the same religion, or economic interests count among the (potential) victims. Viewed realistically, or pessimistically, a truly worldwide sense of community might be present only with a few international civil servants or experts or, more importantly, with non-governmental organizations active on a global level.

But perhaps the cup is half full rather than half empty. Perhaps more or less the same instances we have just mentioned could also be quoted as having led to at least some degree of solidarity — admittedly hesitant, uneasy, late or even too late, broken, schizophrenic, and often faring badly on a political and legal grounding designed for the most part to fetch an individualist, egocentric state system. Certainly, man-made disasters like the situations of Yugoslavia and Rwanda do constitute grim examples of failure and frustration, but at the same time also of unparalleled 'third'-party involvement. After all, who would have cared — and how — a hundred years ago?

4 Conclusion

To sum up, the world of the famous 'Lotus principle', according to which states are only bound by their express consent, seems to be gradually giving way to a more communitarian, more highly institutionalized international law, in which states 'channel' the pursuit of most of their individual interests through multilateral

³⁷ This seems to be the main argument of A.-M. Slaughter's model of a 'World of Liberal States' (*supra* note 15 and *idem*, 'The Real New World Order', 76 *Foreign Affairs* (1997) 183). For the implications of 'globalization' see also the references in note 1.

³⁸ See the critique of this model by Philip Alston in his contribution to this symposium, 'The Myopia of the Handmaidens: International Lawyers and Globalization', 8 *EJIL* (1997) 435.

³⁹ See Abi-Saab, 'Whither the International Community?', this volume at 248; Simma, *supra* note 7, at paras 6, 15.

institutions. Even if private actors, whether groups or individuals, have not yet become regular subjects of general international law, the system as a whole increasingly permeates state boundaries for the sake of protection of individual and group rights. Therefore, we suggest adopting a 'Grotian' view, but to mix it, as it were, with elements of both 'Vattelanism' and 'Kantianism', and with an increasing pull towards institutionalization. In any case, the concept of an 'international community' contains as much aspiration as reality. To quote the former President of the International Court of Justice, Mohammed Bedjaoui, in his Declaration appended to the 1996 *Advisory Opinion on Nuclear Weapons*,⁴⁰ an opinion which perfectly demonstrates the contradictory elements inherent in contemporary international society:⁴¹

Despite the still modest breakthrough of 'supra-nationalism', the progress made in terms of the institutionalization, not to say integration and 'globalization', of international society is undeniable. . . . The resolutely positivist, voluntarist approach of international law still current at the beginning of the century . . . has been replaced by an objective conception of international law, a law more readily seeking to reflect a collective juridical conscience and respond to the social necessities of States organized as a community.

⁴⁰ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, Declaration of President Bedjaoui, para. 12, ICJ Reports (1996) 226, at 270, 271 (para. 13).

⁴¹ Official English translation. In the French original, the passage reads: 'En dépit de la percée encore limitée du "supra-nationalisme", on ne saurait nier les progrès enregistrés au niveau de l'institutionnalisation, voire de l'intégration et de la "mondialisation", de la société internationale . . . A l'approche résolument positiviste, volontariste du droit international qui prévalait encore au début du siècle . . . s'est substituée une conception objective du droit international, ce dernier se voulant plus volontiers le reflet d'un état de conscience juridique collective et une réponse aux nécessités sociales des États organisés en communauté.'