Unilateral Enforcement of the Collective Will: Kosovo, Iraq, and the Security Council

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Interests of the international community have been the object of intense discussions among international lawyers, especially in recent years. While the existence and membership of this community remains disputed, different categories of community interests have been suggested, such as human rights, the environment or peace in general. They are generally opposed to state interests, as states do not necessarily have a direct interest in pursuing such community values: they are not directly concerned and do not immediately profit from their enforcement. The modes of enforcement have likewise been subject to intense debate which has focused on institutional mechanisms, especially the Security Council, and unilateral action, such as reaction to the violation of _erga_
omnes norms. For quite some time, both approaches seemed to be integrated in the drafts of the ILC on state responsibility with respect to international crimes of state.

In 1998 and early 1999, state practice has taken up the question again, by a rise of unilateral military action of especially western states. Apart from the United States strikes on Afghanistan and Sudan in August 1998, which were claimed to be justified mainly by self-defense after terrorist attacks on United States embassies in Africa, military action has claimed to advance community interests: human rights in the cases of Kosovo and of the no-fly zones in Iraq, peace in the case of Iraqi disarmament. And acting states have, at least in part, relied on collective decisions to justify the use of force. I will call the common interest formulated in such decisions the collective will — as opposed to community values in general which, due to their subjective, decentralized determination, would be open to divergent views and would therefore remain less clear and forceful.

In this article I try to show that, despite different ways of justification in detail, the acting states in principle claimed a right to unilateral enforcement of that collective will. Most other states have rejected this general claim, but it reflects a perceived need to act when collective enforcement action is blocked in the Security Council, while purely unilateral action seems hardly justifiable any more. The emergence of such a new right would, however, seriously affect the system of collective security. And the way in which the claim has been advanced has led to widespread perceptions of hegemonic action without regard for the collective system. Although analysis shows nonetheless that the Security Council did matter, albeit to a limited degree, the prospects for collective security are rather sad.

3 Cf. J.A. Frowein, "Reactions by not Directly Affected States to Breaches of Public International Law", RdC 248 (1994), 345 et seq.; A. de Hoogh, Obligations Erga Omnes and International Crimes, 1996, 137 et seq.; see also under I.

4 See Keesing's Record of World Events 44 (1998), 42434 et seq.; on the very negative reaction from many states, see, e.g., Africa Research Bulletin 1998, 13268; Final Document of the XIIth Summit of the Non-aligned Movement, 2–3 September 1998, Durban, South Africa, § 159.