CHAPTER FOUR

THE WILL OF THE INTERNATIONAL COMMUNITY AS A NORMATIVE SOURCE OF INTERNATIONAL LAW

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1. Introduction

The concept of an international community is often used in juridical and political thinking as an authoritative image without fully elaborating its normative or practical implications.1 Sometimes it is only by implication that we are able to adumbrate its particular features. For instance, in Part I of his *International Law* treatise Professor Cassese discusses the “Origins and Foundations of the International Community” and opens the discussion on “[t]he main legal features of the international community” by warning us that “the features of the world (sic) community are unique”2 whereas later he deals with the “traditional individualistic trends and emerging community obligations

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and rights". What one could infer from the above is an image of an international community that transcends the confines of state individualism towards a more inclusive and solidaristic accommodation. However, even in such a less impressionist usage of the concept of an international community, its jurisprudential character often remains unexplored and uncertain.

International relations theorists and particularly theorists in the English School ponder the formation or the characteristics of an international society whereas the consideration of the concept of an international community is rather weak. Moreover, the different conceptualizations of international society peregrinating from a loose concept of society to one that contains common values thus closer to a community, results in a certain intellectual ambivalence. For instance, the inclusion of values in Hedley Bull’s definition of an international society brings it closer to the concept of a community. However, this approach breaks down upon the realization that the

4. In his International Law in a Divided World, Judge Cassese employs the concept of community to describe an aggregation of states. He identifies three segments within that community having distinct international norms: the universal which envelops all states; the general which refers to customary norms accepted by only two groups of states and, finally, the particular adhered to by one group of states. The attribution of community character to such an aggregation resides on the fact that membership is premised on statehood and not on its qualities. This may represent an objective criterion for constituting a community but it is not the defining one as the acknowledgment of sectoralization concedes. A. Cassese, International Law in a Divided World (Oxford, Clarendon Press, 1986), pp. 32–33.
8. H. Bull, The Anarchical Society: A Study of Order in World Politics, 2nd ed. (Houndmills, Macmillan, 1995), p. 13: “A society of states (or international society) exists when a group of states, conscious of certain common interests and common values, form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another, and share in the working of common institutions.”