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The Better Peoples of the United Nations? Europe's Practice and the United Nations

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Abstract

Are the Europeans indeed, as they think, the 'better peoples' of the United Nations? In this article, the author takes a closer look at this flattering European self-image by selecting a few issues of the general theme of 'Europe's practice and the UN'. Having recalled, in Section 2, Europe's marginal role in the foundation of the UN at the end of World War II, and the fragmented existence of Europe in the Organization in the long period of the Cold War (Section 3), the article turns to its central subject – Europe's compliance with the rules of the UN Charter. Here, in Section 4, matters which the author considers particularly important or characteristic are singled out, among them the prohibition of the use of force, the obligation of states to settle their disputes by peaceful means, the protection of human rights, and decolonization and economic cooperation with developing countries. In Section 5, the article reflects on the efforts of the EU Member States to coordinate their foreign and security policies with regard to, and in, the United Nations. In the sixth and last section, it seeks to explore the future place and role of Europe in the UN. In his conclusion, the author suggests that Europe has no choice but to remain loyal to the idea of a multilateral international system based on the fundamental rules of the UN Charter. Intellectually and conceptually, the EU and the UN are built on the same foundations, so that a failure of multilateralism on the global level would necessarily have negative repercussions on the European project.

1 Introduction

Europeans living in the European Union have a clear conscience when they think about the United Nations. European peoples and governments alike are convinced of their 'UN virtuousness'. In comparison with the United States, China and Russia, Europeans view themselves as the 'better peoples of the United Nations'. The US-led Iraq war of 2003 strongly reinforced this self-perception. The banners of the anti-war mass demonstrations in Rome, London, Berlin, Athens and Reykjavik explicitly

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referred to the United Nations and the Charter rules of international law.[1] Leading European intellectuals, including Jacques Derrida and Jürgen Habermas, insisted that the cosmopolitan order described and prescribed in the UN Charter should be defended against competing designs. 'On the international level and in the framework of the United Nations, Europe must bring all its influence to bear in order to balance the hegemonic unilateralism of the United States', wrote Derrida and Habermas in May 2003.[2] Europeans, it seemed, rallied around a UN that had been abandoned by the United States; in an exchange of roles, Europe had become the strongest supporter of an organization which, following World War II, the US had set up without substantial European input.

While this flattering European self-image must be questioned, and will be questioned in this article, it is true that Europeans today strongly relate to the ideals of the United Nations. A large majority of Europeans subscribe to the content of the preamble of the UN Charter, even if they do not know the exact text. After the devastating experience of World War II, nationalism, militarism and imperialism had lost all their credibility in Europe, and the Charter vision of a peaceful and just world was accepted as a meaningful and plausible alternative. Later, the success story of (Western) European integration intensified this view and attitude. If 'integration through law' had worked so well in Europe, why should not a similar mechanism succeed on a global level? The Draft Treaty Establishing a Constitution for Europe expresses this thought by saying that 'the Union's action on the international scene shall be guided by, and designed to advance in the wider world, the principles which have inspired its own creation, development and enlargement'.[3] The EC/EU experience has surely contributed to a European attitude of honest 'institutional loyalty' to the United Nations.[4]

After the end of the Cold War, a moment of Realpolitik has strengthened this European appreciation of the UN: in the face of the overwhelming military power of the United States, and the American claim to a 'sphere of influence' congruent with the entire world, the UN is upheld as the principal symbol of a multi-polar international system based on the rule of sovereign equality and non-intervention.[5] 'We need to build an international order based on effective multilateralism', the Security Strategy presented by the EU High Representative for Common Foreign and Security Policy to the

[1] See, e.g., 'Global Protests Largest in Decades', *Deutsche Welle*, 16 Feb. 2003, available at http://www.dw-world.de.

[2] See Derrida and Habermas, 'Nach dem Krieg: Die Wiedergeburt Europas' (After the War: The Renaissance of Europe), *Frankfurter Allgemeine Zeitung*, 31 May 2003. Further relevant writings of Habermas' (in particular his articles 'Was bedeutet der Denkmalsturz?' and 'Hat die Konstitutionalisierung des Völkerrechts noch eine Chance?') are collected in: J. Habermas, *Der gespaltene Westen* (2004) (for an English translation of the first mentioned article, see Habermas, 'Interpreting the Fall of a Monument', 4 *German LJ* (2003) 701, available at http://www.germanlawjournal.com).

[3] See Art. III-193, para. 1, subpara. 1 of the Draft Treaty. For the full text of the art., see *infra* text accompanying note 89.

[4] See Malone, 'Conclusion', in D.M. Malone (ed.), *The UN Security Council: From the Cold War to the 21st Century* (2004), 617, at 637: 'Like other powers, the United States rarely acts solely out of altruism. Nor does it generally act out of institutional loyalty – in this it may be contrasted to some European actors that privilege institutions and process above what the United States regards as substantive outcomes.'

[5] See Roberts, 'The Use of Force', in *The UN Security Council*, *supra* note 4, 133, at 135 *et seq*.

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European Council in Thessaloniki of June 2003 stated. 'The fundamental framework for international relations is the UN Charter. Strengthening the United Nations, equipping it to fulfil its responsibilities and to act effectively, must be a European priority.'[6] According to a European Parliament resolution of January 2004 on the relations between the EU and the UN, 'the harmonious development of humankind can only be accomplished . . . where efficient multilateral systems of governance such as the United Nations play a vital and central role, and well-functioning international institutions ensure that the international order is based on the rule of law'.[7] For the European states, the rule of law as enshrined in the post-World War II treaty system anchored in the United Nations is at the core of their national interests.[8] This may be the principal explanation for the strong general support given today to the UN as an idea and an organization by the European Member States.[9]

Unsurprisingly, a closer look at the European contribution to the promotion of the purposes and principles of the UN reveals a more complex and contradictory picture than the prevalent European self-image. Overall, Europe has put its own house in order. It has managed to create conditions of life in Europe that are in accordance with the principal ideas of the UN Charter. Credibly, the EU can today describe itself as 'an area of freedom, security and justice'.[10] In view of European history until 1945, that is not to be underestimated. As UN Secretary-General Kofi Annan noted before the European Parliament, 'Europe has seen more than its fair share of war, tyranny, and terrible suffering'.[11] But the record is mixed when it comes to that which the UN Charter's preamble expresses in phrases like: 'to unite our strength', 'the common interest', and 'to combine our efforts' – that is, the willingness and readiness to ensure that the world at large corresponds to the goals proclaimed by the Charter.

[6] Quoted in EC Commission, *The European Union and the United Nations: The Choice of Multilateralism*. Communication from the Commission to the Council and the European Parliament, 10 Sep. 2003, EC Doc. COM(2003) 526 final, at 4. See also Message of Welcome from the Permanent Representative of the Kingdom of the Netherlands to the UN, Ambassador D.J. van den Berg, 1 July 2004, on the European Union@United Nations website, available at http://www.europa-eu-un.org: 'The European Union is deeply committed to the United Nations and to effective multilateralism as a central element of its external action. The Union aims for a more effective, efficient and transparent UN.'

[7] Preambular para. A. See European Parliament 2003–2004, Texts adopted at the sitting of 29 Jan. 2004, provisional edition PE.341.150, at 2. See also Report of the EP Commitee on Foreign Affairs, Human Rights, Common Security and Defence Policy on the relations between the EU and the UN (EP Doc. A5-0480/2003 final of 16 Dec. 2003), adopted by the European Parliament on 29 Jan. 2004. For a summary of the report, see Laschet, 'Für einen effizienten Multilateralismus', 52 *Vereinte Nationen* (2004) 41.

[8] See Malone, 'Conclusion', *supra* note 4, at 643 (quoting A.A. Zinser).

[9] According to Ambassador Sucharipa, Permanent Representative of Austria to the UN from 1993 until 1999, of all the members of the UN the EU Member States offer the most consistent and resolute support of the UN as an organization, and of the goals of the UN. See Sucharipa, 'Die gemeinsame Aussen- und Sicherheitspolitik der Europäischen Union im Rahmen der Vereinten Nationen', in J.A. Frowein *et al.* (eds.), *Verhandeln für den Frieden–Negotiating for Peace: Liber Amicorum Tono Eitel* (2003) 773, at 776.

[10] See Treaty on European Union, preamble (introduced with the Treaty of Amsterdam of 1997).

[11] See K. Annan, Address to the European Parliament upon receipt of the Andrei Sakharov Prize for Freedom of Thought, 29 Jan. 2004, available at http://www.europa-eu-un.org/articles/.

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The present article can only shed light on a few selected issues in the general theme of 'Europe's practice and the United Nations'. This selection and my observations are necessarily personal – in other words, I make no claim to objectivity or comprehensiveness.

2 Europe's Marginal Role in the Foundation of the United Nations

While the ideas and ideals characteristic of the UN Charter – with the leitmotif of the 'dignity and worth of the human person' – all have European roots, Europe's role in setting up the United Nations Organization was very limited. One may say that the Europe of the eighteenth century, the Enlightenment and the French Revolution contributed much more to the establishment of the UN than did the Europe of 1945 and the years leading up it. The only state which influenced to some degree the (ultimately decisive) plans of the Roosevelt Administration for a post-war organization was the United Kingdom, America's closest ally in World War II. Alone, i.e. without the United States, the European states not only would have been unable to establish a new world organization, but they probably would not have even tried. Shattered by the storms of the war, the Western European countries were preoccupied with their own political, economic and societal reconstruction, a situation shared by the European states behind what was soon to be called the Iron Curtain. In addition, the Eastern European states lacked the power to exercise any choice or make foreign policy decisions without constraint imposed by the Soviet Union.

But even if their political and economic resources had allowed the European states substantially to contribute to the establishment of a political world organization in 1945 or the following years, it is unlikely that they would have taken such an initiative. All creative thinking in Western Europe about international relations was directed towards the creation of a closer economic and political union of the European states. It was such a functional integration which, replacing the traditional balance of power schemes, was intended to ensure friendly relations and peace in Europe in the future. This political thinking is captured in the preamble of the 1951 Treaty of Paris Establishing the European Coal and Steel Community:

> The Heads of Government and State,
>
> . . . Considering that world peace can be safeguarded only by creative efforts commensurate with the dangers that threaten it,
>
> . . . Resolved to substitute for age-old rivalries the merging of their essential interests; to create, by establishing an economic community, the basis for a broader and deeper community among peoples long divided by bloody conflicts, and to lay the foundations for institutions which will give direction to a destiny henceforward shared,
>
> Have decided to create a European Coal and Steel Community . . . [12]

[12] Treaty of Paris Establishing the European Coal and Steel Community, 18 Apr. 1951, preamble, 261 UNTS 140. For the historical context, see Fassbender, 'Zur staatlichen Einigung Europas nach der deutschen Einigung', 46 *Europa Archiv* (1991) 395, at 397.

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As far as international relations on a universal level were concerned, the political and legal imagination did not reach beyond what, at the insistence of the Wilson Administration, had been realized after World War I in the form of the League of Nations. Of the European states as they existed in 1945, it was in fact only the United Kingdom which could be expected to support a continuation of the League – an organization on which it had exercised a strong influence, and which had enjoyed the ardent support of the British public up to the League's failure to protect Ethiopia against the Italian aggression.[13] The British Government realized, however, that even before the outbreak of World War II, the name of the League of Nations had been discredited beyond repair by its inability to bring into effect the concept of collective security in favour of China, Ethiopia, Spain and Czechoslavakia, the victims of aggression of the 1930s. 'The League defeated'[14] – this was the prevalent perception in 1945, and none of the European governments thought it wise to commit themselves to promoting a similar project. It was essentially the American Government whose plans for a United Nations Organization forced Europe to face the problem of world peace and reminded Europe of its responsibilities for the world at large.

While the British Foreign Office adapted its ideas regarding a post-war world organization[15] to the plans of the Roosevelt Administration, Prime Minister Winston Churchill believed in the idea of regionalism which, in particular, would promote the creation of a 'United States of Europe'. Already in October 1942, when his Foreign Secretary asked him for his views on a post-war organization based upon the United States, the United Kingdom, the Soviet Union and China, Churchill reacted hesitantly. 'It sounds very simple', he said, 'to pick out these four Big Powers. We cannot, however, tell what sort of a Russia and what kind of Russian demands we shall have to face'. His own hope for the post-war world, Churchill told Eden, was for a 'United States of Europe' that would not include Russia and in which the barriers between the European nations 'will be greatly minimized and unrestricted travel will be possible'.[16] In addition to such a united Europe, Churchill regarded as principal world regions the US, the British Commonwealth and Empire, the Soviet Union, South America, Asia and Africa. When he later wrote his wartime memoirs, he maintained that the world organization should have been built on a regional basis.[17]

[13] See Egerton, 'Great Britain and the League of Nations: Collective Security as Myth and History', in *The League of Nations in Retrospect: Proceedings of the Symposium Organized by the United Nations Library and the Graduate Institute of International Studies, Geneva, 6–9 November 1980* (1983), at 96. See further A. Wolfers, *Britain and France Between Two Wars: Conflicting Strategies of Peace since Versailles* (1940), at 321–364.

[14] This is a chapter heading in F.P. Walter's *A History of the League of Nations* (1952).

[15] For the history of the postwar planning in London, which seriously began in early 1943, see in particular P.A. Reynolds and E.J. Hughes, *The Historian as Diplomat: Charles Kingsley Webster and the United Nations, 1939–1946* (1976).

[16] See M. Gilbert, *Churchill: A Life* (1991), at 731.

[17] See W.S. Churchill, *Triumph and Tragedy* (= *The Second World War*, vol. VI) (1953), at 610.

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3 A Fragmented Europe in the United Nations

Johann Wolfgang Goethe and Friedrich Schiller once wrote the lines: '*Deutschland? aber wo liegt es? Ich weiß das Land nicht zu finden*' – 'Germany? But where is it? I cannot find the country'.[18] Similarly, 'Europe' barely existed, and could barely be discovered, in the United Nations founded in 1945. All through the period of the Cold War and until the great turning point of 1990, Europe's existence in the UN was a fragmented one. Europe, broken into separate parts, appeared only in pieces, none of which could claim to represent Europe as a whole.

The most important divide was that between East and West. This antagonism made it impossible even to address the division of Europe in the UN. Having been made part and parcel of the Communist bloc ruled by the Soviet Union, the states of Eastern Europe were not only excluded from the process of integration in Western Europe, but also prevented from associating themselves, in the UN, with the Western European countries. In all important matters, they followed the course set by the USSR. This division was reflected in the system of regional groups in the UN, with a Group of Western European and Other States (WEOG) standing opposite a Group of Eastern European States (EES). Redefined in the course of the enlargement of the Security Council in 1963,[19] the two groups are still in existence today, along with the Group of African States, the Group of Asian States, and the Group of Latin American and Caribbean States.[20] In the framework of a policy of détente, the so-called Helsinki process, launched by the Conference for Security and Co-operation in Europe (1972–1975), brought about a certain rapprochement of East and West which, however, was not reflected very much in the positions taken by the respective blocs in the UN, with the exception of the area of disarmament.

While the Eastern European countries thus constituted an essentially homogeneous group in the UN, there were further divisions between the states of Western Europe. Firstly, the United Kingdom and France stood out as permanent members of the Security Council and as nuclear powers. In those capacities, they generally pursued their respective national interests and often aligned themselves with the United States, emphasizing their role and rank as 'great powers'. Secondly, the European member states of NATO were separated from the non-aligned states – Austria, Sweden and Finland. Within NATO, France played a special role after it had discontinued its military integration in 1966. Thirdly, with the gradual intensification of their economic and political integration, the member states of the European Economic Community founded in 1957 (since 1992 European Community) increasingly set themselves apart from the non-EEC member states, a significant number of which organized

[18] See J.W. Goethe and F. Schiller, *Xenien* (1797), reprinted in F. Schiller, *Sämtliche Werke* (8th ed., 1987), vol. 1, at 267. The poem continues: 'Wo das gelehrte beginnt, hört das politische auf' (Where the learned [Germany] begins, the political ends').

[19] See UN GA Res. 1991 (XVIII) of 17 Dec. 1963.

[20] See von Schorlemer, 'Blocs and Groups of States', in R. Wolfrum (ed.), *United Nations: Law, Policies and Practice* (1995), vol. 1, at 69 *et seq.*, and Winkelmann, 'Regional Groups in the UN', in H. Volger (ed.), *A Concise Encyclopedia of the United Nations* (2002), at 455 *et seq.* See also Winkelmann, 'Groups and Groupings in the UN', *ibid.* at 15 *et seq.*

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themselves in 1959 in the European Free Trade Association (EFTA). Starting in 1970 with the so-called European Political Cooperation (EPC), EEC member states also strove for a coordination and harmonization of their foreign and security policies, including the positions taken by them in the UN (in particular the General Assembly).[21] However, this division between EEC members and non-members was mitigated by the successive accession of states to the EEC in 1973 (Denmark, Ireland, UK), 1981 (Greece) and 1986 (Portugal and Spain).

Lastly, it must be mentioned that the Federal Republic of Germany only became a member of the UN in 1973. It joined the world organization together with East Germany after the two German states had found a *modus vivendi* which was supported by the United States on the one hand and the Soviet Union on the other. The Federal Republic had, however, been a member of all UN specialized agencies since 1955 so that its status in the UN had often been described as that of an 'active non-member state'.[22]

4 Europe's Compliance with the Rules of the UN Charter

It follows from the fragmented nature of Europe's appearance in the UN that the question of 'Europe's' compliance with the rules of the UN Charter can only be answered on a state-by-state and subject-by-subject area basis. Furthermore, compliance means different things in the case of prohibitive norms on the one hand, such as the prohibition of the use of force in international relations, and norms requesting positive action on the other hand, like the obligation to settle international disputes by peaceful means or the obligation to promote and encourage respect for human rights. It is yet another issue whether and to what extent a state has cultivated friendly relations with the United Nations and supported the Organization in ways not specifically called for by the Charter. In order to at least come close to a general picture of European compliance with the Charter rules, I can only single out some matters I consider particularly important or characteristic.

A *The Prohibition of the Use of Force*

If we first turn to the prohibition of the use of force as the most important of the Charter rules that Wolfgang Friedmann called 'rules of abstention',[23] and indeed a cornerstone of the Charter,[24] we observe a fundamental difference between the United Kingdom and France on the one hand and all other European states on the

[21] See Arnold, 'European Union, Common Foreign and Security Policy at the UN', in Volger, *supra* note 20, at 129 *et seq*.

[22] See Arnold, 'UN Policy, Germany', in Volger, *supra* note 20, at 603 *et seq*. For a review of West Germany's contributions to the work of the UN until 1973, see U. Scheuner and B. Lindemann (eds.), *Die Vereinten Nationen und die Mitarbeit der Bundesrepublik Deutschland* (1973). For an analysis of the UN policy of the two German states in the first decade of their UN membership, see W. Bruns, *Die Uneinigen in den Vereinten Nationen: Bundesrepublik Deutschland und DDR in der UNO* (1980).

[23] See W. Friedmann, *The Changing Structure of International Law* (1964), at 64.

[24] For a recent re-evaluation of the prohibition of the use of force in international law and its present crisis, see Fassbender, 'Die Gegenwartskrise des völkerrechtlichen Gewaltverbotes vor dem Hintergrund der geschichtlichen Entwicklung', 31 *Europäische Grundrechte-Zeitschrift* (2004) 241.

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other. Given the structure of military alliances and the technological development of weapons since the end of World War II, it is only the two mentioned nuclear powers that during the time of the Cold War were in fact in a position unilaterally to use force contrary to Article 2(4) of the UN Charter. All the other European states, including Germany and Italy, lacked the political and military means of autonomously waging war or even engaging in small-scale military interventions abroad. For that reason praising the peaceful behaviour of the respective European states since 1945 amounts to honouring a land-locked African state for not having polluted the Atlantic Ocean with waste water. Nevertheless, it is fair to say that the experience of the devastation of the World War II led the European nations and their governments to honestly condemn war as a mode of interstate relations. While pacifism in Europe was perhaps never as strong as it was in post-war Japan, it was surely strong enough to deter any European government from even considering going to war against another country in Europe.

It is in line with the actual development of military capacities that the United Kingdom and France were more tempted to use military force contrary to the Charter rules in the first two decades of the UN's existence than in later times. In retrospect, the British and French military intervention in Egypt in 1956 in the aftermath of the Egyptian nationalization of the Suez Canal stands out as one of the last major autonomous military actions of the two colonial powers – autonomous meaning that they were not coordinated with and approved by the United States.[25] Later the United Kingdom and France either supported action taken by the United States or their interventions were openly or tacitly approved of by the US. This way, in the last analysis the issue of British and French compliance with the prohibition of the use of force had become an issue of (indirect) American compliance. France forcefully intervened many times in its former African colonies. The veto power of all three states shielded Britain and France from a condemnation of their interventions by the Security Council.

Along with the United States, the European member states of NATO engaged in aerial warfare against Yugoslavia in the spring of 1999. This is not the place to recount once more the events[26] or to examine the legality of the NATO states' action.[27] Suffice it to say that with the Kosovo intervention the Europeans lost their post-WW II virginity (or post-Cold War virginity, respectively) with regard to the use of force. Since the UN Charter does not provide for a humanitarian intervention as an exception to the rule of the general ban on the use of force, and the Security Council remained silent, neither approving nor condemning the intervention, NATO's war was highly questionable from a legal point of view, whatever political or humanitarian considerations may have supported it. It is fair to say, I believe, that their participation in the Kosovo intervention prevented the European states from opposing the US-British

[25] See Rauschning, 'Suez Canal', 4 *EPIL* (2000) 733.

[26] See, in particular, the statements of the parties to the case of *Legality of Use of Force (Serbia & Montenegro v. Belgium* [and, separately, nine other NATO member states]) pending before the ICJ since 29 April 1999. Verbatim records of hearings are available at http://www.icj-cij.org.

[27] For the present author's respective views, see Fassbender, *supra* note 24, at 248 *et seq*.

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war against Iraq of 2003 with legal reasons as strongly as they otherwise could have done. Having sidelined the UN security system, if not outrightly breaching the UN Charter, in the Kosovo case, the European states which disapproved of the war against Iraq, particularly France and Germany, could no longer claim that elevated position of high-principled allegiance to the law from which it is easy to condemn the faults of others. Nevertheless, the position of the European governments opposing the war, including the Russian Government, was decisive for the Security Council's refusal to support the American–British war policy in the winter of 2003, allowing the war to be recognized as what it substantially would have been in any case – an exercise in US unilateralism and hegemonism.[28]

As regards the 'war against terrorism' proclaimed by the United States after the terrorist attacks of September 11 2001, a so-called war raising many legal questions, the position of Europe is ambivalent. Leaving aside the British Government, which has chosen the role of a close ally of the United States, most European states have moved from an initially strong support of the American policy, born of a sincere sense of solidarity, to a mixture of general support and hesitant critique. The European states backed up the US military intervention in Afghanistan and endorsed the various measures of the Security Council, including those directed against private persons suspected of financing terrorist acts.[29] They only cautiously criticized the so-called Bush doctrine,[30] which claims that the United States is entitled to a pre-emptive use of force against any threat to US national security – a doctrine which cannot be reconciled with the rules of the UN Charter on self-defence. The European states basically kept silent about the problematical reinterpretation of the right of self-defence as a right arising not only in the case of a state-authored use of force but also if force is used by 'private' groups, in particular terrorist organizations, and is not attributable to a state. Lastly, the European governments did not openly and unequivocally find fault with the American treatment of supposed Taliban and Al Qaeda fighters captured in Afghanistan and elsewhere, and detained in Guantanamo Bay and other military prisons and secret places maintained by the CIA and possibly other US intelligence services. The European governments only half-heartedly called for a more central role of the United Nations in the fight against global terrorism. They did little to use the potential of the UN as an impartial coordinator of that fight and instead resigned, in an attitude of Realpolitik, before what they regarded as the inevitable – namely the politics of unilateralism adopted by the United States.

[28] For a consideration of the possible meaning of notions of hegemonic power in contemporary international law, see Vagts, 'Hegemonic International Law', 95 *AJIL* (2001) 843, and J. E. Alvarez, 'Hegemonic International Law Revisited', 97 *AJIL* (2003) 873.

[29] See SC Res. 1368 (12 Sept. 2001), 1373 (28 Sept. 2001), 1377 (12 Nov. 2001), 1383 (6 Dec. 2001), 1386 (20 Dec. 2001), 1390 (16 Jan. 2002), 1452 (20 Dec. 2002), 1455 (17 Jan. 2003), 1456 (20 Jan. 2003) and 1526 (30 Jan. 2004). For SC resolutions on Afghanistan after the removal from power of the Taliban, see resolutions 1401 (28 March 2002), 1413 (23 May 2002), 1419 (26 June 2002), 1444 (27 Nov. 2002), 1453 (24 Dec. 2002), 1471 (28 March 2003) and 1536 (26 March 2004).

[30] The National Security Strategy of the United States of America, Sept. 2002, available at http://www.whitehouse.gov/nsc/nss.pdf, 41 ILM (2002) 1478 (introduction only).

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B *The Obligation of States to Settle Their Disputes by Peaceful Means*

As Member States of the UN, the European states have accepted not only the obligation to refrain in their international relations from the threat or use of force, an obligation they by and large have met since 1945, but also the duty to settle their disputes by peaceful means (Articles 2(3) and 33(1) of the UN Charter). This duty was fulfilled in an impressive effort to bridge the East-West divide in the Helsinki process, with the Final Act of the Conference for Security and Co-operation in Europe of 1975[31] and the series of concluding documents emerging from follow-up meetings. A part of the Final Act, the Declaration on Principles Guiding Relations between Participating States, reaffirmed the purposes and principles of the UN Charter, while the Document on Confidence-Building Measures and Certain Aspects of Security and Disarmament sought to eliminate the causes of tension existing among the participating states. In the framework of the Helsinki process, the *Entspannungspolitik* of the German Government led by Chancellor Willy Brandt solved one of the most urgent territorial conflicts which had arisen as a result of World War II, namely the question of Germany's Eastern borders. The respective treaties of the 1970s between Germany on the one hand and Poland, Czechoslovakia and the Soviet Union on the other were confirmed after the German reunification. Today, the few territorial conflicts still existing in Europe are those between some Eastern and South Eastern European countries (especially in the Caucasus and the Balkans), with the notable exceptions of the questions of Northern Ireland and Cyprus. For the mutual relations of its Member States, the European Union provides for a dense network of rules and procedures guaranteeing a peaceful settlement of disputes of a political or economic nature.[32]

In that context, one may also consider the willingness of European states to recognize as compulsory the jurisdiction of the International Court of Justice, as contemplated by Article 36, paragraphs 2 and 5, of the ICJ Statute. Among the 64 states which have made respective declarations (many, however, with reservations), there are 21 European states.[33] While important Eastern European states like Hungary and Poland have accepted the ICJ's jurisdiction, some prominent states of Western Europe are conspicuously absent from that list – France, Germany, Italy. For disputes arising between European states, the ratification of the 1957 European Convention for the Peaceful Settlement of Disputes[34] constitutes an alternative road to the jurisdiction of the ICJ.

[31] For text, see 14 ILM (1975) 1293.

[32] For an analysis of the EU as a dispute settlement mechanism in the sense of the UN Charter, see Fisinger, 'Common Foreign Security Policy after the Treaty of Nice: Legal Aspects of the Relationship between the UN and the EU', in J. Kolasa and M. Rynkowski (eds.), *Architecture of the European Security: Materials of the International Conference Opolnica, 6–9 May 2001* (2002), at 131–160.

[33] See Report of the ICJ to the General Assembly, 1 Aug. 2002–31 July 2003, para. 62.

[34] European Convention for the Peaceful Settlement of Disputes of 29 Apr. 1957, ETS No. 23, German Bundesgesetzblatt 1961 part II, p. 82; I. von Münch and A. Buske (eds.), *International Law: The Essential Treaties and Other Relevant Documents* (1985), 52. According to Art. 1(1) of the Convention, 'The High Contracting Parties shall submit to the judgement of the International Court of Justice all international legal disputes which may arise between them'. Of the presently 45 member states of the Council of Europe, 14 have ratified the Convention: Austria, Belgium, Denmark, Germany, Italy, Liechtenstein,

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C *The Protection of Human Rights and Fundamental Freedoms in Accordance with the UN Charter*

An assessment of how the European states complied with the rules of the UN Charter and promoted the goals stated therein cannot stop here. Other areas of international law besides that of the use of force need to be taken into consideration. A particularly important field is the protection of human rights and fundamental freedoms in accordance with the Charter. Here it can first be observed that the European states ratified or acceded to basically all of the prominent human rights treaties drafted under the auspices of the United Nations, first and foremost the two Covenants of 1966.[35] Further, all European states have accepted as binding the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which in its second preambular paragraph expressly refers to the Universal Declaration of Human Rights proclaimed by the UN General Assembly in 1948.

Addressing the European contribution to the protection of human rights, one must also mention the strong and unequivocal European support of the establishment of the International Criminal Court in The Hague. With the exception of the Czech Republic, all European states have ratified the Rome Statute.[36]

A comprehensive analysis of the degree to which human rights have been protected in Europe would go beyond the limits of this presentation. As regards the compliance of the European states with the human rights norms stated in the ECHR and its additional protocols, one can rest one's opinion on the case law of the European Commission and the European Court of Human Rights. The work of expert bodies, both on a European and a universal level, responsible for complaint procedures and fact-finding,[37] must also be taken into account. Reports of the UN Commission on Human Rights, the UN High Commissioner for Human Rights, the UN High Commissioner for Refugees, and independent NGOs like Amnesty International can complete the picture.

As Christian Tomuschat observed, 'Western Europe cannot boast a stainless record, notwithstanding the generally favourable conditions which have surrounded its rebirth after the Second World War.'[38] An area of particular and growing concern is that of the protection of the rights of persons seeking refugee status in the European Union. The paper by Professor Geoff Gilbert in this symposium examines the question

Luxembourg, Malta, The Netherlands, Norway, Slovakia, Sweden, Switzerland and the United Kingdom (Slovakia being the only Eastern European state having ratified the Convention). Information provided by the Council of Europe Treaty Office at http://conventions.coe.int.

[35] See United Nations (ed.), *Multilateral Treaties Deposited with the Secretary-General: Status as at 31 December 2001* (2001) (ST/LEG/SER.E/20).

[36] European countries, most notably France and Germany, also opposed the American policy seeking to exempt UN peacekeepers from states not parties to the ICC Statute from the ICC's jurisdiction. In June 2004, the US effort failed to have the Council renew for another year the exemption provided for in SC Res. 1422 (12 July 2002) and 1487 (12 June 2003). See Zappalà, 'The Reaction of the US to the Entry into Force of the ICC Statute: Comments on UNSC Resolution 1422 (2002) and Article 98 Agreements', 1 *J Int'l Criminal Justice* (2003) 114, and *idem*, 'Are Some Peacekeepers Better Than Others? UN Security Council Resolution 1497 (2003) and the ICC', *ibid.* at 671.

[37] For an overview, see C. Tomuschat, *Human Rights: Between Idealism and Realism* (2003), at 159–190.

[38] See *ibid.* at 320.

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of whether Europe is living up to its obligations to refugees.[39] It is not coincidental that in January 2004 UN Secretary-General Kofi Annan made the problems of refugees, asylum seekers and migrants the focus of his address to the European Parliament. 'The [European] public', the Secretary-General said, 'has been fed images of a flood of unwelcome entrants, and of threats to their societies and identities. In the process, immigrants have sometimes been stigmatized, vilified, even de-humanized'.[40]

In the 'fight against terrorism' European states have introduced a number of limitations of human rights, especially of the right to privacy, freedom of the press, freedom of opinion and freedom of assembly. In many ways, measures of surveillance by the police and secret services have been made easier. Modern means of communication (telephone, mobile phones, e-mail, computer networks) give the authorities access to information about private behaviour to an extent inconceivable only 20 years ago. As a result, the old police dream of the 'transparent citizen' has largely come true. Individuals suspected of having committed acts of terrorism have been deprived of established rights of the prosecuted. Guarantees of fair trial have been limited. It is obvious that governments have taken advantage of the widespread fear of the general population after the attacks of September 11 to push through legislatory changes which they had long considered desirable. Professor Colin Warbrick addresses these questions more closely in this symposium.[41] I also wish to refer the reader to papers delivered at a conference of the Max-Planck-Institute in Heidelberg in January 2003.[42] Hopefully, these recent policies will not jeopardize in the long term the high standards of human rights protection achieved in Europe since the end of World War II, in conformity with the law of the United Nations.

D *Decolonization and Economic Cooperation with Developing Countries*

Until the time at which the European colonial empires in Africa and Asia had basically been dissolved, that is by the mid-1970s, colonialism was a major contentious issue in the relationship between the United Nations and the European colonial powers, Great Britain, France, Portugal, Spain, Belgium and The Netherlands. Although the UN Charter proclaimed the principle of equal rights and self-determination of peoples (Articles 1(2) and 55) and obliged the colonial powers to develop self-government of the peoples of non-self-governing territories and to assist them in the progressive development of free political institutions (Article 73 lit. b), the Charter did not stipulate a clear duty to lead

[39] See Gilbert, 'Is Europe Living Up to Its Obligations to Refugees?', this issue, at 963.

[40] See Annan, *supra* note 11.

[41] See Warbrick, 'Human Rights in the Fight against Terrorism', this issue, at 989.

[42] See C. Walter *et al.* (eds), *Terrorism as a Challenge for National and International Law: Security versus Liberty?* (2004). Of particular relevance in the present context are the contributions by Krieger, 'Limitations on Privacy, Freedom of Press, Opinion and Assembly as a Means of Fighting Terrorism' (at 51), Schmahl, 'Specific Methods of Prosecuting Terrorists in National Law' (at 81), and Seibert-Fohr, 'The Relevance of International Human Rights Standards for Prosecuting Terrorists' (at 125). The volume also includes detailed country reports about the EU, France, Germany, Italy, Spain, Turkey and the UK.

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the colonies into independence.[43] However, with more and more former colonies joining the UN, the General Assembly increasingly made decolonization a focal point of its activities. In 1960, it adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples,[44] demanding, *inter alia*, that 'immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, … in order to enable them to enjoy complete independence and freedom'. Eighty-nine states voted in favour of the Declaration; there were no votes against but nine abstentions (Australia, Belgium, Dominican Republic, France, Portugal, Spain, Union of South Africa, United Kingdom, United States). Even if it took another 15 years before the most important post-World War II phase of decolonization came to an end, the European colonial powers eventually yielded to the demands of the General Assembly. It is telling that at the time that the so-called Friendly Relations Declaration was passed (1970) they had already given up their resistance.[45]

Today only a few territories, most of them small islands, are left on the agenda of the General Assembly.[46] Although in 2001 the Assembly proclaimed the decade of 2001–2010 to be the 'Second International Decade for the Eradication of Colonialism',[47] the issue has lost its political and legal importance. In a certain respect, it has been transformed into the question of economic progress and improvement in the welfare and living standards of developing countries, economic cooperation between the industrialized and the developing states, and the liberalization of world trade – goals which were most prominently pronounced by the General Assembly in the Charter of Economic Rights and Duties of States of 1974.[48] It is well known that, together with the United States, Canada, Israel and Japan, the Western European countries either voted against this Charter (Belgium, Denmark, Federal Republic of Germany, Luxembourg, United Kingdom) or abstained from voting (Austria, France, Ireland, Italy, Netherlands, Norway, Spain). The effort by developing countries to obtain an improvement of their

[43] Only Art. 76 lit. b. of the UN Charter, in the chapter about the international trusteeship system, included a reference to independence by saying that it is one of the basic objectives of the trusteeship system 'to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government *or independence*' (emphasis added).

[44] UN GA Res. 1514 (XV) of 14 Dec. 1960; UNYB 1960, at 49.

[45] See Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, Annex to GA Res. 2625 (XXV) of 24 Oct. 1970; UNYB 1970, at 788. The declaration, adopted without vote, reiterated that every state has the duty 'to bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned'.

[46] See UN GA, 58th sess., Fourth Committee, Documents before the Special Political and Decolonization Committee, UN Doc. A/C.4/58/INF/1 of 18 Sept. 2003. The territories listed here are Gibraltar (as the only territory in Europe), New Caledonia, Western Sahara, Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Montserrat, Pitcairn, Saint Helena, Turks and Caicos Islands, Tokelau, American Samoa, Guam, and the United States Virgin Islands.

[47] See GA Res. 55/146 (6 Mar. 2001).

[48] See GA Res. 3281 (XXIX) of 12 Dec. 1974; UNYB 1974, at 402.

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economic conditions by means of legal obligations forced on the industrialized states of the Northern hemisphere failed.

'We the peoples of the United Nations determined to save succeeding generations from the scourge of war . . . and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person . . . and to promote social progress and better standards of life in larger freedom' – remembering these still impressive and moving opening words of the UN Charter, it is debatable whether the European states, and in particular the former colonial powers, have cared about Africa the way they should have, whether they have responsibly, determinedly and patiently striven against war and violence, poverty and the suppression of human rights in Africa. Because of the history of colonization, the respective responsibility of Europe for the well-being of the African peoples has been greater, and continues to be greater, than that of any other non-African region of the world. A recent survey of the work of the Security Council concluded that since the early 1990s the Council 'spends the majority of its time on African issues, but frequently with little success'. 'Whatever the sources of its very mixed (at best) track record in Africa, unless the Council can do better in years to come, it will clearly be failing the globe's most challenged continent and the intent of the Charter.'[49] Indeed, the Security Council must do better, and so must the European states as members of the Council.

E *The European Contribution to the UN Budget and to UN Peacekeeping Operations*

As far as the general support of the European states for the United Nations and the achievement of its purposes is concerned, I single out only two matters. First, the Organization could financially not survive without the contributions of the European Member States to the regular budget. Of the 10 Member States contributing the highest amounts, five are European (Germany, United Kingdom, France, Italy and Spain). Among the following 10 states, there are five European (Netherlands, Switzerland, Belgium, Sweden and Austria). In the period 2004–2006, the 25 members of the EU together are contributing 36.525 per cent of the budget.[50] Around 50 per cent of all UN Member States' contributions to UN funds and programmes are provided by EU Member States. Both EU Member States and the European Community provide substantial voluntary contributions.[51]

While the financial contributions of European states to UN peacekeeping operations are based on the regular budget scale of assessments (with somewhat higher rates in the case of the permanent members of the Security Council) and are therefore

[49] See Malone, 'Conclusion', *supra* note 4, at 641.

[50] Figures for 2004–2006 are as follows: United States 22 per cent, Japan 19.468, Germany 8.662, United Kingdom 6.127, France 6.030, Italy 4.885, Canada 2.813, Spain 2.520, People's Republic of China 2.053, Mexico 1.883. The 17 states which each contribute more than 1 per cent together bear 86.408 per cent of the membership dues. See GA Res. 58/1B (scale of assessments for the apportionment of the expenses of the United Nations) and 58/271A-C (programme budget for the biennium 2004–2005) of 23 Dec. 2003. A scale of assessments is also in 52 *Vereinte Nationen* (2004) 52.

[51] See *The European Union and the United Nations*, *supra* note 6, at 3. The EC budget provides some €300 million per year for UN agencies, in particular for development and humanitarian assistance.

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substantial,[52] the European contributions of personnel (military observers, civilian police and troops) have been modest. The greatest burden continues to be borne by a core group of developing countries. As of June 2004, the 15 main troop-contributing countries were Pakistan, Bangladesh, Nigeria, Ghana, India, Ethiopia, South Africa, Uruguay, Jordan, Kenya, Nepal, Morocco, Ukraine, Brazil and Senegal.[53] Only about 10 per cent of the troops and civilian police deployed in UN peacekeeping missions came from the EU and one per cent from the United States.[54] Of the EU states, the largest contributions are presently made by Poland (741), the United Kingdom (541), France (540), Austria (422), Slovakia (398), Sweden (311), Germany (296) and Finland (225).[55] The contributions of most EU states remain below 50 persons.[56] (In comparison, Pakistan contributes 8,159 persons, Bangladesh 6,177, and Nigeria 3,565.)

F *The Use of the Right of Veto in the Security Council by European States*

Lastly, I briefly wish to address the use of the right of veto in the Security Council. Since Article 27(3) of the UN Charter provides for the veto power of the permanent members of the Security Council, its use cannot generally be said to violate the Charter or to run contrary to its purposes.[57] It is only in highly exceptional cases that one can speak of an abuse of the veto power. Nevertheless, a veto cast by a permanent member is generally motivated by what that member deems its national interests. Therefore, the frequency of vetoes exercised by a state can serve to indicate that state's readiness to agree to mutual concessions and compromises in the interest of the international community as defined by the UN Charter. With that understanding, it is not without significance that the number of vetoes cast by the United Kingdom and France since 1946 is small in comparison with the negative votes of the Soviet Union and the United States. A survey covering the time between 1946 and 1990 listed a total number of 33 British and 18 French vetoes, as compared to 124 vetoes cast by the Soviet Union, 82 cast by the United States and 22 cast by China.[58] In most cases, the United Kingdom and France voted against a draft resolution together with the United States. In particular, the three Western powers rejected draft resolutions regarding Namibia and the Republic of South Africa. Only rarely

[52] See UN GA Res. 58/256 of 23 Dec. 2003 (scale of assessments for the apportionment of the expenses of United Nations peacekeeping operations) and Report of the Secretary-General (implementation of GA Res. 55/235 and 55/236) of 15 July 2003, UN Doc. A/58/157 (with Add.1 of 17 Dec. 2003).

[53] See UN Department of Peacekeeping Operations (DPKO), Ranking of Military and Civilian Police Contributions to UN Operations (30 June 2004), available at http://www.un.org/Depts/dpko/. See also UN Mission's Summary Detailed by Country (30 June 2004), at *ibid.*

[54] See information provided by the UN DPKO at http://www.un.org/Depts/dpko/dpko/faq/q8.htm.

[55] See UN DPKO, Monthly Summary of Contributions (as of 30 June 2004), available at http://www.un.org/Depts/dpko/.

[56] Belgium: 14, Czech Republic: 33, Denmark: 56, Estonia: 2, Hungary: 144, Italy: 174, Lithuania: 8, Netherlands: 16, Norway: 49, Portugal: 48, Slovenia: 16, Spain: 28. See *ibid.*

[57] For a discussion of the reasons underlying the right of veto and their varying merits, see B. Fassbender, *UN Security Council Reform and the Right of Veto: A Constitutional Perspective* (1998), at 163–170, 277–285.

[58] See A.V. Patil, *The UN Veto in World Affairs 1946–1990: A Complete Record and Case Histories of the Security Council's Veto* (1992), at 486.

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has the UK or France prevented the adoption of a draft resolution by its own veto alone. In the years 1970 to 1973 the UK vetoed several draft resolutions regarding Southern Rhodesia, and in 1976 France opposed a draft resolution concerning the situation in the Comoros. In 1956, the UK and France vetoed two draft resolutions in the Suez Canal crisis. From this survey it appears that most vetoes cast by the UK and France on their own initiative had to do with the colonial heritage of the two states. In a number of cases, however, the two European powers did not have to use their veto power, knowing that the United States would prevent the draft resolution in question from being adopted. In particular, the United States could be relied upon to defend the 'common interest' of the West against the Soviet Union in the struggles of the 'Cold War'. Evaluating the veto practice of the individual permanent members, one must also take into consideration the fact that until the early 1960s the Western powers almost invariably managed to muster the required majority to defeat unwelcome draft resolutions without resorting to the veto.[59]

G *Concluding Remarks on the Issue of Compliance*

In conclusion, it may be said that those European states which were masters of their own fate have been loyal members of the United Nations and have generally observed the rules of the Charter. There is a broad agreement between their own constitutional values and the purposes and principles of the Charter. In contrast, the Eastern European states were forced to follow the lead of the Soviet Union until 1990. Important human rights and fundamental freedoms were systematically violated in Eastern Europe.[60] As soon as they were free from foreign domination, the Eastern European states joined their Western counterparts in their recognition of the rule of law, democracy, and the protection of human rights.

The Western European states generally adhered to the UN Charter, including its prohibition of the use of force in international relations. However, compliance with that prohibition was not too much of an achievement since the states, firmly integrated in NATO and connected with the United States, were not in a position independently to use military force against any other state. The United Kingdom and France played a special role as principal victorious powers of the Second World War and colonial powers. Slowly and involuntarily retreating from their status as world powers, they were sometimes tempted to take action conflicting with the Charter rules. On the other hand, their history, global links, and diplomatic and military capacities enabled the UK und France often to serve the United Nations in ways not open to other European countries. Both states continue to play a special role as nuclear powers and permanent members of the Security Council. Britain still cultivates a 'special relationship' with the United States, a policy which has often separated it from the rest of Europe.

[59] *Ibid.*, at 458 *et seq.* (the 'hidden veto').

[60] See, e.g., the 1989 report of an independent group of scholars commissioned by the German Parliament: Deutscher Bundestag (ed.), 'Menschenrechte in den Staaten des Warschauer Paktes: Bericht der unabhängigen Wissenschaftlerkommission' (1989). For a review of that report, see Fassbender, 33 *Recht in Ost und West* (1989) 188.

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5 The European Union in the United Nations

The Member States of the European Union endeavour to coordinate and harmonize their foreign and security policies through the instrument of the 'Common Foreign and Security Policy' (CFSP).[61] CFSP continues the 'European Political Cooperation' (EPC) initiated by the then six Member States of the European Community in 1970 and first codified in the Single European Act of 1986. In 1992, cooperation in matters of foreign policy was extended by enclosing issues of security policy, and the new CFSP was included in the Treaty on European Union (TEU, 'Maastricht Treaty'). The respective provisions were amended by the Treaty of Amsterdam (1997) and the Treaty of Nice (2001).

According to Article 11(1) of the TEU, 'the Union shall define and implement a common foreign and security policy covering all areas of foreign and security policies'. Among the objectives of the CFSP, the following are mentioned first: 'to safeguard the common values, fundamental interests, independence and integrity of the Union *in conformity with the principles of the United Nations Charter*'.[62] The UN Charter is explicitly referred to once more in the same article when it proclaims as further objectives of the CFSP 'to preserve peace and strengthen international security, *in accordance with the principles of the United Nations Charter*, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders'.[63] The other stated objectives of the CFSP ('to promote international cooperation', 'to develop and consolidate . . . respect for human rights and fundamental freedoms') also correspond to those of the United Nations.

Article 19 of the TEU deals with the CFSP in international organizations, including the UN, in the following terms:

> 1. Member States shall coordinate their action in international organisations and at international conferences. They shall uphold the common positions in such forums.
>
> In international organisations and at international conferences where not all the Member States participate, those which do take part shall uphold the common positions.
>
> 2. Without prejudice to paragraph 1 and Article 14(3),[64] Member States represented in international organisations or international conferences where not all the Member States participate shall keep the latter informed of any matter of common interest.
>
> Member States which are also members of the United Nations Security Council will concert and keep the other Member States fully informed. Member States which are permanent members of the Security Council will, in the execution of their functions, ensure the defence of the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter.

[61] See Arnold, *supra* note 21. See further Winkelmann, 'Europäische und mitgliedstaatliche Interessenvertretung in den Vereinten Nationen', 60 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (2000) 413, and Tomuschat, 'Die Europäische Union als ein Akteur in den internationalen Beziehungen', in Frowein *et al.*, *supra* note 9, at 799 *et seq*.

[62] Emphasis added.

[63] Emphasis added.

[64] This provision says that the so-called joint actions adopted by the EU Council shall be binding on the member states.

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In the UN, the European Common Foreign and Security Policy mainly finds expression in three different fora – the General Assembly, the Security Council, and the specialized agencies. Here, I shall only deal with the first two.

In the General Assembly, joint declarations of the EU Member States, delivered by the current EU Presidency,[65] have become common. In the second half of 2001, Belgium, for instance, made 97 declarations on behalf of the then 15 EU Member States.[66] Often, the states of Central and Eastern Europe and the EFTA member states, Iceland, Liechtenstein and Norway, formally aligned themselves with these declarations.[67] Following the enlargement of the EU in 2004, the Presidency will thus usually speak for almost 30 UN Member States, which gives the EU a strong influence on the deliberations of the General Assembly. However, this EU coordination has been largely reactive in the sense that common positions have been developed with regard to initiatives taken by other states and groups of states; only rarely have UN-related initiatives actually been devised in the CFSP procedures.[68] The difficult and time-consuming proceedings in which the EU states endeavour to coordinate and harmonize their UN policies in Brussels and New York entail a moment of inflexibility – once a common position has been adopted it can hardly be changed in the course of subsequent negotiations with other UN Member States, especially the other members of the Group of Western European and Other States (WEOG).[69]

[65] See Art. 18(1) of the Treaty on European Union: 'The Presidency shall represent the Union in matters coming within the common foreign and security policy'. In addition, there has functioned in New York since 1974 a Delegation of the European Commission to the UN. On 11 Oct. 1974, the UN General Assembly granted observer status to the European Economic Community (subsequently changed to European Community). The official description of the Delegation's work says: 'The general role of the Delegation in New York is to reinforce the coordination of common EU policy and approaches in the UN, including helping draft EU statements and the adoption of EU positions on draft resolutions and other texts. All these positions are generally established through EU coordination meetings. . . . While in most cases the EU is represented by the EU Presidency in UN bodies in New York, the Commission acts as negotiator in a number of areas of Community competence (e.g. trade, fisheries, agriculture and aspects of development and environmental policy). An important innovation in EU coordination in 2001 was the establishment of regular weekly meetings devoted to consideration of Security Council matters.' See Description of Delegation's Work in New York (19 Sept. 2002), available at http://www.europa-eu-un.org/articles/.

[66] See Sucharipa, *supra* note 9, at 781.

[67] The standard formula developed for that alignment was: 'Mr. Chairman, I have the honour to speak on behalf of the European Union. The countries of Central and Eastern Europe associated with the European Union – Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia, and the Associated Countries – Cyprus, Malta and Turkey, as well as the EFTA Countries of the European Economic Area – Iceland and Liechtenstein, align themselves with this statement.'

[68] See Sucharipa, *supra* note 9, at 777. See also *The European Union and the United Nations*, *supra* note 6, at 4: '[T]oo often, the EU is still content to play a reactive role. Taking a more proactive stance would involve more extensive dialogue and preparatory work with other countries and groups.' By way of example, see the 'EU Priorities for the 58th General Assembly' of 1 July 2003, available at http://www.europa-eu-un.org/.

[69] See also *The European Union and the United Nations*, *supra* note 6, at 21: 'The Presidency (or other EU representatives) should be given greater flexibility to promote EU positions effectively in UN forums, on the basis of agreed mandates or guidelines, rather than on the basis of detailed EU statements. . . . [This] would help the EU to become a more active and operational participant in UN discussions.' For WEOG, see *infra* text accompanying note 82.

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In comparison with the UN policy of the United States, some characteristics of the positions adopted by the EU states can be identified:[70] EU states are more willing to accept certain restrictions of their sovereignty (human rights, death penalty, International Criminal Court) and insist more strongly on peaceful forms of settling international disputes. The European approach is more 'legalistic' than the American, placing trust in the importance and efficiency of international law. In general, the EU has been more skilful in negotiations with the G-77, for whose wishes and concerns it has often shown more sympathy than the US. As far as it can agree on questions of the Middle East conflict, the EU generally takes a view that is more critical of Israel and more supportive of the Palestinians than the US. As regards the budget and financing of the UN, the EU seeks to maintain the functioning of the UN and its secretariat, and opposes budget cuts which it regards as too drastic.

Voting of the EU Member States in the General Assembly has also become largely unanimous. In the years 1995 to 2001, the degree of cohesion with regard to resolutions put to a vote fluctuated between 70 and 85 per cent.[71] There are, however, crucial areas of disagreement – the Middle East Conflict, in particular the questions of Palestine and Israeli human rights violations, nuclear weapons and disarmament (with mainly the two nuclear powers, UK und France, disagreeing with the other EU states), and decolonization.[72] In addition, agreement could not be reached on the issue of Security Council reform.[73] In the EU of 15, the strongest voting cohesion was achieved by the Benelux countries, Germany, Denmark, Portugal, Finland and Greece, immediately followed by Austria, Sweden, Spain and Italy.[74] The European Commission recently described the negative effects of this situation as follows: 'Votes in which the EU is unable to agree on a common line continue to occur, mainly on issues in the area of CFSP. While in the past the practical implications of such split votes have generally been marginal, their impact on the EU's credibility is disproportionate – particularly in cases where there are established CFSP Common Positions on the issues in question.'[75]

While EU cooperation in matters of the General Assembly thus works well, the same cannot be said for the Security Council. Respective efforts suffered a serious setback in the Iraq crisis of 2002–2003 when the EU states represented on the Council positioned themselves in antagonistic groups (the UK and Spain, supporting the US-led war, on the one side, and France and Germany, opposing the war, on the other). A report of the German Government attributes the more limited degree of coordination and harmonization of EU Member State policies in the Security Council to 'the specific role of the Council in the UN system'.[76] This is a fine way of pointing to the fact that,

[70] See *ibid.*, at 787.

[71] See *ibid.*, at 782 and the table at 796 (EU cohesion on record votes, 1977–2001, excluding consensus resolutions). See also Kostakos and Bourantonis, 'Testing CFSP at the UN: EU Voting at the General Assembly 1990–1997', 31 *Peace and Security* (1999) 19.

[72] See Sucharipa, *supra* note 9, at 783 and 797 (table).

[73] See *infra* text accompanying note 106.

[74] See Sucharipa, *supra* note 9, at 784.

[75] See *The European Union and the United Nations*, *supra* note 6, at 4.

[76] See Report of the Federal Government about the Cooperation between Germany and the United Nations in 2001, at 6 (quoted in Sucharipa, *supra* note 9, at 788 n. 22).

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unlike the General Assembly, the Council is entitled to make binding decisions, in particular under Chapter VII of the Charter. In other words, what the Council does really matters, whereas agreement in the Assembly is of relatively little political, and almost no legal, consequence.

Structurally, an important difference between cooperation in the General Assembly and the Security Council lies in the fact that all EU members are members of the Assembly, and are so on the basis of equality. In contrast, EU membership in the Security Council is characterized by a fundamental difference of status between the two permanent members, the UK and France, on the one hand, and the other (usually two)[77] non-permanent EU members on the other hand, the latter only being elected for a term of two years and not eligible for immediate re-election (Article 23(2) of the UN Charter) and lacking the extraordinary power given to the P-5 by the right of veto (Article 27(3)). The United Kingdom and France continue to perceive their respective position as permanent member as being 'national' in the sense that a promotion of national interests is given priority over action as an 'agent for Europe'. Article 19(2) of the Treaty on European Union acknowledges this with the proviso 'without prejudice to their responsibilities under the provisions of the United Nations Charter'.[78]

In recent years, the EU Presidency has made declarations in the Security Council on behalf of the EU Member States, and occasionally the EU High Representative for the Common Foreign and Security Policy, Mr. Javier Solana, has spoken before the Council, but these appearances are largely ceremonial and cannot be regarded as active forms of participation. It is also important to note that in the so-called informal consultations of the Security Council, in which the decisive part of the Council's work is done, the EU as such does not appear at all.

The European Commission cautiously addressed the shortcomings in the implementation of Article 19(2) of the TEU when it suggested that 'EU Member States in the Security Council, and notably the Union's two permanent members, should explore more systematic ways of fulfilling their commitments . . . Where there is a common EU position on an issue under discussion, this could involve the permanent members ensuring that one of them (in turns) explicitly presents that position'.[79] A franker appraisal was recently made by an academic observer: 'The status of France and the UK in the Security Council presents a greater challenge to European foreign and defense policy construction than do their occasional differences of substantive view, however sharp. When they cohere on Council business, as they often do on African issues, they are hard to oppose, even by the United States. When they oppose each other strongly (and when other EU members of the Council do likewise, as on Iraq in March 2003), the results are usually dreadful for the Council and for EU credibility.'[80]

[77] See *infra* note 88.

[78] See *supra* text following note 63.

[79] See *The European Union and the United Nations*, *supra* note 6, at 18.

[80] See Malone, 'Conclusion', *supra* note 4, at 636.

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6 The Future Place and Role of Europe in the United Nations

With the accession of Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia to the European Union in May 2004, Europe is almost united in the United Nations, for the first time in its history. A few European states still do not belong to the EU, but they are either on the road to membership (Bulgaria, Romania, Croatia, Turkey) or tied to the EU in the framework of the European Economic Area (Iceland, Liechtenstein and Norway) or by bilateral treaties (Switzerland).[81] The great East-West divide has been overcome.

A *Europe in the System of Regional Groups*

The system of regional groups in the UN, which reflected the post-World War II division of Europe, has not been fundamentally reformed after 1990. It primarily serves to prepare elections in important UN bodies, in particular the General Assembly. Before formal elections take place, the members of a regional group reach an agreement on which of them will be nominated and supported. Decisions in the regional groups are taken in accordance with the principle of consensus. As a rule, and on the basis of reciprocity, candidates endorsed by a group are subsequently elected. The five regional groups existing since 1963 are the Group of African States (GAFS), the Group of Asian States (GASS), the Group of Latin American and Caribbean States (GRULAC), the Group of Eastern European States (EES) and the Group of Western European and Other States (WEOG).[82]

The latter two groups especially reflect the East-West confrontation of the 'Cold War'. WEOG presently has 30 members,[83] among them the 15 states constituting the EU before the enlargement of 2004, and important Western states outside of Europe (Australia, New Zealand). For electoral purposes, the United States is counted as a member of the Group; otherwise, it has an observer status. Turkey is a member of both WEOG and GASS, but for electoral matters only a member of the former. Since 2000, Israel is a 'temporary' member of WEOG, under certain provisos. Estonia, which, after having been admitted to the UN in September 2001, was not a member of any regional group, recently joined WEOG. In spite of its newly acquired EU membership, Cyprus continues to be a member of the Group of Asian States.

The Group of Eastern European States is composed of 21 states,[84] among them the Czech Republic, Hungary, Latvia, Lithuania, Poland and Slovenia as new EU Member

[81] There remains, however, the question of a possible future EU membership of Serbia and Montenegro (including or excluding Kosovo) and Albania.

[82] For a list of members of the different groups (as of May 2001), see Winkelmann, *supra* note 20, at 455 *et seq*. An unofficial list as of 4 Feb. 2003 was provided to the author by the UN Secretariat.

[83] Andorra, Australia, Austria, Belgium, Canada, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Israel, Italy, Liechtenstein, Luxembourg, Malta, Monaco, The Netherlands, New Zealand, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States of America.

[84] Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Georgia, Hungary, Latvia, Lithuania, Macedonia, Moldova, Poland, Romania, the Russian Federation, Serbia and Montenegro, Slovakia, Slovenia, Ukraine.

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States, and Bulgaria and Romania as states with which the EU has entered into negotiations on accession. Since the mid-1990s, Poland, the Czech Republic and Hungary have increasingly aligned themselves with WEOG in their statements in the UN General Assembly.[85]

Recently, a number of proposals for a new system of regional groups have been put forward,[86] but none of them seeks to create a single European group. The so-called Razali plan of 1997 for a reform of the Security Council was also based on the existing scheme of groups.[87] Since the distribution of non-permanent seats in the Security Council is determined by this scheme,[88] no reorganization of the groups will take place until a general agreement about the Security Council reform is achieved. It is unclear whether such a reorganization is in the interest of the European states because it will probably result in a less favourable geographical distribution of seats for Europe as a whole than the present one. For the time being, the EU will be the most important bridge between WEOG and EES.

B *The Future Place of the European Union in the UN*

Continuing the line of the Treaty on European Union, the Draft Treaty Establishing a Constitution for Europe, adopted by the European Convention in June and July 2003 and amended by the Intergovernmental Conference in June 2004, gives the UN Charter a prominent place in its part about the Union's external action. The first paragraph of the article introducing that part reads as follows:

> The Union's action on the international scene shall be guided by, and designed to advance in the wider world, the principles which have inspired its own creation, development and enlargement: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, equality and solidarity, and *respect for the principles of the United Nations Charter and international law*.
>
> The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations, which share the principles referred to in the first subparagraph. It shall promote multilateral solutions to common problems, *in particular in the framework of the United Nations*.[89]

[85] See *supra* note 67 and accompanying text, and Winkelmann, *supra* note 20, at 457.

[86] See *ibid.* at 458, for discussion of a proposal of the Australian Government of 1995, and a Canadian study of 1997.

[87] Ambassador Ismail Razali of Malaysia, then President of the General Assembly, presented a paper in the form of a draft resolution, proposing an enlargement of the Security Council by five permanent and four non-permanent members. Of the four new non-permanent seats, one should go to Eastern Europe. See Fassbender, 'All Illusions Shattered? Looking Back on a Decade of Failed Attempts to Reform the UN Security Council', 7 *Max Planck UNYB* (2003) 183 at 192 *et seq.*

[88] See GA Res. 1991 (XVIII) of 17 Dec. 1963: '*The General Assembly*, . . . 3. *Further decides* that the ten non-permanent members of the Security Council shall be elected according to the following pattern: *(a)* Five from African and Asian States; *(b)* One from Eastern European States; *(c)* Two from Latin American States; *(d)* Two from Western European and other States'.

[89] Art. III-193(1) of the Draft Treaty Establishing a Constitution for Europe, consolidated version as of 25 June 2004, Doc. CIG 86/04 (emphasis added). The numbering of the article is provisional because the IGC agreed on continuous numbering of the text of the Draft Constitution using arabic numerals.

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In comparison to the text of this article as adopted by the European Convention,[90] the Intergovernmental Conference introduced a change in subparagraph 1 which can easily be overlooked: The IGC replaced the phrase 'respect . . . for international law in accordance with the principles of the United Nations Charter' with the words 'respect for the principles of the United Nations Charter and international law'. The new wording seemingly enhances the importance of the UN Charter by mentioning it in the first place. But actually the Charter is depreciated in the new phrase because it is placed on the same level with 'international law'. The 'principles of the United Nations Charter' *and* 'international law' (or 'the principles of international law'?) are put side by side, as if they were equal in rank. The phrase reveals a fundamental misunderstanding of the UN Charter's place and meaning in the international legal order. It fails to recognize that the UN Charter, as the constitution of the international community, embraces all international law.[91] The Charter was not conceived of as one of many multilateral treaties operating within the framework of international law, but as the constitution of the international community within which international law would operate. Accordingly, there is no room for a category of 'general international law' existing independently *beside* the Charter. Instead, the UN Charter is the supporting frame of all international law and, at the same time, the highest layer in a hierarchy of norms of international law.[92] Constitutional rules which preceded the Charter have become a part of it, and they are subject to the relevant rules of interpretation and amendment. They are valid solely in the form the Charter has given them. New customary law which would amend, or derogate from, Charter law cannot come into being. The United States Government was right when it argued in the *Nicaragua* case that 'the provisions of the United Nations Charter . . . subsume and supervene related principles of customary and general international law'.[93] The UN Charter and (general or customary) international law cannot be played off against each other. Accordingly, the IGC's amendment of Article III-193 of the Draft Treaty is a regrettable step backwards. The phrase chosen by the European Convention, 'respect . . . for international law in accordance with the principles of the United Nations Charter' (or even better: 'respect . . . for international law in accordance with the United Nations Charter'), would have been preferable.

A similar tendency of the IGC to reduce emphasis on the UN Charter becomes apparent from an amendment of Article III-193, paragraph 2, of the Draft Treaty. As one of the objectives of the Union's common policies and actions in international relations, the Convention had determined 'to preserve peace, prevent conflicts and strengthen

[90] See Draft Treaty Establishing a Constitution for Europe, adopted by consensus by the European Convention on 13 June and 10 July 2003 and submitted to the President of the European Council in Rome on 18 July 2003, OJ 2003 C 169/01, at 65.

[91] See Fassbender, 'The United Nations Charter as Constitution of the International Community', 36 *Col. J. Int'l L.* (1998) 529, at 585 *et seq.* See also *idem*, 'Sovereignty and Constitutionalism in International Law', in N. Walker (ed.), *Sovereignty in Transition* (2003), 115.

[92] In its resolution of 29 Jan. 2004 (*supra* note 7, para. 15), the European Parliament 'confirm[ed] that the UN Charter constitutes the key political and legal basis for developing international relations and ensuring peace and international security'.

[93] See *Nicaragua*, ICJ Reports (1986) 14, at 93, para. 173.

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international security, *in conformity with the principles of the United Nations Charter*'.[94] Instead, the IGC decided to say 'to preserve peace, prevent conflicts and strengthen international security, *in conformity with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders*'.[95] The additional references to the Helsinki Final Act[96] and the Charter of Paris[97] were taken from Article 11(1) of the Treaty on European Union as presently in force.[98] Probably the IGC wanted to emphasize specifically 'European' principles and aims. However, both the Final Act and the Paris Charter are legally non-binding (which in the final clauses of both texts was expressed by the phrase that the Act and the Charter, respectively, 'is not eligible for registration under Article 102 of the Charter of the United Nations'). The European Union is of course free to orient its foreign policy to all sorts of principles, objectives and aims, but it is inappropriate to equate the binding rules of the UN Charter with pronouncements in political declarations, especially in the field of principal responsibility of the United Nations, the maintenance of international peace and security.

The Draft Constitutional Treaty did not alter very much the provisions of the present Article 19 of the Treaty on European Union[99] on the coordination of foreign policy action in international organizations, including the UN.[100] The role of the new Union Minister for Foreign Affairs is emphasized by a new provision according to which the Minister shall organize the coordination of actions of Member States in international organisations and at international conferences (Article III-206(1), second sentence). EU Member States which are also members of the UN Security Council shall concert and keep the other Member States *and the Union Minister* fully informed (Article III-206(2), subpara. 2). The following subparagraph 3 was added to paragraph 2: 'When the Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member States which sit on the Security Council shall request that the Union Minister for Foreign Affairs be asked to present the Union's position.'[101]

[94] See Art. III-193(2(c)) of the Draft Treaty as adopted by the European Convention, *supra* note 90 (emphasis added).

[95] See Art. III-193(2(c)) of the Draft Treaty as amended by the IGC, *supra* note 89 (emphasis added).

[96] Final Act of the Conference on Security and Co-operation in Europe (CSCE), 1 Aug. 1975, 14 ILM (1975) 1292; von Münch and Buske, *supra* note 34, at 623.

[97] 'Charter of Paris for a New Europe', declaration of the Heads of State or Government of the states participating in the CSCE, 21 Nov. 1990, 30 ILM (1991) 193.

[98] See *supra* text accompanying note 63.

[99] See *supra* text following note 63.

[100] For a review of the Draft Treaty's CFSP provisions, see Thym, 'Reforming Europe's Common Foreign and Security Policy', 10 *Eur LJ* (2004) 5. See also Cameron, 'After Iraq: The EU and Global Governance', 10 *Global Governance* (2004) 157 (criticizing, in particular, 'the confused external representation' of the EU unchanged by the Draft Treaty).

[101] See also Art. III-197(2) of the Draft Treaty: 'The Minister for Foreign Affairs shall represent the Union for matters relating to the common foreign and security policy. He or she shall conduct political dialogue with third parties on the Union's behalf *and shall express the Union's position in international organisations and at international conferences*.' (Emphasis added.)

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However, in principle the definition of a position to be taken by the Union will require unanimity in the EU Council (Article III-201, para. 1).[102]

Further, the Draft Treaty dropped the special reference to the European permanent members of the Security Council (Article 19(2), subpara. 2, of the Treaty on European Union)[103] by saying that 'Member States *which are members* of the Security Council will, in the execution of their functions, defend the positions and the interests of the Union, without prejudice to their responsibilities under the United Nations Charter.'[104] It does not seem, however, that the substance of the provision concerning the special status of France and the United Kingdom as permanent members of the Security Council[105] was meant to be changed by that amendment.

So far, the EU has not been able to agree on a common position in the question of UN Security Council reform.[106] EU states appeared in the reform discussion as members of different groups, such as the 'Coffee Club' (Italy, Spain), the 'Group of 10' (Belgium, Ireland, Portugal, Austria), or the Nordic WEOG states (Denmark, Finland, Iceland, Norway, Sweden). A particularly delicate issue is the permanent membership sought by Germany.[107] While the United Kingdom and France gave up their initial opposition, Italy continues to strongly reject the German candidacy. Spain also adopted a reserved position, while most other EU states supported Germany. Both Italy's and Spain's policies have been motivated by their wish not to see their status as European powers diminished in comparison with Germany. In an interview with an Italian newspaper, the then Permanent Representative of Italy to the UN, Ambassador F. P. Fulci, said, *inter alia*: '[T]he Germans thought that we would commit Harakiri and welcome their proposal which wants to push us out of the group of important countries.... It is about our marginalization. If the Security Council were enlarged according to the German idea, ... a new directorate would be created excluding Rome.'[108]

At present, the oft discussed idea of a common European seat in the UN Security Council is unrealistic. While such a seat would reduce the present over-representation of Western industrialized states on the Council, which is widely criticized by the developing countries, neither France nor the United Kingdom is prepared to give up its seat. Germany is not striving for a common European seat either but seeks its own permanent seat, and has gained substantial support for this claim by other states. In view of the fact that EU foreign policy is still guided by the unanimity principle,[109] it is

[102] For an analysis of the Draft Treaty's provisions on qualified majority voting (Art. III-201, paras. 2–4) in comparison with the present Art. 23(2) of the TEU, see Thym, *supra* note 100, at 10 *et seq*. The author concludes that 'Art. III-201(2) largely corresponds to the present Art. 23(2) TEU and does not foresee an immediate wide-spread extension of qualified majority voting'.

[103] See *supra* text following note 63.

[104] Art. III-206(2), subpara. 2, second sentence, of the Draft Treaty (emphasis added).

[105] See *supra* text accompanying note 78.

[106] For a recent summary of the course of the reform discussion, see Fassbender, *supra* note 87.

[107] For a detailed description of the German policy, see L. Andreae, *Reform in der Warteschleife: Ein deutscher Sitz im UN-Sicherheitsrat?* (2002), at 40–159.

[108] See '"La Germania ci schiaccia" accusa l'ambasciatore Fulci', *Il Giornale* (Milano), 1 Apr. 1996, at 13 (transl. by the author).

[109] See *supra* at note 102.

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also very questionable whether the responsibilities inherent in such a seat could be carried out in an effective way, or whether in contrast the EU would be forced into a policy of permanent abstention. If a common EU seat is created in the Security Council, it would be difficult to explain why in the General Assembly, ECOSOC and other UN bodies, the European Union should have 25 seats. On the other hand, exchanging the present 25 votes of EU Member States in those bodies for just one vote would severely diminish European influence in the United Nations, notwithstanding the example of the United States which is a powerful actor in the Organization in spite of its having just one vote.

Apart from these political questions, there are also serious legal obstacles to a European Union seat in the Security Council. The UN Charter only provides for membership of (sovereign) states (Article 4). The Security Council consists of 15 Member *States* (Article 23(1). The rules of Article 9 (the General Assembly shall consist of all the members of the UN) and Article 18(1) (each member of the General Assembly shall have one vote) do not allow states to retain their individual UN membership while uniting their seats and voting power in the organs of the Organization. From this it follows that as long as the EU is not a (sovereign) state it can neither become a member of the UN nor assume a seat in the Security Council, without a respective amendment of the UN Charter.[110] And such an amendment is unlikely to be accepted in the foreseeable future, if only for the reason that other groups of states (such as the Organization of American States, the African Union, or the Russian-dominated Commonwealth of Independent States) would claim similar privileges.

In a communication of September 2003, the European Commission diplomatically spoke of 'substantial challenges remain[ing] for the EU if it is to fulfil its potential in the UN'.[111] The Commission further stated: 'While the EU has moved progressively towards speaking with a common voice in UN debates, its real influence – and its ability to project European values – on the world stage still falls short of its economic and combined political weight'.[112] This is a fair description of the present situation – a situation which most likely will last in the years to come. In small steps, EU Member States will increasingly try to act in concert in the UN, and to make their unity visible by allowing EU representatives to take the floor in New York and Geneva. At the same time, EU states will individually remain members of the UN and, as such, will continue to be international actors in their own right.

7 Conclusion

Some 50 years have passed since the establishment of the European Coal and Steel Community in 1951. This period was not only an extraordinarily good time for the countries of (Western) Europe, but also a time in which, all in all, Europe was a positive

[110] The European Parliament failed to notice this fact when it claimed for the EU a permanent seat in the Security Council 'as soon as its [the EU's] legal personality is recognised' (see the resolution of 29 Jan. 2004, *supra* note 7, para. 12). International legal personality and 'sovereign' statehood are not the same.

[111] See *The European Union and the United Nations*, *supra* note 6, at 3.

[112] *Ibid.*

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force in the United Nations, its support of the principles and purposes of the UN clearly outweighing the questionable aspects of its political and military action. A steady economic growth, the success of the democratic form of government, the strong military presence of the United States and the integration of the European armed forces in NATO, the threat to the independence and freedom of all Western European states posed by the Soviet Union – all these factors favourably contributed to a situation in Western Europe characterized by a general respect for the purposes and principles of the United Nations as defined by the Charter. The success of Western European economic and political integration was so obvious that, after the breakdown of Soviet rule over Eastern Europe, the peoples there immediately sought to join the European Union.

However, in recent years clouds have begun to darken the clear Union sky. Economic stagnation and cuts in social security benefits made necessary by very large national debts could be harbingers of a greater economic crisis which could not fail to have an impact on a political stability largely based on the expectation of 'more wealth for all'. It will be a challenge to maintain, under so much more difficult conditions, democracy, the rule of law and the protection of human rights in Europe, and to continue a policy of goodwill and solidarity towards the world at large, in accordance with the guiding ideas of the UN Charter.

'The European Union's commitment to multilateralism is a defining principle of its external policy.'[113] This statement of the European Commission also applies to the foreign policy of the individual European states. As neither international anarchy nor a hegemonic world order are desirable or realistic alternatives, Europe has no other choice but to remain loyal to the idea of a multilateral international system based on the principle that all states 'have equal rights and duties and are equal members of the international community', and that 'each State has the right freely to choose and develop its political, social, economic and cultural systems'.[114] So far no other equally convincing – and equally universally accepted – guiding idea of international relations has appeared.

But, as the European Commission rightly remarked, the tests we face to keep this multilateral system and its institutions standing are bound to multiply, not diminish. 'In the years ahead, therefore, Europe's attachment to multilateralism – and to the United Nations, as the pivot of the multilateral system – will help determine whether, and how, the institutional architecture established in the years after World War II can continue to serve as the bedrock of the international system.'[115] Since the EC/EU and the global multilateral order of the UN are based on the same idea of 'integration through law'[116] and, more fundamentally, the same belief in rational and enlightened human beings able to design and organize their societal life in a reasonable way, a failure of multilateralism on a global level would necessarily have

[113] See *The European Union and the United Nations*, *supra* note 6, at 3.

[114] See UN GA, 'Friendly Relations Declaration', Annex to GA Res. 2625 (XXV) of 24 Oct. 1970, 'The principle of sovereign equality of States'. For analysis, see Fassbender, 'Sovereignty and Constitutionalism', *supra* note 91, at 125 *et seq.*, 131 *et seq.*

[115] See *The European Union and the United Nations*, *supra* note 6, at 3.

[116] See *supra* text *accompanying* note 3.

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repercussions on the European project. Intellectually and conceptually, the European Union and the United Nations are built on the same foundations. If this ground becomes shaky, both structures are in danger. Equally, the European Union would get into serious trouble if as an international actor it stopped being faithful to the values which are its own spiritual foundation. This is the true reason why the EU, as long as it retains its identity, cannot engage in selfish power politics, a diplomacy of coercion, or military interventions contrary to international law.

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