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NORMS OVER FORCE

The Enigma of European Power

ZAKI LAÏDI



Norms over Force

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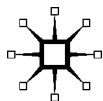
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I N T R O D U C T I O N

It may seem strange to take an interest in the power of Europe at a time when Europe more than ever seems to be a vulnerable political entity. But I will respond to this irrefutable observation in two ways: first, by considering that crises provide stimulation and justify in-depth questioning and, second because the failure of the constitutional treaty does not prefigure Europe's demise. If this were the case, it would mean that the foundations on which Europe has been built since 1957 are incredibly fragile. It is unimaginable that the *acquis communautaire*, which remains considerable whatever people might say, could dissolve due to the failure of a text that in fact introduced no major innovation. From this standpoint, the comparison between the failure of the Constitutional Treaty and that of the European Defense Community (EDC) in 1954 does not hold water. Admittedly, the failure of the EDC delayed the idea of a European defense for over 40 years. But the project in itself was a historical gamble, a leap into the unknown that grew out of nothing other than the idea that war was the evil that Europe needed to shake if it wanted to survive. The Constitutional Treaty is backed by 45 years of slow, gradual, erratic but real construction work that has significant results to show for its efforts: peace, prosperity, the rule of law, a single market, and the communitarization of certain public policies. Seen from Europe, the result may seem modest. Seen from the rest of the world, the achievement is obvious. For even if the political integration of Europe is stalled, even if its growth has not improved, and even if globalization has eroded the social protection of European citizens, Europe still has very strong trump cards in its hand. And the fact that so many states are seeking

to join the European Union is, from this standpoint, an important promotional argument. Building the rule of law, protecting civil liberties, guaranteeing the free functioning of the market, preventing the risk of war are all essential components of the European project. The fact that these *acquis* are fragile or perceived as not inspiring enough in no way makes them less important. Actually, it is highly likely that Europe's main difficulty derives from the fact that it lacks self-confidence and that the confidence deficit reflects a problem of identity. Europeans certainly have no trouble defining themselves with respect to the rest of the world. But they have a lot more trouble thinking of themselves in new terms and according to new categories, ones that would enable them to combine national identity and European identity. Naturally, the easy answer is to say that these dimensions are complementary and compatible, and that they are a source of enrichment. But, as usual, the reality is more complex than that. For between European citizens, who can view themselves from multiple angles, and Europe, comes the great survivor that is the nation-state. The prospect of its demise, always announced and systematically belied, is disturbing, either because its existence no longer seems guaranteed (wherefore the announcement of its demise), or because it seems incontrovertible (wherefore the announcement of its return). Such that the European project basically experiences itself as a project that both wants to get beyond nation-states and still keeps them alive without really knowing how to go about it.

From this historic ambivalence flows what I will call here the enigma of European power. In many regards, Europe "looks like a power" and tries to assume this appearance. But its power is not one of a nation-state. One might be tempted to discount this objection by pointing out that in the world today, there are numerous forms and modalities of wielding power that do not avail themselves of a state apparatus: multinationals know it well. But there again, nothing is simple. For although Europe in no way aspires to become a super state, on a world scale it is striving to obtain recognition as a "de facto super state" on which the classic attributes of power would be conferred.

Nothing offends Europeans more than to see Europe reduced to the rank of mere regional organization. But Europeans are even

more offended when they are asked one way or another to sweep their particularism under the carpet of European unity. Thus there is a basic contradiction in European power. But rather than seek to overcome it, it should be investigated. Unfortunately, political analyses of Europe have not necessarily always given themselves the means to do so. Traditionally, analysis of European power has been the privilege of either foreign-policy specialists or public policy analysts. Analyses that seek to study the connection between European defense, its trade policy, and its environmental strategy are few and far between. Worse yet, analysis of social preferences is disconnected from that of the European Union's external action. Such that it is often weighed down by a considerable handicap: institutional formalism. In many analyses, investigating Europe's role in the world still means examining the constitutional and legal framework of Europe's foreign policy, at the risk of succumbing to a fascination for microdecisions that would yield very meager results.

Now that is exactly the habit that needs to be broken. I do not mean that institutions are not fundamental, but that institutions only have the meaning we are willing to give them. Such that without first examining the contents of the choices and preferences of Europe, an analysis of its institutions remains a infertile exercise. Moreover, separating external policy from Europe's social, economic, and cultural preferences is untenable. For if globalization makes any sense, it is in the shattering of the hermetic compartments of Europe's action in the world. Certainly, trade is not diplomacy, and the issue of arms sales to China is not on the same level as that of respect for basic social norms that are at odds with this same China. But never has the gap between these various problems been so small. For how can we convince China not to rely too much on its competitive edge if we do not have more political cards to constrain it to make an effort in this direction? For the United States, such an approach makes sense because it is a state. But can Europe do the same?

The point is not to confuse matters, but to try to connect everything by attempting to answer this simple question: What does Europe really want? What worldview does it hold? What preferences does it defend? What likelihood is there of its being able to share them with the rest of the world?

Such are the questions this book will address, not by providing abstract or idealized answers, but by suggesting an analytical framework that aims to consider Europe in the context of globalization, beyond the microdisciplinary segmentations that it is sometimes subject to.

In an attempt to rise to this challenge, I will thus submit to the reader four sets of questions that actually are more open avenues than sort of closed-circuit conceptualizations.

The first has to do with the meaning of European power. Is it a deceptive power, merely a civilian power, or a superpower in gestation that simply needs to be given time to mature? My hypothesis is that Europe will not be a superpower as long as it is not the ultimate guarantor of its own security. Therefore, as long as European Union defense policy does not tackle this problem, its meaning will remain unchanged. This is why it is reasonable to think that Europe will remain a soft power, but a soft power that must be taken seriously.

So if the power does not have the strength to make itself heard, what instruments does it have? My second hypothesis, which consists in thinking that the power of Europe is based on what I will call the *preference for norms*, addresses this question.

Assuming that this preference is a trademark of European power, what ethical, political, social, and cultural preferences does it express?

Taking that question as a starting point, I will try to show how the European model of preference for norms is confronted today with the resistance of political state sovereignties—particularly the most powerful of them, the United States.

I will conclude by discussing the implications that the European preference for norms can have on the world system. Two paths can be imagined. The first involves thinking that with the rise in new powers such as China and India, the world checkerboard will tend to be rearranged around the classic interstate game in which realpolitik will win over regulation by norms. In this hypothesis, there will be a real race between Europe and the rest of the world. With Europe seeking to standardize the world system, the other powers will try to delay or chip away at this normative system. The consequences of this competition will, of course, be considerable.

For either Europe wins, and its model will come out strengthened, or else Europe loses, and its model will suffer, inciting the most powerful European states to try to strike out on their own in a big geopolitical negotiating game. In the most extreme case, the European project will come apart on its own, except perhaps in the field of trade, the transnational functioning of which does not bother realpolitik theoreticians.

To thwart this possibility, which could be fatal, Europe could then attempt to force the hand of destiny by moving toward what I call a constitutionalization of the world order. Norms would be not only global but also legally guaranteed. That would be the logical response in the face of the return of world realpolitik.

Yet if Europe has everything to lose in a comeback of realpolitik, it has nothing to win from a constitutionalization of the world order. For to constitutionalize the world order means, in a way, seeking to draw out of norms the very essence of politics. This is the crux of the criticism that the United States addresses to Europe in a sometimes brutal manner. Europe does not have to agree with this analysis, but it cannot ignore it. Not only because the United States matters, but also because the relationship between norms and politics poses problems in Europe as well. Wherefore the need to cross over the hump that will prevent Europe from falling into the trap in which it has historically fallen (realpolitik), while avoiding succumbing to another temptation that historically it has not always resisted either: confusing the defense of its interests with those of universal morality.

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CHAPTER 1

Why Europe Cannot Be a Superpower

Much plethora of research has been conducted on Europe's power.¹ But aside from the fact that it tends to concentrate particularly on procedures and discourses, it winds up stumbling upon the same enigma: Can Europe be a superpower? This question in turn raises two new questions: Is it conceivable for a political actor that is not a state—even if it seeks *de facto* acknowledgment as such, particularly by international institutions—to rise to the rank of a superpower? Even more fundamentally, is the European project compatible with the very idea of power? As we will see, these questions are essential. And the fact that they are posed with regard to Europe and not China, India, Brazil, or Russia shows that Europe is indeed a specific case. Its specificity is twofold. Not only because Europe's political structure has no historical equivalent—it is not a state, even a federal one (and nothing indicates that it is on the way to becoming one)—but also because, like it or not, the philosophy of the European project is historically dominated by a refusal of power: “Cooperation between nations,” wrote Jean Monnet, “solves nothing. What we need to strive for is to merge European interests and not simply to balance them.”² This very definition contains an explicit desire to get beyond the traditional balance of power (in fact, invented by the Europeans) and the ambition to draw out common European interests that amount to more than the sum of national interests.

This enigma of European power—which arises from both the refusal to accept power and the inability to ignore it totally in a world

where such refusal is perceived or experienced as powerlessness and where, moreover, the pooling of forces almost automatically produces power—is something I shall return to at length.

What Is a Superpower?

At this stage, I shall begin by formulating a hypothesis: Europe has several instruments of power, including the instruments of a superpower. But it has little chance of achieving the rank of superpower, not because it does not have a military force—as it is too often claimed—but because, basically, *Europeans do not see themselves as the ultimate guarantors of their own security*. That is a fundamental starting point.

In the hierarchy of important actors in the world system, Europe shares this particularity with Japan; this is obviously no coincidence. After 1945, Japan sought to turn its back on its imperialistic past. As for Europe, it wanted to break the endless cycle of confrontation between nations at a time, moreover, when it had exhausted its needs for imperial conquest. The Rome Treaty followed on the heels of the Franco-British debacle in Suez. The hypothesis may seem chancy, but it nevertheless seems temporarily to hold true: The major *soft powers* are striving to disown part of their history. In the case of Europe, there is an additional challenge: to turn its back on a history of wars between European nations without quashing them. *Hard powers* see themselves differently. They want to break with their history not to create a new one, but to pursue or revive it.³ However, making a clean break with one's past is not an easy task, for it fundamentally deprives the actor of an historic depth of field. Europe, where the modern notion of political sovereignty of states was founded, has for fifty years been trying to circumvent it, sublime at, and share it without wanting or being able to get beyond it.

Thus all the other major actors such as the United States, China, Russia, India, and even Brazil see themselves as the ultimate guarantors of their own security. Saying that does not mean that all these states actually have the means to ensure their own security, even though their morphology is a considerable contributing factor.

They are all indeed vast states that make territorial conquest difficult to undertake, whereas Europe does not have the same expanse to protect it.⁴ That means that these states view the world “as if” it will always be their duty to carry the ultimate responsibility of ensuring their security. Now, the fact of perceiving oneself as the ultimate guarantor of one’s own security has incommensurable consequences on the way an actor looks at the world and, in a mirror effect, on the way the world looks at it.

To be the ultimate guarantor of one’s own security means constantly speculating about the conditions for one’s survival, the extreme situations that could jeopardize it, and the tight interweaving of the various dimensions of power—political-military power, economic power, and identitarian power, taken to mean the ideas and values to which a human collectivity connects its survival. To be a superpower is to believe that “the world order,” with its codes and rules, could one day or another come into contradiction with one’s own survival, which implies, in this event, either pulling out of the game or changing the rules.

Being a superpower also means integrating the fact that one’s survival is at stake almost on a daily basis. Let us take an example suggested by recent current events. In the past few years, the energy question has returned to the forefront. The rise in power of China as well as India, coupled with the usual U.S. demand for Fuel, has led to increased energy demand and a subsequent rise in price across the globe. As a result, all these countries are trying to develop veritable energy supply strategies. The most spectacular form of this approach has been the Chinese takeover bid on an American mini-major corporation—Unocal.⁵ Like other big consumers, China is also trying to acquire oil reserves through the stock market, with India following in its wake. It is moreover obvious that these two countries place considerable importance on energy supply security in their overall political strategy.

All this may appear in a way to be perfectly natural and rather trite. Except that a country such as Japan that is even more dependent than India and China in terms of energy does not behave at all in the same way. It has no major oil company and conducts a very passive supply policy that keeps it in a position of very high dependency with respect to Middle Eastern oil. But it does not

seek any political outlet to this situation. Its oil dependence is experienced as a mere constraint that has prompted it to keep a low profile in the Middle East.

What does all this tell us about nations' relationship to power? The lesson is fundamental. Japan deliberately strives not to transform its energy supply security into a political issue, because it intensely associates the "aggressive" search for oil with war. Tokyo attacked Pearl Harbor when the United States suspended their exports. With regard to its history, Tokyo associates the quest for oil with recourse to force. It is, therefore, not inclined to treat its energy supply security in political or strategic terms.⁶ Europe's approach is different from Japan's, but it also appears inspired more by a sustainable logic of interdependence than by a power strategy. In the next 20 years, Europe's energy dependence will represent two-thirds of its needs as opposed to only half of them today. And to meet them, it has chosen recourse to natural gas (to protect its environment), which, unlike oil, requires lasting commitments in terms of infrastructure on the part of both importers and exporters. The role of a guaranteed supplier is mainly played by Russia. Politically, this means that Europe is structurally impelled to seek political accommodation with Russia.⁷ Naturally, there is nothing automatic about Europe's conduct of its policy that prompts us to believe that its natural gas dependence requires it to refrain from criticizing Russia about Chechnya or other human rights abuses. Certain observers do not exclude such a relationship, pointing out a coincidence between Euro-Russian negotiations on energy supply and the Union's commitment to extend its *Tacis* program to Chechnya, a commitment that could hardly be considered as anything but an implicit support for the Russian policy of "normalization."⁸ But all this is a matter of perspective. When looking at Russia, the gaze European Union casts is one that can mainly be qualified as a "gaze of interdependency."⁹

The second case study deals with the EU's energy policy. In this context, the stakes of the Energy Charter are highly revealing of Europe's preference for norms and the resistance it faces. Initiated by the Commission in 1994, signed in 1998 but not ratified since then, this charter explicitly states that its fundamental

role is to “strengthen the rule of law on energy issues, by creating a level playing field of rules to be observed by all participating governments, thus minimizing the risks associated with energy-related investments and trade.”¹⁰ In addition, it provides for a characteristic element of governance by norms: the setting up of a dispute-resolution mechanism. Through this entire system, Europe is basically seeking to engage Russia in a partnership that will make it very difficult for Russia to interrupt natural gas delivery to Europe, particular by depriving it of a monopoly over the gas distribution network.¹¹ The energy issue confronts Europe with not only realist issues (energy supply involves interests that can be qualified as highly sensitive, even vital), but also arbitration, because it just so happens precisely that its main suppliers, Russia and Algeria, are fiercely hostile to any idea of political conditionality.¹²

But the energy issue does not stop there. It poses a more general problem: how does Europe envisage regulation of the energy market on a global scale? Should the EU think of it in terms of regulation through the market and institutions or should it on the contrary reason in terms of classic geopolitics?¹³

The first alternative reflects the hypothesis of governance through norms that Europe prefers over *realpolitik*, whereas the second fits into a classic geopolitical framework in which a dominant actor uses energy as the instrument of state power, has little sympathy for world regulation, but is highly reactive to political considerations. Naturally, these two options leave room for uncertainty in the middle. It remains to be seen how the EU will manage to handle it. It is conceivable that the EU will be entrusted with the governance aspect, whereas the geopolitical aspect will remain in the hands of member states—a division of roles that naturally carries a risk of incoherence.

Power is indeed a way of viewing and acting in the world and this independently of any objective consideration. In paroxysmic manner, a superpower seeks to “create reality” and not react to it. This is the meaning of George Bush’s remarks when he said, “We’re an empire now, and when we act, we create our own reality. And while you’re studying that reality . . . , we’ll act again, creating other new realities.”¹⁴ Hard power can be considered

as the actor potentially trying to fashion a world reality in its own image, whereas soft power does its best to influence it.¹⁵ Hard power is one that describes the world in political terms; soft power is one that is subjected to it to varying degrees. The Solana report, which set out to define Europe's security strategy, is an illustration of this approach.¹⁶ The global threats it identifies are about the same as those identified by the United States. This coincidence is not surprising in itself. But it is significant to note that this report uses the same terminology as the Americans, particularly the controversial notion of failed states, and offers nothing original or European in origin. It is moreover striking to see that this document practically entirely evacuates issues of global governance and European approaches in this regard. All this starkly points up the European Union's lack of strategic coherence as a world actor. From this a twofold observation can be drawn: the conclusion that the document is a sort of broad enough compromise to accommodate convergent European positions. Europe can be said to style itself on the U.S. world agenda but suggests more cooperative and less conflictual solutions for implementing it.

In any event, hard power also spends its time sending out signals to the other dominant actors to indicate that it shares the codes of power with them, and only them. Thus, when India reveals plans to put in orbit a satellite that will enable it to observe the moon's surface, no one seriously thinks that it will obtain results that will be any different from those brought back by the Apollo missions nearly 30 years ago. On the other hand, everyone understands that India is seeking to endow itself with the status of a superpower, forcing China to launch a program so as not to seem to lag behind its regional competitor.¹⁷

Power Avoidance

This naturally brings us straight to Europe. Like Japan, it is weighed down by the memory of war. Such that each time confrontation is involved when issues of power are at stake, it will do everything to sublime them or remove them from the center. And like Japan,

it will attempt to conceive its dependence in terms of interdependence rather than survival. A superpower has a natural tendency to pose the stakes of the world in terms of a zero-sum game, which a lesser power seeks precisely to avoid. And it is precisely because superpowers view the world in the form of a potential zero-sum game that they are prompted to up the ante: to ensure its survival it must ensure its *supremacy*. Hard power implicitly conveys a dominant instinct, even if its sphere of domination is only regional, as is the case with Brazil and India. Soft power discards this idea, even on an economic level. When the Europeans launched the Lisbon strategy in the year 2000 to make the European Union the most competitive region in the world, no one read the declaration as a claim for world leadership. Its aim was much more to galvanize Europeans by encouraging them to reform their economies to close the gap between the United States and Europe, particularly in the field of innovation and research.

It is thus understandable that an actor that is not the ultimate guarantor of its security will behave differently. It will by nature be less assured, less determined, and more diversified. It will naturally start by thinking about the conditions that will allow it to overcome this weakness or deficiency in order precisely to become the ultimate guarantor of its security. But this assumes a keen intentionality, backed not only by discourse but also by strong choices.

Now, even for the two political-military powers that are France and Great Britain, the ultimate guarantee of their own security has not been posed in exclusively national terms since 1945. France, which pursued the game of strategic national autonomy the furthest, conceived it only with respect to the U.S. strategic guarantee in Europe. And even if it tried to develop an autonomous strategic culture in Europe that in the long run would lead to Europe's ensuring its own defense, it did not manage to achieve this. The real but modest progress that can be noted as regards European defense has been possible only by cooperating with Great Britain, which itself is fiercely hostile to any idea of strategic decoupling between Europe and the United States. The immense majority of Europeans do not view themselves as the ultimate guarantors of their own security. And with European enlargement, this outlook can only be reinforced because the

countries of “new Europe” still sense a potential threat to their sovereignty that no European force today can protect against, and also because, paradoxically, they fear a slump in the vigor of the U.S. guarantee.

In fact, up until 1989, U.S. defense implicated defending Europe.

Since the end of the cold war, and especially since September 11, 2001, which the Americans call the “11/9–9/11 sequence” (November 9, 1989–September 11, 2001), this strategy has become “globalized” in that it is no longer a question of defending a territory (Europe) better to defend its own territory, but of seeing how the Europeans can contribute to what is now a deterritorialized strategy. Strategically, there is less U.S. interest in thinking about Europe as a whole, as it did during the cold war, because today it is less a matter of fighting a battle on European soil to prevent a subsequent attack against the American territory, than of seeking allies in a more global combat. In order for them to remain “in the area,” to use NATO jargon, the United States demands of their allies an engagement outside of Europe, in other words “out of the area.”¹⁸ The United States moreover is seeking to release NATO from majority rule, because, particularly since the war in Kosovo, they have been able to measure just how much it can limit their own margin for the maneuver.¹⁹

The Americans want to act locally in Europe in order to picture themselves globally in the world.²⁰ And in this perspective, it is less Europe as such that interests them than the EU member states taken separately. To this end, they are absolutely determined to weigh their engagement in Europe very carefully. Their stand against Germany being granted a permanent seat on the UN Security Council to punish it for its nonalignment during the war in Iraq, and so as not to rile London, shows that the question of the U.S. preference for a strong or weak Europe is purely academic. Between a Europe united behind them and a Europe divided, the United States will always prefer a united Europe. But if this united Europe came to view itself in terms of a “counterweight,” an American preference for disunity would win out. To be convinced of this, suffice it to examine how the United States did everything in its power to prevent the European Galileo satellite project from

getting off the ground, in order to maintain the asymmetrical relationship between the United States and Europe as regards satellite communications.²¹ They fear that in the long run Europe will have its own instruments, particularly for military intelligence, which is obviously not without consequence with regard to the controversy on weapons of mass destruction in Iraq. Countries such as France and Germany cast doubt on the way the Americans interpreted satellite photos, but they had no counterproof to back up their suspicions.

The first option offered to European power is thus that of *implementing* its strategy with all the limits that we have briefly mentioned. But this choice is only one among others. It is possible to imagine—and in the case of Europe, the hypothesis is borne out—that an actor that is not the ultimate guarantor of its own security practices *avoidance* or, in other words, the more or less pronounced refusal to take an interest in the consequences of this lack of autonomy. Avoidance can be interpreted as the accepted interiorization of this inferiority or dependence with respect to the ultimate guarantor of one's security.

Lastly, there is a third approach that involves changing the refusal of power into a virtue, in other words, instead of avoiding power, *diverting* it. Europe's entire approach to security could be considered to involve rephrasing the question of "world order" in terms of the ultimate security guarantee not only of each nation, but of the human species more than ever caught up in webs of interdependence. Taken even further, this approach can seek to banalize classical forms of national and military security and promote postmodern approaches to security, for instance, in the fields of the environment, health, or society.

In observing the political reality of Europe, fragments of these three dimensions are easy to spot: fragments of the quest for power (including from a military standpoint), a persistent refusal of power, and innovation to shift the power center toward civilian and societal areas. If Europe indeed wields power, it is *composite* to say the least. Such that when one denies that Europe has any "features" of power, it is not difficult to find counterexamples to this overly abrupt assertion. But on the other hand, in attempting to rationalize power to the point of trying to compare it to others, considerable

power “deficits” can be identified. This is why thinking about European power does not boil down to piercing its “enigma” but to conceptualizing it.

This enigmatic power naturally affects how the rest of the world looks at it. Some may see a power in gestation, others the construction of a market in which only nation-states are worth considering; still others an original form of civilian or normative power. The vast array of possible ways of considering Europe naturally depends on which actor is looking at it. The fact that Europe is not a hard power is likely to make it more acceptable, less threatening, and therefore an entity easier to associate in the eyes of the rest of the world. Protest against Europe as such is a rare phenomenon indeed. An international opinion survey conducted in 18 non-European countries shows that in nearly all of them the European Union is perceived in a positive light. But certain details of the survey warrant a closer look. In Latin America, where pro-European sentiment is yet generally symmetrical to anti-American sentiment, there is one notable exception: Brazil, where European agricultural protectionism is obviously perceived as a hindrance to its power. In Asia, pro-European sentiment stands out, but what dominates in a country such as India or the Philippines is indifference toward Europe, reflected in the high rate of no-answers.²² From indifference it is easy to slide toward a certain disdain, either because “norms over force” hardly seems a credible stance, or because it is perceived as “a second-rank player” (the strategic choices being made by its protectors—in this case the United States), or, finally, because Europe is seen only through its member states, each having specific interests and practices far removed from the principles defended by Europe. The more one touches on questions of strategy and security, the more crucial this dimension would appear.

A country such as India, for instance, has considerable trouble picturing the EU as an international actor, to such an extent that European Commissioner Mandelson has publicly expressed concerns about it: “Just as Europe should take India seriously, I want India to take Europe seriously. . . . I read recently a report that Indians do not think very much about the European Union. This is a shame if it is true.”²³ This statement implicitly addresses a key issue: that of state sovereignty. Not only India, but also China, Russia, and

Brazil, not to mention the United States, seem to identify power only with a national power. An Indian forecasting report drafted in 2005 imagines in 2035 a tripolar world made up of the United States, India, and China. He arrives at this conclusion via a fairly simple methodology taking into account population, GDP, and per capita GDP.²⁴ Now if Joschka Fischer is to be believed, this is precisely the scenario the Americans are working from.²⁵ What is interesting in the Indian report is to see the treatment reserved for Europe. Two hypotheses are envisaged. The first is based on surrendering half the sovereignty of European states to the benefit of the European Union and to the detriment of its member states. In this case, Europe would become the fourth pillar of the world system. The second imagines a much more moderate surrender of member state sovereignty (one-fourth). In this case, the power of the European Union in 2035 would represent either 25 percent of the American power, as opposed to 50 percent in the first scenario.²⁶ Notwithstanding any reservations one might have with regard to a quantitative approach to power, it is interesting to see that the Indians stick to an extremely classic vision of sovereignty and power, and with regard to Europe its entire dynamic is seen from the angle of a zero-sum game between member states and the EU.

The question of sovereignty, in fact, rebounds on all aspects of Euro-Indian relations in that the Indians cannot help but be wary of a European project that seeks to erode the sovereignty of its members—and thus of its partners—whereas India is striving by all possible means to enhance its power as a nation.²⁷ For the Indians, for instance, the notion of “shared sovereignty” is simply synonymous with “intergovernmental cooperation.”²⁸ This explains the obvious misunderstanding about the shared European and Indian attachment to multilateralism. For the European Union, multilateralism constitutes a regulatory instrument aiming to advance “the common good,” whereas for the Indians, it primarily represents a resource to gain U.S. recognition as a full-fledged major power.

To conceptualize Europe’s power, three possible directions can be taken: that of power *achievement*, which would inevitably transform Europe from a commercial power into a global power; that of power *avoidance*, which would involve not posing the ultimate

security question; and that of *diverting* it, which would involve shifting the way the world game is organized in such a way that the issue of ultimate security is no longer posed in the same terms. We must then try to ponder these three dimensions simultaneously rather than to choose one of them over the other, according to one's preferences or prejudices.

Hard Power and Soft Power

Let it be admitted, then, that Europe has constructed itself as a composite power made up of contradictory elements. But what is power? To analyze "power," Joseph Nye forged a useful classification that divides power into two categories: hard power and soft power.²⁹ This simple distinction has met with considerable success. But it rests rather firmly on a misunderstanding. In the current meaning given to the terms "hard power" and "soft power," the former is usually identified with military power and the second with civilian power. Naturally, a military power can also be a civilian power. This is particularly the case of the United States. In this commonly accepted meaning, military power lends credibility to civilian power, which does not have the resources to make itself heard or respected if its resources as a civilian power turn out to be insufficient. It acts as a multiplier on the content of power. This is evidenced by the fact that Europe and the United States are virtually equal in economic terms but the political statuses they enjoy are incomparable. Speaking along the same lines, it can be said that the congenital weakness of European power is, incapacity to combine the attributes of hard power with its soft power resources. And to remedy this, the creation of a European military instrument is seen by some as a decisive stage in achieving power.

Naturally, like all commonsense interpretations, this one holds several grains of truth. But its mechanistic interpretation ("let's give Europe military power in order to make it a superpower") stumbles upon countless methodical and implemental difficulties. I shall return to this later. Let us try, at this stage, to understand the distinction between hard and soft power and how it might apply to Europe.

Table 1.1 Nye's distinction between hard and soft power

	<i>Hard power</i>	<i>Soft power</i>
Behaviors	Command, coercion	Inducement, attraction, cooptation
Resources	Use of force, sanctions	Institutions, values, culture policies

Source: Adapted from Joseph Nye, *Soft Power. The Means to Success in World Politics*, New York, Public Affairs, 2004.

Actually, on reading Nye a little more carefully, his distinction between hard and soft power appears to cover only very imperfectly the distinction between civilian power and military power (see table 1.1). For Nye, a hard power is an actor capable of resorting not only to force but also to coercion, whereas a soft power is an actor capable of reducing and convincing other actors to accept its own preferences. A hard power inspires fear, whereas a soft power uses attraction instead of fear. Nye associates different behaviors and resources with the wielding of hard and soft power, while pointing out that hard and soft power are more complementary than opposite.³⁰

Attraction and Coercion

Nye has the merit of identifying hard power not only with military power but also with coercion. The dividing line between hard and soft power is thus not recourse to force, but the passage from attraction to coercion. Naturally, at a very general level, the definition makes sense. But as soon as one tries to delve a little deeper into things, one realizes that it raises more problems than it solves. Take, for example, the matter of attractivity, it remains a very ambivalent concept. The United States attracts by the considerable opportunities that it offers individuals, by creating a climate of liberty and the opportunity to accumulate wealth quickly by working and to become part of the political community without giving up one's own origins. In this regard, it is very clearly different from continental Europe where a real wariness remains toward immigrants

despite the growing demographic deficit, where the obstacles to integration are more tangible, especially in European countries that are historically fairly closed to immigration, where the procedures for starting a business are longer, and so on. Nothing better illustrates America's attractiveness from this standpoint than the phenomenon of Hollywood, which symbolizes the image that America has of itself, an image that, as everyone knows, is very largely produced by artists who very often come from abroad. The same phenomenon can be found on American university campuses, the power and influence are largely related to their capacity to attract foreign talent.³¹

But at the same time it is easy to see that the social attractiveness of the United States does not mechanically produce support for American policies. Robert Cooper pointed out rather humorously that Saddam Hussein enjoyed Hollywood movies.³² We might even add that these same films draw their strength not so much from any automatic support they induce for the American model, but from the capacity they offer individual viewers to identify with their narratives. A filmmaker of Indian stock put down the unusual success of *Titanic* in India—unusual because Indian national film production is substantial—not so much to a fascination for America, but to the fact that the film mobilizes human resources such as emotion that Indian audiences especially value.³³ Hence there is sometimes an undeniable naïveté among certain “realists” in seeing any vehicle of American origin as potential source of American influence. Simultaneously, there is equally great naïveté among certain authors, including Nye, in analyzing “attractiveness” outside of any reference to a power struggle in which coercion still plays an essential role. If tomorrow the European Union adopts accounting norms that are much closer to the Anglo-American model than the continental model, it would not be because the former would magically be more “attractive,” but because they have been defined by mainly Anglo-Saxon private actors who are concerned much more with a need to financialize economies than with outlining a less volatile conception of accounting.³⁴ Aware of the enormous stakes involved in implementing these new norms, the Commission in Brussels finally took charge of the dossier to renegotiate the terms

of applying these new norms on the European continent. There is in fact a whole gray zone between functional attractiveness and the political pressure that is found for instance in the globalization of American legal practices.³⁵

Associating the intangibility of created wealth such as information, for instance, with a mere logic of attractiveness as does Nye is thus disarmingly naïve,³⁶ as if there were a cause-and-effect relationship between the intangibility of a product and the stakes of power and strength attached to them. If American films take up 70 percent of European screens although European film production is numerically greater than American production,³⁷ it is primarily because the advertising budgets of U.S. films are now as high as their production costs and incomparably higher than European film budgets. A French film costs on the average \$6.6 million to produce compared to \$63.6 million for an American film. If an American film can bear such costs, it is first and foremost because production costs for a film are practically instantly recovered on the American market, with a potential \$1.7 billion in tickets sales for a monolingual audience before it is even distributed in Europe. European films cannot possibly enjoy such an advantage simply because there is not the same European market for films as there is for goods. Theoretically, there is nothing to counter free circulation of artistic works. But the cultural and linguistic segmentation of Europe remains considerable. Furthermore, the fact that 80 percent of the world market for American films is dominated by seven American majors enables it to set the rules of supply: for instance, to the distribution rights for *Titanic* may be attached the purchase of rights to six other much less interesting films as a package deal.³⁸ This is thus a far cry from the principle of attractiveness based on the intrinsic merits of a work. And the fact remains that the proportion of American films is smaller in France than in Spain, both on the big and little screens, which shows that the discriminating variable is not attractiveness but the variety of the supply, itself made possible by the existence of a concerted policy of support for French films.³⁹ The political opposition demonstrated by the United States with regard to cultural diversity well indicates that “cultural attractiveness” is not independent from the economic context in which it develops. Thus if the Spanish watch many more

American films than the French do, it is because France has the means to encourage its own production and offset the American cultural influence and not because the Spanish “like” American films more than the French do.⁴⁰

All the above goes to demonstrate, then, that it is difficult to dissociate the notion of attractiveness from power struggles and thus from a potential or actual power of coercion.

I would add a second reservation, just as important as the first. Attractiveness only very rarely refers to a homogenous or coherent representation. In the case of the United States, the attraction of the American model or American society is clearly offset by a marked hostility toward American power by virtue of the very fact that it is a power. Certainly, the sources and forms of what is called by simplification anti-Americanism are numerous and highly complex.⁴¹

In any event, in Europe the image of the United States has deteriorated considerably, a phenomenon that probably began with the American refusal to ratify the Kyoto protocol and amplified after the American invasion of Iraq. The most notable fact of this evolution is that it only slightly receded with the events of September 11, 2001, which should have, logically, created a sense of Atlantic solidarity in the face of terrorism.

Thus, of all the EU countries taken into account in this international opinion survey on the United States conducted by the Pew Research Center in 2006 (see table 1.2), four of them have a negative image of the United States (France, the Netherlands, Germany, and Spain) compared to two others—one that has a rather positive image (Great Britain), and the other a very positive image (Poland).

It thus appears clear that these representations result more from the conduct of American policy and from a depreciation of the American cultural model. They, therefore, have a strong potential for reversal.

In any event, the idea of attractiveness that Nye refers to in defining soft power turns out to be relatively fragile when confronted with the facts.

I have discussed attractiveness as a modality of soft power. It is time now to turn to the notion of coercion as an expression

Table 1.2 Opinions favorable to the United States in Europe (percentage of opinions expressed)

	2000	2006
Poland	NA	62*
Great Britain	83	56
The Netherlands	NA	45
France	62	39
Germany	78	37
Spain	50	23

Source: Figures from *The Pew Global Attitudes Project*, June 13, 2006 (www.pewglobal.org).

*2005 figures.

of hard power. As already mentioned, the field of coercion is in no way limited to the field of military power. There are some extremely powerful forms of civilian coercion, just as there are noncoercive or only slightly coercive forms of military power. Microsoft has a much stronger power of coercion than a military peacekeeping mission in Macedonia. In matters of economic coercion, Europe has undeniable resources. Because it is constituted as a unified market with codified rules, it has a great power of attraction for the major world economic players, particularly the American ones. Despite the reigning Euroskepticism, the European continent continues to be the most attractive area in the world for foreign investors.⁴² This attraction as a unified market in return lends an exceptional power of legal extraterritoriality that it shares so to speak only with the United States. Thus the Commission in Brussels managed to block the merger of the two American giants, General Electrics and Honeywell Bull, by arguing that such a merger would put them in a dominant position that would harm free competition. Behind this case, like that of Microsoft sued by Europe for abuse of dominant position, lurk two conceptions of regulation and thus of international norms: one, American, privileging consumer interests; the other, European, taking into account the interests of all actors in the market. The fact remains that this economic hard power within the single market has a hard power extension in trade that is just as effective because it is also founded on the collective power

invested in the Commission. That is why even when European Union defense spending is aggregated, we come up with a figure that reflects absolutely no effectiveness in terms of power. On the other hand, when Europe is said to be the largest trading power in the world (20 percent of world trade), the aggregation of national powers makes sense even naturally in terms of hard power: Europe has a power of trade coercion that is guaranteed and circumscribed by the WTO, but enhanced by its economic effectiveness. This is why the debate between hard power and soft power can be summarized as follows: hard power is a power that is feared; soft power is a power that is not feared. Often fear is prompted by military might, but the array of resources available to soft power is much broader than that. Europe has at its disposal two instruments of “fear” and thus two resources of hard power: conditional access to its market (because highly regulated) and conditional access to its institutional system through the process of accession.

The Impossible American Parallel

From there, a new question arises: isn't Europe inexorably bound to become a hard power, different from the United States but nevertheless comparable to it?

At first glance, there is no reason it should not. In fifty years of existence, Europe has figured out that it can better “make itself heard” by “speaking with one voice.” The fact that the Rome Treaty provided for a *de facto* communitarization of Europe's trade policies points to the difficulty of escaping from the wheels of power. The fact that Airbus and Ariane, and next Galileo, are identified not only as European “achievements” but also as expressions of European power again indicates Europe's permeability to the challenges of power, with all the implications of competition, rivalry, and confrontation. It remains to be seen whether these fragments are *conductive beams* of power, taken in the sense of world power as defined above, or mere kernels of power that resist fusion. Some analysts believe they have the answer to this question. For instance, Charles Kupchan sees Europe calmly

advancing on the road to a centralized authority comparable to American centralization in the nineteenth century.⁴³ He interprets Javier Solana's nomination as High Representative for the Common Foreign and Security Policy as the birth of European diplomacy—whereas the means available to him are trifling and his power purely rhetorical—and credulously takes all the professions of faith made by European leaders literally, however contradictory they may be to or cruelly belied by the facts. Joschka Fischer's famous appeal in 2001 in favor of a European federation signaling the demise of the Monnet method and calling for a leap toward political integration is naively deemed congruent with Tony Blair's message regarding a strong Great Britain in a strong Europe.⁴⁴ Oddly enough, such a declaration is seen as nothing short of the emergence of "supranationalism" in which states and institutions would "coexist comfortably."⁴⁵ The call of power is supposedly irresistible due to its alleged correspondence with European well-understood interests.⁴⁶ Wherefore the "tipping point" rhetoric that now supposedly obliges Europe to choose between "power" and "impotence" whereas it is constantly maneuvering so as not to have to take this route without for all that relinquishing the idea of making headway. If there is any lesson to be drawn from the failure of the constitutional treaty, it is indeed Europeans' reluctance to conceive of Europe beyond the "concrete achievements" creating a "de facto solidarity" that Schuman mentioned in a famous speech, achievements he contrasted with what he called "a single plan."⁴⁷

In an equally optimistic but perhaps less rigorous vein, Jeremy Rifkin also sees in the defunct Constitutional Treaty "the first transnational government in history whose regulatory powers supercede the territorial powers of the members that make it up."⁴⁸ At the price of a terrible misinterpretation, he likens this document to the creation of a transnational political institution designed to make the European Union function like a state.⁴⁹

Thus, Europe is said to be on the road to political unity because the stakes are too high for national resistance to sabotage it.⁵⁰ The teleology of European integration seems alive and well even if the clichés used to express it are apparently more often uttered by "benevolent" Americans than wary Europeans.

Rifkin rightly recalls that the European approach differs from the American approach. But by presenting the Constitutional Treaty as “something quite new in human history,” a document that can “build a perpetual peace, and nurture a global consciousness,”⁵¹ one can legitimately ask whether the author has not finally left the ground of analytical rigor for ideological fantasy. In the face of an American political elite that is deeply skeptical of Europe’s ability to assert itself but at the same time determined to prevent it from doing so, American Europhiles are seeking to rehabilitate Europe and encouraging Americans to take it seriously. This is what Kupchan and Rifkin basically mean. They must hence be taken for what they are: pro-European professions of faith aimed to counterbalance the Europe-bashing that Republicans are so fond of.⁵² In addition, analyses of power have trouble shedding the state schema. That means that if power no longer lies with the state, then it can be only a super state power. And if it is not a super state, then Europe has no other choice then to unite on the model of a super state, maybe not like others, but a super state all the same. In short, if Europe wants to make itself heard, it cannot escape some degree of political centralism. True, nonstate forms of power exist that have been well identified in the literature on transnationalism. But there are loci of power where circumventing the nation-state as a form is simply impossible because international reality remains at least in part so highly structured by states. Germany’s demand for a permanent seat on the UN Security Council could, for instance, be viewed as preposterous with respect to other power issues. But as long as it has not been explained why a supposedly preposterous question of status continues to be seen as essential by a state and its population, people will analyze international reality the way they want it to be and not the way it is.⁵³ Therein lies the problem of defining Europe as a potentially diverse actor. Diversity naturally has a number of advantages. But in terms of power, it is undeniably a hindrance.⁵⁴

Wherefore the tempting parallel made with the political structure of the United States, a parallel that American international relations specialists cannot help but make, especially when their subjectivity leads them to “support” the European project.

There Is No European People

Yet between the American and European approach, there are glaring differences. The most fundamental of them has to do with the fact that the building of the American nation started with the existence of an American *demos* (the American people), whereas in Europe this assumption is neither made nor intended. Joseph Weiler even takes this a step further in saying that starting with the Rome Treaty, Europeans rejected the federal state model when speaking of an “ever closer union of European people.”⁵⁵ True, there is a descending order of norms that legally corresponds fairly well with the American federal model. But the parallel existence of an authority with ascending power sets it radically apart.⁵⁶ Intellectually, European integration is thus destabilizing, because it creates a hierarchy of norms that clearly subordinate juridical monopoly of states to a European norm without creating a corresponding political community.⁵⁷ Europe has managed to create a body of norms that govern it and on which it is based, but not an entity capable of symbolizing it.

There is no doubt that certain European federalists have been tempted to or have tried to take advantage of the debate surrounding the constitution precisely to take that symbolic step toward a European *demos*. But besides the fact that European member states put a brake on such ardors during the Intergovernmental Conference, it must be pointed out that the advocates of a constitutionalization of Europe—at least on the books—were not necessarily in favor of European federalism. Valéry Giscard d’Estaing for instance was both a champion of the “constitutionalization of Europe” and at the same time the greatest partisan of an intergovernmental Europe that we now know is impracticable in a Europe with 25 members. And this is indeed the conception that finally won out because ratification of the Constitutional Treaty has remained subject to the principle of unanimity, whereas the Constitution of the United States came into force even before the state of New York had ratified it.⁵⁸ That means that the U.S. Constitution had posited from the start the existence of an American *demos* that transcended the sovereignty of the various states, whereas Europe has refused such a perspective and seems likely to refuse it for a long time to come.

To understand Europe, one must, therefore, try to refrain from comparing it too hastily to the United States.

If Europe can thus not be thought of in American terms, then what terms should be used to analyze it? The commonsense answer is to say that there is no model for Europe and that it constitutes a *sui generis* construction. The argument is impossible to counter, except that Europe is caught up in a world game that forces it to position itself with respect to extant forms of political organization that are comparable by definition and, especially, finite in number. There are yardsticks of power against which it is simply impossible not to measure oneself unless one admits to one's inferiority. Europeans can always argue that their power is not like the power of others, but at the UN, the WTO, the IMF, or on battlefields it is obliged to choose between unity and plurality. There is, at the base of it, a contradiction between an international system whose raw logics understand only binary terms (power versus impotence) and an aesthetics of European power that seeks to get beyond this duality without being sure it wants to or without always knowing how to go about it.

Power with No Anchoring Point

Can Europe pull out of this dilemma and this difficulty? Probably not, because as long as there is no European *demos*, there can hardly be a European power in the traditional sense of the term. From that perspective, the rejections of the Constitutional Treaty can be interpreted as another refusal of Europeans to conceive of themselves as a *demos* even if, paradoxically, the draft text hardly went in this direction. It was closer to "rules of association" than a foundational act. Introducing the very word "Constitution," to which we associate belonging to a people, exacerbated the fears of those who were afraid of losing their identity as a "national people."⁵⁹ For lack of a European *demos*, Europe is thus not in a position to construct a new postnational historical narrative. Certainly, after the war, it managed to produce a narrative structured around the "memory of the war." But this remarkably effective narrative has run out of steam. Not that peace is naturally lasting. But the idea

that there is a very slim chance of the peoples of the European Union ever going to war against one another has undeniably been internalized. “Up to now, it was enough to say that European integration was a guarantee of peace. But this argument leaves the younger generation cold. A dream come true no longer makes people dream.”⁶⁰

The memory of war thus is not enough to foster the progress of Europe. What is more, the “memory of the war” did not imply the emergence of a European *demos*. It merely aspired to the fact that the *demoi* of Europe would no longer make war on each other. This is why the ritual and sometimes overwhelming appeals for the emergence of a new European narrative are thus at risk of continuing to spin in a void if the question of a European *demos* is not raised. Europe lacks a strong symbol, a basic signifier that gives meaning to and anchors the multiple signifieds Europe produces, though not without some degree of success in fact: peace, stability, prosperity, networks, governance, and so on. The result is a discursive deficit that recalls what Lacan called the *point de capiton*, the anchoring point:

Whether it be a sacred text, a novel, a play, a monologue, or any conversation whatsoever, allow me to represent the function of the signifier by a spatializing device . . . I shall call the *anchoring point* this point around which any concrete analysis of discourse must operate.⁶¹

Is there a means for Europe to find itself an anchoring point without a common *demos*? The question is thus posed. The fact remains that the absence of a European *demos* must be the starting point to understand the unlikely conversion of Europe to the logic of a hard power.

If Europe does not constitute a *demos*, it has no reason to conceive of its security and survival in identical terms. Certainly, there are joint threats and common challenges Europe must face, globalization being one of them. And as we shall see, it is at this level that Europe can be a useful and effective actor. But global threats in no way diminish local threats. Globalism does not destroy localism. A good grasp on postmodernity does not involve thinking that

political forms succeed one another on a stage where the actors' business is clearly blocked out. On the contrary, they are constantly intertwined. Nothing prevents a Lithuanian from feeling concerned by the greenhouse effect, while considering that its neighbor Russia will continue to threaten its independence for a long time to come. Under such conditions, it has no need to choose between the global and the local and consequently, between Europe—for its prosperity—and NATO—for its security. But what is true for a Lithuanian is not necessarily so for a Spaniard or a French person. European peoples do not weigh threats the same way, which means that a common, integrated defense seems very remote indeed.

Europeans Don't Share the Same History

Naturally, it is not impossible that these scales of risks will become closer and better harmonized in the long run. But for the moment, and particularly since the enlargement of Europe to the East, heterogeneity prevails, precisely because Europeans do not share the same history. Enlargement pointed up a certain heterogeneity in political timeframes in Europe that the accession mechanism alone cannot compress. The incorporation of the *acquis communautaire* does not have that function, and it would be unwise for this process to appear as an eraser of history. As a result, these societies have different relationships to security. The Central and Eastern European countries see their accession to Europe as a means of reuniting not only with their European past but also with their national history left in deep-freeze by communism. Accession to the European Union is certainly in no way contradictory with this plan. But the consequences they lead to in terms of sovereignty are not at all the same as those that prevailed at the time of the Treaty of Rome. For them, the idea of sharing their sovereignty does not make sense because they feel that their return to Europe should hail the recovery of their sovereignty. For them, membership in the Europe Union means recovering not only dignity and prosperity, but sovereignty as well. This very different relationship to sovereignty is often seriously misunderstood in "old Europe," where for some the sovereignty issue may seem obsolete.⁶² But this lack of understanding has paradoxically been maintained by

certain Central European leaders such as Vaclav Havel, who always expressed a preference for a Kantian postnational Europe. His article "Kosovo and the End of the Nation-State" is the strongest illustration of this.⁶³ Vaclav Havel's point of view, however respectable it may be, probably remains in the minority. His successor as Czech head of state, Vaclav Klaus, in some ways seems more representative of a "neoliberal sovereignism" dominant in the East that demands more political sovereignty and more neoliberalism, probably in reaction to the Soviet system. Carried to its extreme, this vision leads to a rejection of Europe because Europe is viewed as a machine to share sovereignties and regulate economies, to prevent too much social deregulation. But there are an infinite number of beliefs—including those in the East—many of which hold accession to Europe to be compatible with their recovered national sovereignty. The only point common to all these beliefs is the fact that they are not spontaneously receptive to the idea of Europe as a power precisely because they may see therein a form of federalist power in contradiction to their sovereignty. They are even less in favor of it if such power is conceived as a means of emancipating Europe with respect to the United States. For them, everything possible should be done to prevent an American withdrawal from Europe and everything should be undertaken to grant the United States the real or symbolic *quid pro quos* that it demands in exchange (e.g., support for sending troops to Iraq). Under such conditions, being pro-European and pro-American is in no way contradictory, but on the contrary perfectly complementary: Europe is supposed to bring them prosperity, and America, security.⁶⁴

It could certainly be argued that this reality is not set in stone and is thus transitory. I will not disagree with that, with the caveat that in the long run, accession to Europe will necessarily lead to a French-style European power. It must, however, not be believed that this resistance to Europe as a power, with all the voluntarism and distantiation from the United States that it implies, constitutes a mark of defiance to France alone. Nothing guarantees that British calls for "liberal European imperialism" receive any real assent in Eastern or Northern Europe.⁶⁵ The Central and Eastern European countries' backing of Washington in Iraq seems to be

guided more by a very narrow nationalistic calculation than by some political-ideological messianism. The gradual withdrawal of East European troops from Iraq confirms this hypothesis.

For there too, one of the lessons of the Dutch referendum was the reactivation of national sentiment, against all expectations, in countries thought to be “sated” and already postnational since they have been engaged in European integration for over 50 years. Naturally, the Dutch sovereigntist reaction does not have at all the same connotations as Czech or Polish sovereigntism. With the Dutch, like with other Northern Europeans, sovereignty refers to a peaceful, liberal lifestyle, particularly jealous of its protection from “political” interferences. To them it is Europe and not NATO that would appear to jeopardize such sovereignty.

For the French in particular, it may seem strange for Europe to be identified with an erosion of sovereignty and NATO with its preservation. But that is nevertheless the way the vast majority of countries in Central, Eastern, and Northern Europe as well as the United Kingdom—all for different reasons—view things. And that is why Europe’s conversion into a hard power in the sense given here seems unlikely, even supposing it were desirable.

This state of things is apparently contradicted by European opinion polls that regularly highlight the rise in demand for a common foreign and security policy for all Europeans.⁶⁶ But these professions of faith should be read with caution. First, because, out of principle, few Europeans have any reason to be against common action on the world scene. Second, because setting up a common foreign and security policy takes on meaning only when it involves real arbitrations for the European member states: between European sovereignty and national sovereignty, or between military spending and civil spending. Now on these two planes, the slim margin for European states to conduct such dual arbitrations is continually narrowing.

Structurally, all European member state apparatuses are reluctant to see themselves stripped of their political sovereignty, especially if these resources are residual. Even if it may seem that it is absurd for Europe to maintain 21 navies and 22 armies, which of these will be sacrificed? Here we enter registers where the symbolic is totally

impermeable to Community method or a military reorganization rationale modeled on industrial reorganizations.⁶⁷

The difficulty is compounded when converting to power involves real financial arbitrations. Even Germany, which owing to the Iraq crisis gave a spectacular demonstration of its political and affective dissociation from the United States, seems to have no desire to draw lessons from this emancipation to rethink its relationship to power from a military standpoint, for instance.

However, because Europe remains an open, diverse, and pluralistic space, it is by definition laced with contradictory forces.

European armies cannot be rationalized merely from a managerial perspective. But the power of the economic constraints that military programs are up against can lead to the rationalization of national arms production programs and their interoperability and possibly to common doctrines for using these forces. This is the context in which to interpret the creation of a European Defense Agency or the Franco-British project to build an aircraft carrier, which should enable both states to have two aircraft carriers constructed jointly in order to reduce the prohibitive costs of such projects. Thus the harmonization of equipment programs and the pooling of military research programs would constitute considerable progress on the road to European defense. It would reflect the “concrete solidarities”—the only ones that have proven their effectiveness in Europe in the past 50 years—and would offer tangible advantages to each state.

Furthermore, even if the French discourse on Europe as a power remains misunderstood—or rejected because too well understood—European opinions and elites seem more sensitive to the need to act in the world, including via military action, as long as this projection does not fit within any strategy of power or domination (Germany) or if it intervenes in areas where the United States has only secondary interests (Macedonia, Africa).

The organization of 13 battle groups to be set up by 2007—able to deploy European forces within 10 days as far as 6,000 km from Europe’s borders for as long as 120 days, which has been approved by 20 member states of the EU⁶⁸—attests to the will to extend European power mentioned above. But the existence of fragments of military power is not the premonitory sign of a European power in gestation and even less so of a superpower.

All the same, it is highly likely that in the coming years the requirements of the fight against terrorism will probably relegate the urgency for a common defense policy to the back burner, even if the two priorities are not incompatible. But in this area, sharing sovereignty proves to be an extremely thorny problem. Differences in legislation and the interpretation of individual rights have already reduced the effectiveness of the European arrest warrant.⁶⁹ Moreover, the European member states seem extremely reluctant to share intelligence in the fight against terrorism, reducing the European antiterrorism coordinator's role to one of a mere facilitator.⁷⁰ On the other hand, major states such as France seem to have a preference for intergovernmental cooperation; it has, in fact, established extremely close relations with the United States in this area.⁷¹

CHAPTER 2

Norms over Power

It is generally acknowledged that Europe will not be a superpower in the sense of a political-military ensemble on an equal footing with the United States or China. Europeans reject this possibility across the board. Moreover, even if they wanted to go that route, would it not expose them to reproducing on a European scale what they have struggled to combat amongst themselves: the idea of becoming a great power with all the attributes of force and supremacy that such a project implies?¹

So if Europe will not be a superpower, how can it be a power at all? Probably by reinforcing what remains its major political resource: its capacity to produce and set up at the global level a system of norms as broad-sweeping as possible to organize the world, discipline the interplay of its actors, introduce predictability in their behavior, develop among them a sense of collective responsibility, and offer those who engage on this path, particularly the weakest, at least some possibility of using these norms as an argument against all, including the world's most powerful.

The task may seem colossal, even outrageous. It probably is, but does Europe have any other choice but to assume its responsibility as a normative power? Probably not.

Normative Power: The Genealogy of a Concept

The academic debate on European power has been and remains closely indexed on commonsense representations of this power as

well as on the dominant interpretations or those in vogue in the international system. Between the abortive attempt of the EDC (European Defense Community) in the early 1950s and the early 1970s, this question was virtually absent from the debate simply because the instruments for action outside of Europe were limited to its trade and development aid policies. These instruments were not yet perceived as a palpable source of decline in state sovereignty and even less so as a source of internal social debates, as trade policy has become since the creation of the WTO. The issue did not reemerge until the early 1970s with the publication of works by François Duchêne and Johan Galtung.² Several explanations contribute to understanding this relative resurgence of interest:

The first is a result of the initial enlargement in which the major European powers (France, Great Britain) would coexist in a common political framework. The second is the opening of the East-West corset in the wake of détente and the Chinese-American rapprochement. And last, the energy crisis confronted Europe with its first major test of cohesion reflected not only in the difficulty Europeans had in defining a common strategy, but also in the United States' irritation at seeing one emerge. This was the context in which Kissinger made his famous complaint about the lack of a "telephone number for Europe," and this is still the image that is used symbolically every time the definition of a common European policy crops up again. These empirical facts about the changing international system are confirmed on an academic level by the emergence of a whole body of interdependentist literature that emphasizes the retreat of interstate dynamics giving way to economic interactions and insists on the growing obsolescence of military tools.³

Even if Duchêne's and Galtung's definitions rest on very different premises, they agree on two essential points: Europe is destined to be a power, but it can achieve this only via means that differ from those used historically by European nation-states and on different terms than those of the two superpowers of the period.

According to Duchêne, the axis of European power can only be one of a civil power, in other words, only as an actor capable of contractualizing world relations on the basis of treaties and conventions that would reduce the benefit of resorting to force. According

to him, Europe's contribution to international politics should be a sense of shared responsibility and structures of political contractualization.⁴ In his mind, Europe cannot be a military power because such a perspective is so entirely antithetical to the project of its founders. He sees in what was not yet called the European Union a driving idea, the "power over opinion," oddly borrowed from Edwar Carr, the father of realism in international relations theory, but who already in 1962 placed this form of power on the same lines as military or economic power.⁵ The power of ideas is also very present in Galtung's writing, in which the underlying Marxist idealism leads this scholar to conceptualize the power of ideas through ideology. In Galtung's mind, Europe is not inclined to either reward or punish (classic attributes of power) but to influence the world with its ideas. Europe would thus constitute a third way between the United States and the USSR. The possibility of becoming a power by taking another route than the Westphalian path it has usually followed thus fueled early discussion on Europe's place in the world.

In the early 1980s, it was an article by Hedley Bull—father of the British realist school and Carr's successor—that rekindled the debate, this time on more Manichean bases. In Bull's mind, to talk about civilian power is a contradiction in terms, for there can be no power without military power.⁶ But this verdict needs to be contextualized. In the early 1980s, Europe once again became a sensitive issue in East-West rivalry due to the deployment of Euromissiles. Bull argued in favor of a European military power that would be capable of preventing an American withdrawal and neutralizing the continent. But he did not at all discuss the issue of the communitarization of this policy. For Bull, the priority was to make way for a middle road between Atlanticism and neutralism.⁷

This return to Europe's geopolitical realities was not to last. The gradual weakening followed by the collapse of the USSR on the contrary reinvigorated interdependentist and post-Westphalian interpretations of the international system and Europe's place in this new process.⁸

In 1990, Maull reintroduced the concept of civilian power in the debate, using a comparison between Germany and Japan.⁹ Not only in Maull, but also in Twichett, who picked up on Duchêne's

idea in 1976,¹⁰ the definition of civilian power, however, remains very classical: a preference for peaceful conflict settlement and the use of a binding multilateral framework to organize the international system.

It was not really until after the Maastricht Treaty was signed that the question of a community actor in international politics was again raised, this time with an intention to consider the way in which a *sui generis* actor that is less than a state but much more than an interstate organization can act on the world scene. It was Christopher Hill who paved the way to reconsider this in clear opposition to Bull's remarks when, 10 years earlier, he indicated that Europe "is not an actor in international affairs, and does not seem likely to become one."¹¹ Christopher Hill primarily set out to take the then European Community seriously by identifying the areas in which it could become a power as an actor in its own right, and different from the member states. There is, of course, nothing original about the areas in which Hill imagined a specific action on the part of the European Community, all the more so since they were dealt with too succinctly to be assessed properly.¹² This attempt at formalization, however, contains two new ideas. The first, an unusual position for a British academic to hold, is to view Europe as a counterweight to the United States after the collapse of the USSR. The second is to conceive of the European Community as a specific actor toward which strong demands converge emanating from countries outside of it and which, by this very fact, finds itself confronted with the challenge of a disproportion between these demands and the means at its disposal.¹³ Thus we clearly enter into a phase in which Europe is now seen as a specific actor, even if this specific actor is perceived, rightly so, not as a state in its holistic form, but as a system that for a long time to come will combine national policies, intergovernmental policies, and common policies.¹⁴

Nonetheless, for a long time fairly little research was done on external EU action and in any case it remained incomparably weak with regard to the immense body of literature devoted to the political integration of Europe. Moreover, even when it exists, it seems much more interested in the procedural dimensions of Europe's external action than in its content or its finalities.¹⁵

Finally, it was not until Ian Manners's article on normative power published in 2002 that the academic debate got rolling again.¹⁶ Manners in fact takes as a starting point a definition given a few years earlier by Rosencrance, who defined Europe as a normative rather than an empirical power. For Rosencrance, *normative power* refers to the idea of setting world standards, in contrast to *empirical power*, which imposes itself by conquest or physical domination.¹⁷

Manners thus starts with the assumption, that the specificity of the European Union rests on post-Westphalian norms, in other words, he shifts the focus for assessing and interpreting Europe's role beyond the usual focus on means of power.¹⁸ What Manners suggests, and therein lies his originality, is that Europe's role in the world cannot be understood by simply comparing it to other states. As it is assumed to be post-Westphalian, it makes no sense to compare Europe to Westphalian states. Manners considers this preference for norms with respect to the principles on which the political integration of Europe has been based since 1950: peace, freedom, and defense of human rights (to which he adds, on a more minor note, social solidarity, the rejection of discrimination, and sustainable development).¹⁹ Prior to Manners, Christiansen had also mentioned the normative foundations of Europe, while Weiler referred to its founding ideals and Laffan to its normative pillar.²⁰ How are these values placed in the service of EU external action and how do they manage to become performative, that is, capable of exerting a concrete effect on global political processes beyond national frameworks? In other words, the question Manners poses is to know how a post-Westphalian actor can actually promote post-Westphalian norms. Manners then tries to resolve this general question empirically by showing how the fight against the death penalty, widely promoted by the European Union, ended up emerging as a global standard.²¹

The set of issues surrounding normative power provided a means of rekindling the debate on the role of the European Union in the world by shifting the grounds of analysis. And present research places itself on these new grounds. However, I believe that Manners's approach—confirmed by other research—has revealed its true limits in that it simply leads to equating Europe's

normative action on the global scene with the ideals on which Europe integration is based.

The Conceptual Foundations of Normative Power

Whatever its limits may be, I find the concept of normative power highly valuable, for it indeed corresponds to a certain vision of the world. This vision is inspired by what is known as the “constructivist” school of thought. Given the extent to which it conditions Europe’s worldview, it is useful to say a few words about it here. Constructivism is based on the Weberian idea that human beings are cultural beings that have the capacity and desire to give meaning to the world. Unlike facts of nature (water, mountains, population, or the law of gravity) that exist independent of the meaning given to them, social facts (such as money, property rights, sovereignty, marriage, sports scores, celebrations, processions, or rituals) exist only with respect to the meaning conferred on them and the shared social significations regarding these facts. Thus they are by definition “constructed,” not natural. Behind all these facts there is a sort of collective intentionality.

Applied to the international system, constructivism naturally conceives international reality as being constructed on the basis of material facts (wealth, strength) as well as values that reflect a collective intentionality. Such that from a constructivist perspective the very purpose of studying international relations involves analyzing state identities and interests by trying to determine how these identities and interests are socially constructed.²² Constructivism for instance would have a great deal of difficulty accepting the fact that *realpolitik* constitutes a sort of natural law of international relations. It would instead see them as the effect of shared beliefs.²³ Because it believes that social reality is manufactured, constructivism naturally ends up attaching a particular importance to the institutions in which social norms are devised. Through socialization, negotiation, and consultation, institutions produce norms, rules, and procedures that which constrain the behavior of states toward convergence. Constructivism and institutionalism

thus quite naturally overlap.²⁴ For constructivists, states are “social actors” and not “cold monsters.” Realists naturally do not share this interpretation precisely because they do view states as “cold monsters” whose behaviors and identities are supposedly stable over time.²⁵

Realists consider the world order as an anarchic order that is pointless to seek to tame via norms because of the radical discontinuity between internal order and external order. In this perspective, the focal element is not the underlying norms and institutional processes but the distribution of capacities among dominant actors.²⁶ They attach only secondary importance to the way in which state interests are constructed or altered. These are assumed to be stable, even intangible, as a result.

However summary, this overview of the contrasting theories shows which direction Europe leans toward. Europe by definition cannot see itself in the “realist” terms of power politics because it is not a state. It is itself a highly institutionalized political construct that from the start has rejected realistic determinism. In fact, a realist view of Europe in the aftermath of the Second World War would have led to supposing that the Franco-German antagonism would one day be revived because the interests of the two states were mechanically opposed. Now it is precisely to counter this deterministic and realistic mechanism that Jean Monnet envisaged an economic and institutional system capable of releasing France and Germany from this “inevitable polarization.” There was hardly anything idealistic and even less so unrealistic about Monnet’s constructivism, because it functioned on very concrete bases. But it provided proof that there was nothing intangible about the supposed realism of states. Even when they are “realist,” states can conceive of “realism” in different ways.

At this stage in my reasoning, it is easy to understand that European power draws its meaning in a constructivist view of the world order—an order in which processes matter as much as structures.

Behind the idea of process, there is a close association between norms and institutions. This association is highly understandable. Institutions are real or symbolic spaces in which rules and practices common to all actors involved in a given game (WTO rules, for instance) will be manufactured and legitimated to produce norms.

I define norms here as the basis for standards of behavior admitted by the actors of the game. International relations theorists, always fond of subtle categorizations, tend to distinguish three types of norms: *regulating norms*, those that generate collective discipline (trade rules or respect for procedures in the areas of nuclear proliferation, for instance); *constitutive norms*, those that create new categories of actors or action (greenhouse gas emission permits as provided by the Kyoto Protocol); and *prescriptive norms* that indicate what should be done in the name of admitted principles.²⁷ This formalism is not necessarily pointless. But in reality, these three types of norms overlap considerably. All international social norms have a prescriptive dimension. In recommending what should be done, they implicitly define what should not be done. Moreover, as soon as a norm tries to discipline actors in a new area, it perforce generates new actors, new interests, or new categories of action. If one adheres to the Kyoto Protocol, then one adheres to prescriptive norms (reduce greenhouse gas emissions), regulating norms (states are bound to a certain discipline), and constitutive norms (a market for greenhouse gas emissions will be created).

This is not the only way of distinguishing between norms. A distinction can be introduced also between procedural norms—those that indicate steps to take—and behavioral norms—those that are concerned with the content of action. Lastly, we can distinguish between norms that are binding or not. From the viewpoint of a norm's effectiveness, that is a decisive criterion. In a highly norm-based world system in which the production of norms moreover leads to setting up implementation mechanisms and sanctions, norms can make a difference. On the other hand, in a world system in which the control and sanction mechanisms are weak, the value of norms is reduced. This naturally poses the crucial question of a norm's legitimacy.²⁸ In evaluating Europe's performance as a normative power, this point is essential. I shall return to it.

What Is a Normative Power?

The notion of normative power, popularized by Ian Manners, is actually not very far from the notion of civilian power defined

by François Duchêne.²⁹ The first to talk about normative power is Robert Rosencrance, for whom Europe, after having been imperialist, has sought to influence the world through a certain number of driving ideas.³⁰ A normative power is, therefore, a power that has its identity and strategy grounded on a preference for overarching rules of behavior applicable—largely but not exclusively—to states and that has three essential characteristics: to have been negotiated and not imposed; to have been legitimated equally by representative international bodies; and to be enforceable on all actors of the international system notwithstanding their rank within it. Normative power thus seeks the integration of a world order based on the legitimacy of rules, the predictability of behavior, and especially the enforceability of accepted principles. Naturally, European power is not a *de facto* power able to achieve these three aims, but it is by reference to this ideal type that it situates itself as a power. What are these norms? They are constructed on the principles of democracy, the rule of law, social justice, and human rights. These principles are said to have been laid down in 1973 during the European summit in Copenhagen, which was one of the first to take an interest in the international identity of what was not yet called the European Union.³¹ These principles were expanded, again in Copenhagen, in 1993. At that time, the issue was to define accession criteria to the European Union, which even today are the primary features of Europe's international identity, with the only caveat being that they have no geographic limitation: market economy, democracy, respect for human rights and minorities, respect for the rule of law. In addition to these principles, Ian Manners adds social solidarity, the fight against all forms of discrimination, and sustainable development.³²

In a way, Romano Prodi truly summarized the idea of normative power when he said, "It is not imperialism to want to spread these principles and to share our model of society with the peoples of Southern and Eastern Europe who aspire to peace, justice and freedom. Indeed, Europe must go further. We must aim to become a global civil power at the service of sustainable global development."³³

It is obvious that all these ideas and all these discourses are important to understand the power of Europe. Speech is constitutive of

reality and that should be taken seriously into account. The risk, and it is a real one, is nevertheless to confuse “normative power” with the power of an idea—in other words, “ideal power,” in which everything would be a matter of values and principles and never one of interests.

Ian Manners, for instance, presents sustainable development as a normative reference for Europe—which is hardly debatable—but never questions the whys and wherefores of this preference. European norms are seen as transcendental values overarching European societies. As a consequence there is a considerable risk of idealizing Europe, all the more so since the question of the effectiveness of norms has not really been posed. Manners dwells on Europe’s influence on the movement to abolish the death penalty throughout the world.³⁴ But although the issue is symbolically powerful, it is admittedly perhaps not the best illustration of what could be called a normative power.

For this reason, while I consider the relationship to norms essential to understanding the enigma of European power, I believe it is indispensable to qualify this preference over and above any sort of idealization. To do so, I will proceed in two stages. The first involves exploring why Europe prefers norms. The second, understanding what concrete social preferences these norms reflect.

Why Does Europe Prefer Norms?

Norms are a core feature of European integration because they constitute the only tool for States trying to share their sovereignty the main. Norms are what enable Europe to go beyond individual state sovereignty without abolishing it.³⁵ In this regard, there is an indissociable relationship between norm and sovereignty. The more a European norm is binding, the more state sovereignty is weakened, even if it is the states themselves that have manufactured this norm and have no qualms about releasing themselves from its bonds if they become too constricting. The various metamorphoses of the Stability Pact demonstrate this.

In building Europe, the preeminence of norms answers three concerns. The first has to do with neutralizing the most conflictual

aspects of state political sovereignty to replace them with a stable, lasting, and predictable cooperative model that should gradually lead these very European states to stop thinking of their interests in terms of a zero-sum game. Already starting with the ECSC (European Coal and Steel Community), the European project was a model of decentering the honor of European nations. At first, the point was to destroy the bellicose instinct that had torn apart European nations. But for all that, the disappearance of this instinct did not anesthetize state self-centeredness. Such that with each new stage of European integration, new norms had to be invented to discipline states, without making them formally give up their sovereignty. Norms in Europe have always tried to circumvent state sovereignty. The example of the euro illustrates this rather well.

When the ECB (European Central Bank) was set up, the countries in the euro zone deliberately gave it a very narrow mandate: to ensure price stability. This narrow mandate contrasts with the U.S. Federal Reserve for which the fight against inflation has never been an end in itself, but the condition for growth.³⁶ Thus on one hand, there is the ECB, dogmatically attached to enforcing a norm imposed by the member states (no more than 2 percent inflation per year); on the other hand, an American fed for which the main thing is not to enforce a norm but to achieve a balance between expected results and risks taken.³⁷

Why then do we have, on one hand, an American monetary policy based on weighing risks and, on the other, a European policy constructed on scrupulous respect for norms? The answer is simple. The case of the United States involves an independent institution of a single state. In the case of the ECB, there is a single currency but it comes under several sovereign states. The latter agreed to give up their monetary sovereignty only on condition that the ensuing loss was closely framed. A central bank that would fight against inflation was acceptable, but not a central bank that might end up supervising the economic policy of all the countries in the euro zone. Thus the norm here aims to limit the ECB's authority to prevent it from intruding in budgetary policies, which have remained national.

However, it was quickly realized that a monetary policy that did not take budgetary policies into account contained a threat of economic paralysis, even more so since controlling inflation without

controlling budgetary overspending is a very delicate exercise. So what did Europe do? It could have broadened the ECB's mandate following the Fed model. But the European states would not hear of it. How could they reconcile budgetary sovereignty and budgetary discipline? By creating a new norm, enshrined in the Stability and Growth Pact. This pact prohibits states from exceeding a budgetary deficit of 3 percent in all cases other than "exceptional circumstances." In a unified state, these circumstances would be submitted to deliberation. But in Europe, such an approach is hardly possible because either the responsibility would be entrusted to the Commission, for instance, at the risk of dispossessing states, or the states would be allowed to discuss the matter, which is obviously not without risk. So it was decided to circumvent the political problem by creating a new norm, one that would define what exceptional circumstances meant in budgetary matters.³⁸ Here we can clearly see that every time Europe comes up against a policy that is uncertain or unpredictable and touches on sovereignty, it manufactures a norm. Such an exercise obviously carries certain risks and has already demonstrated its real limits. For although it generates collective discipline, it also produces political rigidity and especially pits norms against politics. Norms thus appear as a sort of metavalue aimed to tame indisciplined states. Taken to its logical conclusion, this reasoning leads to considering that policy constraints—including national ones—are unhealthy constraints that one must break free of in order to enable a supposedly superior European rationality to triumph. The whole question is to know what legitimacy principle this supposedly superior rationality obeys, especially if it implicitly aims to devalue national legitimacies that nevertheless have the benefit of having been approved by democratic vote.

The desire to circumvent politics, or more precisely the constraints of politics, largely explains the decisive role that norms play in the political integration of Europe. But this essential factor does not explain everything. It also has to do with the way in which Europe has been built as a legal construction. Indeed, right from the start, implementation of the four freedoms (free circulation of goods, capital, services, and workers) has given rise to a body of rules laid down by the Commission, themselves complemented by

a sizable body of European Community case law.³⁹ Furthermore, in a process built on chain-type model, norms beget norms, either to specify what was not made explicit in the first place, or to solve a problem that did not previously exist, or to deal with a related sector. Moreover, as states gradually agreed to extend the EU's competences, Europe's normative provisions naturally had to be extended as well.

European Governance and Global Governance

European governance is thus dominated by the centrality of norms. But it is not reduced to that. Added to that is a three-tiered method of governance. First are "communitarized" policies, in other words, those placed under the Commission's responsibility. Then come harmonized policies that obligate EU member states to harmonize but not unify their norms, which are designed on the state's initiative. It is especially the stock of harmonized norms that makes up the bulk of the *acquis communautaire*. Lastly, there is the strategy invented at the Lisbon conference, the open method of coordination (OMC). The level of constraint imposed on member states is much lower than in the preceding two levels. It involves simply setting common policy goals in the areas of research or employment, for instance, it being up to each state to implement them with the means at its disposal.

The central question of sovereignty can be found at each of the three levels. At the level of common policies state subordination to the Commission is accepted; at the harmonization level, we are in the realm of shared competencies; and in the open method of coordination, states remain in control of the game. Moreover, the fact that the OMC was invented in Europe shows plainly that the EU member states have no desire to go any further in economic or political integration, which explains the rough-and-ready settlement between a European "benchmarking" that is supposed to stimulate "laggards" and the freedom of initiative left to the states to achieve it.

This European construction is in fairly close symbiosis with systems of world governance in which basically the same configuration can be found: (1) global public goods subject to the establishment of supranational and not only intergovernmental systems; (2) the whole array of areas affected by world regulation that requires intense cooperation between states in order to produce common and harmonized rules, such as the WTO; and (3) areas of action in which states commit to common objectives but where there is no one to control them, monitor them, and even less punish them. Europe's way of seeking to "sell" the idea of governments on the world scale contains all the arguments that are precisely at the heart of European governance: the first of them involves saying that norms are negotiated among political actors having different degrees of power (Luxembourg is not Germany), thus serving as an equalizer in terms of power. The second is to insist on the fact that they are negotiated within the framework of international bodies that thereby have a certain degree of legitimacy. Lastly, that these norms are enforceable on all, including the most powerful, should incite even the weakest to support them. The whole European discourse at the WTO thus aims to convince developing countries that it is in their interest to participate in a norm-based rationale of governance and that it alone can protect them from market and deregulation excesses.⁴⁰

There is obviously a certain degree of porosity between European governance and global governance (see table 2.1),

Table 2.1 European governance and global governance

<i>European governance</i>	<i>Modalities</i>	<i>Global governance</i>
Common policies (agriculture, competition, external trade)	Mobilization of common resources managed by superstate bodies	Management of global public goods (the environment, water, health, education, etc.)
Policy harmonization (health, the environment, taxation)	Increase policy convergence without doing away with national differences	Policy harmonization (taxation, intellectual property, trade policy)
Open Method of Coordination (employment, social policy, research, etc.)	Collective commitments made to achieve common goals while respecting each country's sovereignty	Tangible public commitments (public aid, fight against poverty, debt reduction, etc.)

simply because both of them seek to solve problems that states can no longer solve on their own. But states can hardly be said to submit to the principle of responsibility—as opposed to the principle of sovereignty—harmoniously and even less so naturally. But in both cases can be found this attempt to manufacture collective norms to make progress in decision making by going beyond traditional intergovernmental agreements. The most fundamental consequence of globalization is to have highlighted problems that traditional intergovernmental cooperation can no longer handle. And on this level, Europe undeniably has considerable experience.⁴¹

Certainly the European model of governance cannot simply be transposed to the world scale. However, certain European collective methods of action might well prove useful for global governance. For this reason it seems more apt to talk about a European toolbox or laboratory rather than a European model.⁴² This laboratory has three distinctive features that help understand why the European Union manages perhaps better than other regionalized areas to assert its citizens' social preferences over and above the channels offered by nation-states.

Europe first of all has at its disposal fragments of a public space, one of the most important of which is perhaps the European Parliament. It is after all the only transnational parliament that exists in the world, and it has limited but not marginal prerogatives. It is in any event at least an echo chamber that is particularly receptive to interests that do not directly involve states, whether they are economic, environmental, or cultural groups. The European Parliament acts as a counterweight to the EU Council and thus to state power, even if the two institutions are disproportionate in strength.

The second factor likely to explain the porosity between European societal and political preferences has to do with the need European institutions—particularly the Commission—have to constantly find resources to legitimate themselves in order to alleviate what is commonly called the “democratic deficit.” Since it does not derive its power from the “European people,” the Commission needs to demonstrate in concrete terms that it is acting in the general interest and that it is able to do so in areas in which the social demand for regulation through norms is strong, that is, in areas

such as environmental protection, food safety, or the precautionary principle.⁴³

The third European specificity has to do with the way its public action is financed. For some 20 years now, most or nearly all the European member states have chosen to fund political parties out of the public coffers. This has not entirely eliminated political party dependence on sponsors, but it has decreased it. The United States has basically taken the opposite route. The dependence of central political figures on financial powers has increased considerably. This is very apparent, for instance, in U.S. policy choices and in its trade priorities. Europe as an international actor, in fact, better reflects the societal concerns of its inhabitants on the world level than does the United States.

CHAPTER 3

Norms for What Preferences?

To grasp the meaning of European power, a normative approach is thus essential. But it must be realized that norms, especially constructed norms, reflect the economic, social, and cultural preferences that are at stake. Once again, globalization plays a fundamental role. For as long as we are moving in a global economy in which competition and trade relations are intensifying, the terms of the debate are altered. Unlike the practice of the past 40 years, it is no longer simply a matter of lowering tariff and nontariff barriers between countries to trade peacefully on the basis of well-understood mutual interests. The stakes are much higher than that. They involve exploring the possibility of harmonizing social systems. There is a risk of not understanding the real issues of globalization if it is not clear that what is now at stake is no longer simple competition between economies, but competition between social systems. For as soon as tariff barriers are lifted, the question posed becomes one of harmonizing the social conditions of trade. That implies everything that takes part in the social construction of trade: wages, social protection, legal systems of property, property rights, educational systems, trade union rights, environmental protection, and so on. It is everything that is socially upstream of trade exchanges that is thus brought into play and becomes involved in the issue of globalization.

To take the environment as an example, over the past decade Europe has developed very high standards that European economic agents, such as automobile manufacturers, must integrate.

This results in additional costs compared to their competitors' who are not bound by such constraints. How, then, can environmental protection standards be reconciled with economic constraints without transforming this qualitative preference into a competitive disadvantage? To do so, Europe must make sure it obtains guarantees, either by encouraging its competitors to adopt the same standards as it has or by closing its borders to products that do not respect certain environmental norms.

An important element of analysis flows from what precedes: To understand Europe as a world actor today, one must understand what collective preferences it is striving to promote and how it goes about obtaining recognition for them. There is too much of a tendency, when speaking about Europe, to wonder what values it projects in the world. But the question can hardly be posed in these terms. On one hand, because, in the world today, few peoples or nations hold any expectations that some external model might release them from their constraints and, on otherhand, because Europe is in a much more defensive position than one might believe. Despite its very high standard of living and its state of economic advancement, the nature and quality of its collective preferences place it in an original but isolated situation. It has preferences on a par with its wealth and its protection system. Its priority is thus not to export its values in the name of some outmoded messianic mission, but to obtain recognition from the international system for the preferences on which its originality is based. This task is obviously not an easy one.

On the basis of this assumption, six major preferences can be identified that are shared by European societies and promoted by the European Union. These preferences are

1. the rejection of *realpolitik*,
2. the belief in a civilizing power of trade,
3. attachment to nonmarket social values,
4. the primacy of shared responsibility over national sovereignty,
5. serious consideration for individual rights and the desire to expand them,
6. political compassion with respect to world social imbalances.

As stated earlier, these collective preferences are not simply abstract or idealistic preferences. They draw from the source of European political history, its level of development, the constraints of its environment, the expectations of its citizens, and interests of its inhabitants. Historical-social determinants always underlie these preferences, constraints related to the European experience and social interests in the broad sense.

Collective preferences thus reflect a floating combination of *legacies*, *experience*, and *interests*, drawing their legitimacy from the fact that they emanate from democratic societies endowed with deliberation processes and representative institutions. But there is no doubt that all these preferences reflect a liberal worldview in the philosophical sense of the term, in that they attach considerable importance to individual preferences as well as to the institutional frameworks on which they are based and in that they deeply believe in the continuity between internal state norms and their extension to the international sphere.¹ Not all these preferences will be developed here; I will concentrate on the first four, as they provide the most tangible illustration of the European difference.

The Rejection of Realpolitik

The realist worldview (commonly called *realpolitik*) is by definition the one espoused by hard powers. It rests on five assumptions with which the European Union is at odds. The extent of disagreement may be variable, but there can be no doubt about its existence.

The first assumption states that nation-states remain the principle actors in the international system. Europe is in an ambivalent position with regard to this proposition. It naturally cannot reject this idea wholesale, because the European Union in no way defines itself as a federal entity. Moreover, most member states are for various reasons prepared to admit the “realist” postulate. Countries with a strong realist tradition such as France or Great Britain remain, as we have seen, highly state-centered. For them inter-governmentalism remains the ideal form of European integration,

as their joint concern to weaken the European Commission indicates, for instance. For obvious historical reasons, Germany, of all the great European nations, has been the least “realist” in that it has agreed to give up areas of sovereignty due to the need to get beyond the nation-state. This Habermas-inspired “postnational” ideology is not, contrary to what one would think, purely rhetorical. By giving up the *deutschemerk*, Germany accepted a sacrifice in the name of a postnational political reality. Joschka Fischer’s famous speech on May 12, 2000 regarding the finality of European integration was unofficially perceived in France, particularly by the Foreign Affairs Ministry, as a sort of declaration of war on the European nation-state, a sign of the desire to dissolve Germany into a European federal ensemble.² In fact, it is interesting to see how the Maastricht Treaty gave rise to different legal interpretations in France and Germany. In France, the Constitutional Council has always refused to approve the principle of transfer of sovereignty because constitutionally, sovereignty is inalienable. In Germany, the Constitutional Court in Karlsruhe has never made use of such an argument. The only condition it sets on the principle of sovereignty is that it be framed by democratic legitimacy.³ Of course, German policy cannot be confined to this example. Germany, like every other country, seeks to promote its own interests by several means, including striving for recognition as a “major power” by securing its status of permanent member of the Security Council. Europe is thus very far from being engaged in the postnational era. That does not mean that its political horizon is reducible to that of its component nation-states. It is actually in a historically undetermined gray zone where three competing rationales are at work: (1) a rationale of classic competition between European states, (2) a rationale of competitive cooperation between European states taken individually as such and the European Commission in all areas of shared competence, and (3) a rationale of assertion of individual rights expressed by European citizens who rely on the body of European law to exercise their rights, including those against the states themselves.

The very idea of “collective preferences” basically rests on “antirealist” postulates, in that it considers that the latter fundamentally emanate from rational individuals who are sensitive

to the risks, whose expectations, rooted in their experiences, are constantly renegotiated.⁴ The best example, to which I shall return, in fact, is the environment. Some 15 years ago, European environmental standards were well below American standards. Since then, the relationship to risk has been inverted. Here is an example of reversible collective preferences, based in the evolution of perceptions of risk in Europe. Now this idea is durably opposed to “realist” theories of the international system, which reason less in terms of preferences than in terms of interests and which postulate that these interests are stable over time.

Certainly, Europe will easily concede that in security matters, states play a decisive, even exclusive role. But given that it refuses to view the world from the classic angle of security, once again it is a more pluralistic vision of the world system and its decisive actors that prevails.

The second realist hypothesis involves thinking that the international system severely penalizes states that do not protect their vital interests or that pursue objectives beyond their means. States are thus assumed to be sensitive to costs and behave as rational actors.⁵ The second assumption is not part of Europe’s culture. Certainly, it has “vital interests” to protect like any other actor in the world system. But the notion of “vital interests” is at the very heart of the definition of hard power, because it implicitly presupposes that there is a breaking point at which the threat to vital interests calls for retaliation that can easily be conceived as military. The *National Security Strategy of the United States of America* put out in September 2002 is moreover very explicit in this regard when it says that “defending our Nation against its enemies is the first and fundamental commitment of the Federal Government.”⁶ Here we are in an entirely realist framework in which a territorialized actor seeks to dissuade or combat its enemies. No similar reasoning can be found in the Solana Report, for instance, which is meant to explore Europe’s world strategy. The document talks about “threats” but not about enemies.⁷ What is more, it implicitly rejects the notion of defending a territory besieged by enemies. On the contrary, it emphasizes the fact that “no single country is able to tackle today’s complex problems on its own.” Defending one’s soil against an enemy is precisely at the crux of Schmittian

theory that has always argued that the political order is a spatial order before being a normative order.⁸ Schmitt does not refute norms but subordinates them to the defense of territory. He favors *topia* (“the taking of lands”) over *utopia* (perpetual peace).⁹ In this regard, Europe is undeniably Kantian and anti-Schmittian.

Indeed, Kant, in his project for *Perpetual Peace*, which is supposed to lead to a cosmopolitical order, privileges values over territoriality. Two factors were essential in his mind: the pacific nature of republics and the civilizing power of trade. The Solana Report takes up these two elements practically word for word. He notes that “the quality of international society depends on the quality of governments: the best protection for our security is a world of well-governed democratic states” and adds that “trade and development policies can be powerful tools for promoting reforms.”¹⁰ Even more significant is the latest report of the European Defence Agency devoted to Europe and its strategic environment.¹¹ It is striking to read the importance given to public opinion in the perception of any military operation (“the political outcome will be determined not just by the achievement of military objectives but by the manner in which operations are conducted or are perceived to be conducted”).¹² There again we find something akin to the Kantian reference to the existence of a public space exercising a critical and disciplinary function in view of building Perpetual Peace.¹³ But what seems even more revealing in this document is precisely the refusal to conceive of military intervention in terms of a zero-sum game between friend and enemy. Political leaders in the Commission talk about partners, not allies. And even if they talk about “friends,” they never mention enemies but noncooperative states.¹⁴ Significantly, the EDA report states: “The objective is not ‘victory’ as traditionally understood, but moderation, balance of interests and peaceful resolution of conflicts.”¹⁵ The European Union adheres to visions of peacekeeping based on very strict rules of engagement, privileging contact with civilian populations and reducing recourse to force as much as possible.¹⁶ For Europeans, military force is clearly not to be used as an instrument of hard power. Its primary goal is one of reconciliation and pacification, not punishment.¹⁷

Furthermore, the idea that world actors operate only on the basis of a cost/benefit assessment seems somewhat removed from a European vision that emphasizes socially based collective preferences. Naturally, even when it promotes environmental values, for instance, Europe reasons in terms of costs and benefits. But even if the Europeans have ratified the Kyoto Protocol whereas the Americans have not, it is not because the former ignore the costs and the latter overestimate them. It is simply because their individual assessments of the costs and benefits differ. This boils down to saying that, in this case, “sensitivity to costs” can be interpreted in different ways and result in highly varied strategies. The Americans measure environmental costs in the short term and on a national basis. Europeans instead have a tendency to measure costs in the long term and strive to share them in the name of an interdependent world vision.

The third assumption in the realist theory believes that anarchy, in other words, the lack of a world government, forms the guiding principle of the international system as well as the primary motive for state action.¹⁸ There again, this idea is vastly remote from the European vision that seeks precisely to reduce the anarchic structure of the international system through rationales of global governance. The whole philosophy of governance via norms aims to frame the actors of the international system within a web of norms that is both closely woven and if possible binding. It is moreover around this question of international anarchy that the confrontation of European and American theories with regard to Iraq crystallized.

In a famous article, Robert Kagan explained the Euro-American conflict over Iraq as a conflict between two worldviews: the Americans view inspired by Hobbes and the European view inspired by Kant.¹⁹ In Kagan’s mind, the United States views the world as an anarchic space dominated by the state of nature and the condition of war of “every man against every man.” This prompts him to use the figure of Leviathan—in other words, the state—which prosaically is supposed to prevent men if not from living in perfect harmony, then at least from killing one another. Transposed to the international scale, Kagan’s analysis consists in saying that in a world without order, the United States plays the

role of Leviathan, a Leviathan powerful enough to be credible but democratic enough in its values to be accepted as world regulator. Hobbes saw in the Leviathan a myth that was able to strike a subject's imagination, maintain affects, and hold him in awe.²⁰ The expression Hobbes uses, "to keep them in awe," turns up as a verb in a military strategy known as "shock and awe," recently employed by the U.S. military in Iraq.

This obviously cannot be Europe's vision, inspired more by Kantian principles based on conflict prevention precisely through rationales of interdependence. For Kant, a cosmopolitical order would be reached by achieving three conditions that are as many beliefs: the peaceful nature of republics, the civilizing power of trade, and the critical and disciplinary function of public space.²¹ There is no doubt that from this standpoint, the European idea remains profoundly Kantian, because it believes in the possible advent of world political order built on rules that organize the interdependence of nations. But contrary to what one might believe, the Kantian vision of the world implies losses and gains of state sovereignty because, as Habermas reminds us, the cosmopolitical union is a federation of states and not a federation of cosmopolitans.²² In other words, Europe is so Kantian that it has managed to get beyond violent conflicts between states without abolishing state sovereignty, which, in fact, is what Habermas seems to criticize Kant for.²³ In any event, there can be no doubt that the Euro-Kantian vision is indeed constructed on the will to transcend the anarchic character of the international order.

The fourth realist assumption follows directly from the third. In an anarchic world in which the principal issues are those of power and security, states have a predisposition for conflict, even in situations where they might have common interests.²⁴ There again, the whole European philosophy seems constructed in opposition to this idea, because world governance precisely involves saying that global problems require global solutions and these have a tendency to call for contractual solutions. Europe's wager of governance aims to foil the realist logic, because it believes that interdependence should encourage states to cooperate rather than tear each other apart.

The realist theory of international relations contains one more hypothesis: that international institutions only marginally affect the perspectives for cooperation between states. This points up a strong and long-standing line of cleavage between the absolutist visions of the state and its sovereignty and the liberal, pluralistic visions of the state. The former place the state above everything else and analyze the challenges that arise in terms of possible confrontations, whereas the latter strive to put the role of the state and society in perspective and thereby mobilize the dynamics capable of defusing conflicts. Traces of this difference in interpretation of the social order can be found in the work of Carl Schmitt and in the decisive critique he makes of the pluralistic visions defended by Cole and Laski.²⁵ I will not rehash the details of the controversy here, particularly since I will return to Carl Schmitt's philosophy to explore it as a veritable counter-model of Europe today, suffice to say for the moment, to evoke his critique of liberal and pluralistic visions. For Schmitt, the essence of politics rests on the distinction between friend and enemy.²⁶ But for such polarization to be operational, by definition he has to reduce all forms of pluralization that might affect the friend's unity against its enemy. This is why every political community must be able to diminish the pluralisms within it and substitute simple and existential antagonisms that are in turn exploited by states. A state's task is thus not to complicate the world but, on the contrary, to simplify it by reducing it to a powerful and necessarily simplistic line of cleavage.²⁷ Schmitt's critique of the liberal premises of Cole and Laski are thus only natural, for they, on the contrary, seek to qualify state sovereignty by considering it as one of many actors, invested with the function of governance and transaction among different actors. Europe's political system is, in fact, often defined in these terms. It is also with reference to this idea of plurality that Europe approaches the question of global governance.²⁸ It can certainly be argued that governance by norms can reduce pluralism. Legal positivists such as Kelsen for instance propose a single normative system, itself anchored to a central point disseminating norms that have been brought down to the very lowest baseline.²⁹ But this is not the European approach to

governance. In fact, to my knowledge there is no theory of governance that aims to reduce pluralism in the name of a procedural vision of the international legal order. The immense majority of plans for world governance seek to organize pluralism rather than to tame it. Moreover, what is put forward is a rationale of transaction among actors rather than one of hierarchy.

This explains the importance of institutions in charge of organizing pluralism, in other words, an institutional process by which the hierarchy of norms is structured and legitimated rather than imposed merely as a result of a power struggle or a legal and institutional void. When Europe calls for an examination of the coherence between WTO rules and multilateral environmental accords, it is seeking to obtain recognition for environmental norms and their enforceability on free trade, and this is due to lack of support for endeavors to establish a World Environment Organization. Unlike realist theories, Europe thus does not believe that international institutions only marginally affect state behavior. It believes, on the contrary, that these institutions are a decisive tool for normifying the world system.

Belief in the Civilizing Power of Trade

Europe is convinced, as Adam Smith was, that trade soothes the savage breast. The more people trade, the less people will make war. Interdependence through trade is at the heart of the European project. But this preference is not purely abstract or ideal. Europe is in favor of trade and opening markets because it conditions the well-being of its inhabitants. Europe is in fact the largest exporter and the second largest investor in the world. Moreover, much more than the United States, it has always been dependent on trade for its development. The downturn in Europe's growth rate over the past 10 years has heightened this dependence. Europe thus has a vital interest in the development of an integrated world economy through trade, especially to enhance its comparative advantage in the area of services. These represent two-thirds of its GNP and the jobs in Europe but only 20 percent of world trade.³⁰ It thus has every interest in removing obstacles to the liberalization of

services. And in that regard, it basically shares the same goals as the United States.

But there are several impediments to achieving this “offensive” goal, which are in fact much more sociopolitical than strictly commercial. For a long time, even a very long time, Europeans mainly traded among themselves. That means they are used to trading with countries that have the same level of development, the same regulatory structure. The harmonization of the single market considerably strengthened this tendency, to such an extent that the very notions of import and export within the EU have become merely a matter for balance sheets.

Not counting the European Union, it is with the United States that Europe has the strongest trade relations. This, in fact, explains why most of Europe’s disputes at the WTO involve the United States.³¹ But this fact should not be misinterpreted. Euro-American conflicts nevertheless oppose countries having a comparable level of development and similar interests. For this reason, the so-called regulatory conflicts pitting the EU against the United States have tended to diminish, which suggests that their interpretations of WTO rules are beginning to converge.³² Most of the differences opposing them have to do with the legality of protection measures (safeguard clauses, antidumping measures) in sensitive sectors. The only unusual dimension in Euro-American conflicts has to do with issues that we could call “societal” and that refer to conflicts over social preferences, such as conflicts regarding the use of hormones in beef or GMOs. I shall return to that subject.

At this stage, it is important to understand that Europe’s vital necessity to obtain new outlets for its industrial products and especially its services, is confronted with new trends that are all converging toward a rising demand for norms on the part of Europe.

Europeans have a tendency to trade less and less among themselves and more and more with the rest of the world. For Germany, for instance, the decrease in intra-European trade in its overall trade figures is spectacular. In 10 years, it went from 65 percent to 50 percent, a considerable drop. For Belgium, the figures are even more drastic: the proportion of its intra-European trade has gone from 80 percent to 65 percent. What makes this redeployment of trade toward emerging countries significant? It is the fact

that it represents a shift toward emerging countries where the social and environmental norms are incomparably lower than they are in Europe and that these countries, at the same time, are catching up to developing nations very, very quickly.³³

For a long time, international division of labor was explained from the perspective of the division of labor between Europe, which would sell Airbus, and China, which would sell garments. This is not a false view of reality, but it is changing so fast that there is a risk of seeing countries such as China compete with Europe in high value-added markets without allowing rise in quality products to produce a similar rise in wages. In other words, it may well be that in certain areas, China can sell high-technology products to Europe produced at much lower wages. Europe's comparative advantage does not reside only in the fact that it sells high-technology products, but also in the fact that it sells "expensive labor."³⁴ This "expensive labor" is the reflection of both the high technological level reached in Europe and the high level of social protection supporting it. In the face of China, then, the issue is not to get it to open its market. This has already been achieved and, to a large extent, much more so than in countries with a similar level of development. However, as regards trade regulation, everything remains to be done: assurances are needed that access to the Chinese market is more transparent, that protection against corruption is better guaranteed, that the rules of intellectual property are better complied with, that Chinese development fits in with the logic of sustainable development so that China does not exert further pressure on the raw materials market, so that it does not increase its comparative advantage without integrating environmental constraints, and especially so that it does not use wage repression to increase its advantage. Like the United States, China is in the process of becoming an economic power that by its very morphology will have systemic effects on the whole world regulation system, not only on trade. The EU-China relationship can be seen as a perfect illustration of Europe's interest in normifying globalization. For by acting the way it does, it is primarily seeking to protect its social model.

Consequently, the meaning of its attachment to socialization through trade is altered. The question is not only to wager on the

fact that trade will soothe the savage beast to prevent war, but also to wager that societies having neither the level of development nor the regulatory culture of developed countries (nor even the same priorities) can take part in a global game of which the rules have been made together.

From that standpoint, is the WTO the most conducive structure for promoting Europe's regulatory vision? The answer is clearly yes, and this for at least three reasons: the first is that, in general, when Europe files a complaint or is accused, the WTO overwhelmingly finds favor with it. Between 1999 and 2004, Europe won 13 disputes brought before WTO panels and lost only 4 of them,³⁵ all of these against developing countries.³⁶ The second is that the European Union does not have any real alternative to the multilateral system to promote its normative view. The United States clearly plays the bilateral card to promote respect for basic social or environmental norms when necessary because it has noncommercial political assets in its hand.³⁷ Europe does not enjoy such room to maneuver. For it, the challenge comes from China and India. Only a multilateral framework is likely to influence these huge states. A third reason explains and justifies the European preference for regulation through the WTO. This organization is potentially seen as a "disciplinary institution" that enjoys a real legitimacy to convince countries, particularly developing countries, to convert not only to free trade but also to its regulations. It is very eager to see sensitive problems such as corruption handled at a multilateral rather than a bilateral level.³⁸ Europe views the WTO as an institution able to "soften" the binding character some of its social preferences may have on export strategies in developing countries. That said, the results obtained by Europe on the multilateral level are far from spectacular. The example of core labor standards attests to this. For Europe, the main thing is to avoid both a "social race to the bottom" and to increase the legitimacy of the WTO by encouraging it to take into account social questions and by strengthening the social image of the European Union on the world stage. At the WTO conference in Singapore in 1996, the principle of respect for core labor standards was accepted on condition that these norms would not be used for protectionist purposes.³⁹

At the Doha conference in 2001, the Europeans tried to place the subject on the agenda once again, this time on their own. But they came up against the hostility of developing countries, particularly India, which threatened not to sign the final declaration if this question was tabled again.⁴⁰ Developing countries combat the issue of core labor standards as much due to considerations of political sovereignty as due to economic questions because such standards do not take into account labor costs. They view them as a remnant of a neocolonialist ideology.⁴¹ Actually, considerable doubt subsists as to the effectiveness of core labor standards, even if European public opinion and trade unions attach great importance to them. Indeed, if the defense of labor standards is perfectly in line with a rationale of protecting human rights, it has never been proven that violating them has constituted a comparative advantage or has sparked a "race to the bottom." Without trade unions, Chinese wages have quadrupled in 30 years, whereas with powerful trade unions, Brazilian wages have stagnated.⁴²

The call for a joint organization combining the ILO and the WTO has had little success. Having had their fingers burned with the failure of Seattle, the United States now privileges a bilateral framework to promote its interests in this area.⁴³ As a result, the Europeans have ended up being much more stigmatized by developing countries than the United States, for Europeans are the ones who prove to be the most demanding as regards the setting up of a multilateral normativity in environmental matters and labor standards.⁴⁴ It should nevertheless be noted that sustained European interest in this question is due to the fact that Europe continues to have an industrial base that is in competition with emerging countries. Its industrial specialization is not flexible enough. It is built on static positions, the search for sources of income and exploitation of existing areas of specialization. This is what distinguishes it from the United States, which is more flexible, especially in the area of technology and service industries.⁴⁵

As a consequence, Europe is obliged to revise its goals downward and fall back on a bilateral strategy, at least as regards core labor standards, the defense of which is now integrated into the broader

framework of the fight for “decent work.” Europe prides itself in having sanctioned Belarus and Myanmar for violating core labour standards. But these are isolated and largely disqualified regimes that do not constitute a threat to European interests. Europe thus gives the impression of levying sanctions only on states that can do it no harm.

The Norms Europe Stands For

Europe’s capacity to establish and export norms should not be underestimated. On the contrary, with the expansion of the European common market, Europe has adopted even stricter norms that pertain not only to its member states but also to all the economic agents that want to get into the EU market.

The EU’s economic partners are forced to adapt to those norms, since the European market is one of the largest and since norms concerning environment, health, and sustainable development are becoming more and more compelling. In those fields, European norms are becoming the highest in the world and, therefore, Europe is the norm-setter at the global level.⁴⁶ A country exporting agricultural products will be very careful in introducing massive use of GMOs if it knows that Europeans will not tolerate them.

This role of *norm-setter* was long fulfilled by the United States. Today, Europe has taken over from it.⁴⁷ Two factors account for this: Europe is the most integrated market in the world and it is the one with the highest norms. To demonstrate this, I will provide three examples. They concern what is known as *e-waste* (WEEE—Waste Electrical and Electronic Equipment), restrictions on the use of hazardous substances (RoHS) in electrical and electronic equipment, and finally the regulation, registration, evaluation, and authorization of chemicals (REACH).

WEEE is designed to increase recovery and recycling of electrical and electronic equipment by extending producer responsibilities, since consumers can return free of charge all regulated equipment for reprocessing and recycling in exchange for incentives to produce environmentally friendly equipment. Under REACH legislation,

chemical products will undergo a registration procedure followed by a safety evaluation.⁴⁸

The WEEE, RoHS, and REACH programs are already influencing other actors. RoHS for example is regarded by the United States as the biggest change in electronics in the past 50 years.⁴⁹ REACH also constitutes a source of enormous change for U.S. firms, which must now comply with European regulation. But at the same time, REACH is extremely influential in the sense that it has forced the U.S. Congress to work on national legislation on issues drawn from the European experience. In the United States, the influence of the EU is visible in the action of the various member states, such as their support for the Kyoto protocol. Many states, influenced by European laws, have adopted more compelling legislation than what federal laws require on the issue of the *e-waste*. Nevertheless, this has not prevented the American government from using diplomatic means to combat the realization of REACH. They fear that such legislation constitutes an obstacle to free trade. Actually, the American position mirrors that of American business, which does not want to adapt to European constraints.⁵⁰ The European common market is a considerable source of normative influence, provided Europe has a homogeneous rule system and an attractive market. This passive and almost mechanical influence does not exclude the development of a more active policy of norms exportation.

In this regard, competition policy is one of the most powerful instruments in the hands of the EU. Strictly speaking competition policy refers to the rules that are designed to prevent market players from forming cartels. In fact, in a broader sense, for a given market, it refers to provisions intended to distinguish between economic agents by means of innumerable regulatory obstacles. Respect for competitive rules is thus an issue in Europe's internal market as well as for its trade policy.

The stakes are high since Europe is not only the largest solvent market in the world and the leading economic power, but also the first in world investments.

A genuine risk of cartelization does exist because most global investing is done through mergers and acquisitions, thereby

automatically increasing the likelihood of market concentration. Faced with this risk, Europe has considerable means at its disposal; their import was evident on two different occasions involving two different issues: when in 2001 a European court, on the basis of extraterritorial powers, effectively prohibited the merger of two American companies (General Electric and Honeywell Bull); and in 2007 when this same court condemned Microsoft for having eliminated its competitors from the operating systems market by denying them access to technical information on Windows. What stands out in this affair is both the fact that Microsoft was condemned in Europe but not in the United States, and also that it was an American company that brought charges against Microsoft in Europe as if it considered it would be easier to do so in Europe than in the United States.⁵¹

The condemnation of Microsoft is evidence of a European conception of competition that is today different from that of the United States. In Europe's eyes, competition must not only provide an advantage for the consumer but also ensure the continued existence of market competitors. In other words, there can be no genuine competition in the absence of genuine competitors; whereas for Americans the competitive structure of the market itself is of less importance than the advantages to be derived by the consumer. Microsoft's quasi-monopoly would, in the latter perspective, have been acceptable if the consumer were to benefit from a steady price reduction.

The other aspect of competition has to do with the rules guaranteeing fair competition between economic actors. For Europe this aspect—at a time when its trading patterns have been changing radically and rapidly—has become increasingly important. As long as Europe remained an introverted economic area, the rules of competition concerned only countries with strict norms. Conforming to rules governing intellectual property, for instance, had never been a major issue for Europe as long as it traded within its borders or with the United States and Japan. Today the situation is entirely different since trade has been expanding with emerging countries whose norms are looser. Europe thus has an impressive roster of normative cases to settle, one that is closely linked to its commercial policy.

In fact, until around 2005, Europe tried to put through its normative agenda via a multilateral channel known as the “Singapore issues” (investment protection, competition, transparency, and trade facilitation). But after the 2004 failure in Cancun and the deadlock in the WTO multilateral negotiations, Europe—without admitting as much—decided to explore bilateral ways to advance its normative agenda. And it is obvious why. When 80 percent of imitations intercepted in Europe are of Chinese origin, it would appear legitimate to address China directly, rather than waiting for a multilateral solution. All the more so in that the issue in this case was less the drawing up of new rules than their effective application. Europe willingly admits that, when it comes to issues other than tariffs, it has more success in bilateral than in multilateral negotiations. Moreover, Europe is in the process of tightening provisions concerning intellectual property in its bilateral agreements, coming closer to the United States that has always considered that, in such matters, bilateralism was more effective than multilateralism.

Since 2006, Europe’s trade policy has taken a bilateral turn so as to take root in emerging countries, particularly China that is its leading commercial partner.

Faced with public scepticism as to the advantages of globalization, Europe knows that it can prove its effectiveness and its legitimacy only by demonstrating that the opening of new markets will lead to the creation of jobs in Europe.

Today it is countries with high growth potential that Europe is most interested in. To meet its objective Europe intends to deploy its battery of norms in the key areas of respect for intellectual property, access to government markets, and discrimination against foreign investors, not to speak of the fundamental social norms concerning environment, energy efficiency, and human rights. There is, of course, the risk that its commercial policy will then be overburdened with conditions, all the more restrictive when the balance of power is in Europe’s favour. The issue should be squarely faced, all the more so in that it is clear that Europe has no intention through these agreements of relaxing its control over sensitive aspects of agricultural production and even less so over the movement of people.

The Defense of Nonmarket Values

Globalization, as we have seen, has a powerful ability to reveal social preferences. It highlights what societies are attached to when they find themselves confronted with dynamics of openness. And this is precisely what has happened in recent years. Europe has thus been forced to realize that opening up markets clashes with collective choices it was attached to, whether they pertain to agriculture, the environment, food safety, or its social model. In other words, the defense of nonmarket values boils down to considering that free trade does not necessarily produce well-being (see table 3.1).

Enforcing moral, social, cultural, or religious values on the opening of markets is not in itself a new phenomenon. In 1927, the International Convention on the Abolition of Import and Export Prohibitions and Restrictions explicitly examined the subject. Moreover, the GATT and the later WTO accords include a considerable number of provisions allowing them to suspend imports of a given product that is harmful to health, the environment, or the preservation of rare species, provided that scientific evidence has been demonstrated. The three best known mechanisms are the SPS accord (Sanitary and Phytosanitary Measures), the TBT (Technical Barriers to Trade), and article 20 of the GATT that allows each state to develop its own rules in terms of health and the environment as long as these protection measures are not discriminatory or used as disguised trade barriers. In fact, WTO case law has had a tendency to base its analysis—through its panels—on this very article 20 and hand down its decisions in reference to it when conflicts opposing free trade and environmental preservation were brought before it.

Table 3.1 Europe's nonmarket preferences

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- enforceability of environmental rules on opening markets
 - use of the precautionary principle
 - multifunctionality of agriculture
 - respect for core labor standards
 - respect for cultural diversity
-

The two most famous panels in this area are the Shrimp-Sea Turtle Panel and the Gasoline Panel. Europe was not involved in these two emblematic panels, because in both cases the complaint was lodged by the United States, against Asian countries in the shrimp-sea turtle dispute and against Latin American countries in the case of gasoline. Europe nevertheless paid close attention to the WTO ruling because it set a precedent that could be very instructive for it. In the shrimp dispute, the United States justified closing their market to shrimp imports by the fact that the rules regarding the type of nets used in Asian countries endangered the conservation of sea turtles that were caught in these nets. In the gasoline case, the United States claimed that Latin American oil products did not comply with American environmental legislation. Certainly, in both cases, the ruling was not directly in favor of the United States.⁵² But in substance, the WTO acknowledged the legitimacy of using environmental laws to prohibit imports. The European Union saw this as moving in the right direction in that the WTO now seemed prepared to take environmental concerns more into account.⁵³

The Environmental Preference

Why then does Europe insist so much on better coupling of trade and environmental protection when provisions whenthat can protect the environment and, moreover, WTO case law seems to be going “in the right direction”? Because it believes that WTO provisions such as SPS and its precedents are insufficient to provide a stable and lasting guarantee for its environmental preference. Therefore, it would like to see the WTO also enact clear trade restrictions in the name of environmental protection, as is the case in Community law, thus moving beyond raising environmental issues in panels with a fluctuating jurisprudence. At the Doha conference, in eleventh-hour negotiations, Europe managed to put examination of the consistency of Multilateral Environmental Agreements (MEAs) with WTO rules on the agenda.⁵⁴

The second reason has to do with the fact that social pressure in favor of stricter environmental rules has intensified. In 1991, when

the predecessor to the WTO—the GATT—had to settle a famous dispute (tuna-dolphins) in many ways similar to the shrimp-sea issue, the ruling was not in favor of the United States. At that time, Europeans applauded the GATT decision because it refused to link trade and the environment.⁵⁵ In ten years, a real Euro-American *chassé-croisé* has taken place in environmental matters. The United States has tended to lower its requirements in this regard while the Europeans have had a tendency to raise them. Why? There are several explanations.

The first is institutional in nature. Environmental issues in a broad sense have gradually been integrated into the sphere of Community jurisdiction. This “communitarization” has systematically worked in the direction of higher standards, beginning with the Single European Act, which came into force in 1987. It provided a legal support to environmental preservation and harmonization of standards on the basis of a high level of protection. In 1993, the Maastricht Treaty for the first time ratified the precautionary principle as a guiding principle for EU action. The Amsterdam Treaty in 1997 confirmed Europe’s concern for environmental questions, calling on the EU Council and Parliament to attain high standards in the areas of health, food safety, protection of the environment, and consumer rights. These questions entered the sphere of co-decision, thus reinforcing the influence of European citizens in the field of European decision making.⁵⁶ And so, institutional and political logics conjugated with an outcome that considerably raised the environmental stakes in Europe. Since there are now only European consumers, sanitary and environmental regulations necessarily end up engaged in a process of strong harmonization. It is in the interest of economic agents to limit the obstacles to the penetration of their products, while citizens are entitled to demand similar health and environmental guarantees once products are freely circulating, bearing in mind that risks disregard borders.

The second explanation is a result of the demand for increased democratization of European institutions, a demand constantly reiterated since the Maastricht Treaty. This trend has been confirmed by implicating Parliament in environmental choices. In fact, between 1984 and 1994, the precautionary principle was

enshrined in 27 European Parliament resolutions.⁵⁷ The European Commission was not to be outdone. In February 2000, it called for the precautionary principle to be extended to health risks on the basis of scientific evidence, an examination of the potential benefits and costs of action (or of lack of action), and the level of risk that the European public was prepared to tolerate.⁵⁸

In December 2000, the Nice Summit confirmed the new European philosophy as regards precaution while modifying it on two points. For one, it noted that it may not always be possible to make accurate risk assessments due to lack of scientific evidence or due to averred and immediate risk. It also emphasized social acceptability of risks and consequently the necessity to integrate public acceptability of risks at each stage.⁵⁹

The environment thus became a major political issue in Europe. Three essential factors institutionally favored its rise in importance: It is one of the areas that best lends itself to the production of norms because there is a need to constantly set rules, ceilings, quotas, and other such parameters.

It is also an area in which European political integration can gain in legitimacy as long as it allows the production of high-standards goods and services. No one in Europe can complain about the Europeanization of health and environmental norms, except, of course, social groups or professions who want to take advantage of low standards. Lastly, the environment is the ideal area for sharing sovereignty, obliging Europe to speak and act with one voice once a collective decision has been made. Unlike a nation-state—such as the United States—that can change its mind, the Community rationale “locks” its various member states into choices that it can repudiate only at prohibitive cost. As a political ensemble, the European Union by definition has greater trouble than a nation-state in defining a common position. But once this position is adopted, the unified position exerts a “mass effect” both by the aggregation of forces and by the impossibility of pulling out of the agreement. Moreover, due to the logic of integration, even in the absence of an identical risk assessment in all countries, European legislation tends to align itself along the countries that are the most demanding in terms of risk assessment.⁶⁰

The environment, and more especially climate change, is not only a part of Europe's political agenda but also participates in the construction of its international political identity. It offers the Commission an opportunity to consolidate its legitimacy not only among the member states, but also among the European public, which is particularly sensitive to this topic. It is also by its nature—a public good—a political object that lends itself to the logic of *de facto* communitarization through European policy. And finally, it is an instrument of political distinction enabling the EU to structure its difference, particularly with regard to the United States.

However, Europe committed itself in April 2007 to reduce by 20 percent its emissions of greenhouse gases by 2020 (and even by 30 percent if a reduction of this kind was accepted by the other states) and then by 50 percent before 2050, keeping 1990 as the reference year. In the Kyoto agreement, the reduction of GHG for Europe was fixed at 8 percent between 2008 and 2012. By being the first geopolitical region to commit itself to After-Kyoto targets, the European Union effectively fixed the norm that was to be central in the international negotiations held in Bali in December 2007. But Europe must meet two challenges. The first is to be exemplary in environmental matters, not simply in rhetoric but in practice. Yet on this score the results are not yet in.

In 2010, according to the Commission's own estimates, GHG emissions in Europe of the 15 will only have been reduced by 0.6 percent below the 1990 level, whereas Kyoto stipulated an 8 percent reduction by 2012. For Europe of the 25, the outlook is more encouraging, but not necessarily significant; the former Eastern Bloc states are closing out the polluting factories left over from the Soviet era. In 2004, the GHG emission levels for Europe's 25 were at their highest since the adoption of the Kyoto Protocol in 1997. The black spot for Europe remains road and air traffic. In addition, the proportion of European exports with high carbon intensity is superior to that of the United States or China, which renders attempts at tax importations of polluting countries hardly credible.

For Europe, to set an example is a crucial issue, but the outcome remains uncertain. A political strategy capable of inciting

the emerging countries to share this approach is needed, not to speak of the fact that the United States might be reluctant to see these countries absolved from taking meaningful steps before 2020 as proposed in the latest UN development report. It will be most difficult. Yet it is only by such criteria that European nations can continue priding themselves on being “a green power.”

Europe thus has a comparative political advantage in environmental matters, first, because it enjoys undeniable leadership—based on its know-how; second, because it is for Europe that the adjustment to climate change is the least costly (the European Union contributes only one-sixth of the greenhouse gas emissions although it represents 25 percent of the world GDP); last, because it probably enjoys an economic advantage in the area of clean technology it can likely capitalize on. It remains for Europe to convince the other world actors to enter the playing field as soon as possible so that its political advantage is not minimized by a short-term economic advantage if it happened to be the only one to embark on a bold environmental policy.

The institutional dynamic is, however, not the central explanation. If Europe has managed to wrest leadership from the United States in environmental matters, it is basically because the various member states have acquired a common environmental awareness that, in fact, has arisen from very different experiences. Conversely, the United States is confronted with an “environmental counter-revolution” that encourages political, economic, and even religious forces to see environmental protection either as a new form of paganism (Pat Robertson), or as the greatest threat to Texas after illegal immigrants (DeLay), or, more prosaically, as a lack of income for the oil industry or as an attack on the American way of life based on wanton consumption of nonrenewable resources.⁶¹ In fact, American environmental groups seem more than ever on the defensive, ascribing their decline to that of liberal American values. “Our death is a symptom of the exhaustion of the liberal project.”⁶² There is thus indeed a certain consistency between the rise in neoconservatives, the political influence of fundamentalist movements, the decline of environmental values, and the claim of an “American exceptionalism” that apparently encourages it to wrestle free from environmental constraints and discipline.

The Controversial Use of the Precautionary Principle

Europe's environmental policy has moved in a different direction. It has been considerably driven by the Scandinavian countries and Germany. Europe's reappropriation of the precautionary principle owes much to Germany's influence, which during the 1970s developed the concept of *Vorsorge* (precaution) and whose entire environmental policy hinges on this principle. To protect German forests against acid rain, the authorities were prompted to make drastic reductions in sulfur emissions well before scientific knowledge had clearly decided on the causes of deforestation.⁶³ In 1990, the ministerial declaration on the North Sea was a major step toward international recognition of the precautionary principle. This principle is defined as a recourse to preventive measures designed to avoid damage even in the absence of scientific evidence of a link between the emission of certain toxic substances and their supposed effects on the environment.⁶⁴ But even if Germany was always in the lead, it was not the only one to defend a very active environmental policy. Denmark and the Netherlands were also very involved in this area. This green troika within the European Community in turn benefited from the accession of countries with a strong environmental culture such as Sweden, Finland, and Austria. All these countries had either a strong environmental tradition or relatively powerful or influential green parties.⁶⁵

This said, the remarkable fact in Europe is not so much the influence of green countries as the extension of this green culture to a whole swathe of Europe that was not sensitive to it until then. How did this contagion occur? This is where the question of political experience plays its full role. Indeed, most European countries were, beginning in the 1980s, either confronted with environmental or health crises, or strengthened by the existence of a European political framework able to take charge of their concerns.

Great Britain for instance never appeared to be a particularly green country. But the existence of a European environmental policy enabled it to promote its own agenda, dominated by a strong sensitivity to animal protection. Great Britain thus naturally formed alliances with the green countries of northern

Europe to put forward a series of provisions that were favorable to animal protection.⁶⁶ France did not have the image of a country with a particularly developed green culture either, especially because of its nuclear program. But through food safety issues this awareness was heightened, thus feeding the development of a particularly vigorous European policy in this area. France, a country with a strong culinary tradition, was the first European country to be confronted with the issue of GMOs, because it was in France that in 1997 the first applications for a license to introduce GMOs were filed on the European continent. For reference, GMO technology involves isolating genes in an organism, handling them in a laboratory and injecting them into another organism to increase product yield and resistance to pests, thereby reducing the use of herbicides and pesticides. At first, France nevertheless approved the application and forwarded it to the Commission. The Commission in turn consulted the member states. But seven of them rejected the license, on the grounds that the health guarantees offered were insufficient. Due to the lack of agreement, the decision went up to the environment ministers, who refused to vote in favor of an authorization to introduce genetically modified corn on the market. But after a favorable scientific opinion, in February 1997 the Commission authorized the sale of GM corn. France went along with the Commission's recommendation before backtracking one week later under pressure from the environment minister. In February 1998, the Jospin government again authorized the planting of GM corn. This time it was NGOs, including the Confédération Paysanne, that filed an appeal with the Conseil d'Etat. In September 1998, this institution handed down its ruling. It revoked the decision to authorize the production of GM corn on the grounds that it took inadequate account of the precautionary principle. The Conseil d'Etat decision was in turn reinforced by a European Court of Justice (ECJ) decision, considering that the GMO issue came under the sphere of shared competences between the European Union and the member states and thus invalidating the Commission's position that had authorized putting GM corn on the market. In the case in point, the ECJ emphasized the right of each member state to use the precautionary principle and thus to restrict or prohibit

the use or sale of a product presenting a risk to public health or the environment.⁶⁷ The ECJ decision would prove to be essential, because it would enable several member states to justify their opposition to the marketing of GMOs products.

As a result, the Commission in Brussels was prompted to back down and to declare in 1999 a moratorium on new applications to approve GMOs.⁶⁸

What is interesting to note in the case of GMOs is both the power acquired by the precautionary principle in conducting European policy as well as the way in which the various European experiences combined to fashion—not without difficulty or contradiction—a relatively ambitious European environmental policy.

This “combination of experiences,” however, would have not acquired the influence that it did on the definition of European policy if different countries had not been faced with very serious environmental or food crises, among which, the mad cow crisis was decisive. It broke out in 1995 when the British government announced that 10 people had been discovered to be infected with Creutzfeldt-Jakob disease. This crisis, which would lead to the death of about 100 people, was to have two consequences. It would prompt deep wariness in Europe with regard to health regulation authorities and by the same token a demand for the reinforcement of precautionary measures throughout Europe. It also gave rise to a very strong sensitivity to health and environmental questions, a sensitivity attested by the vigor of the debate on GMOs. European reticence toward GMOs or the use of hormones in beef is largely due to public concern regarding the development of an industrial-scale agriculture driven by a profit rationale and prepared to take considerable health risks in pursuit of this logic. This concern corresponds not to one but several converging reasons: the loss of trust in national health regulation bodies following certain regulation crises, European sensitivity to culinary art, the fear that crops would be contaminated by GMOs due to physical proximity, and the memory of genetic engineering in Germany. All these elements converge toward a collective anxiety that has no equivalent in the United States,⁶⁹ particularly because they have not had any serious environmental crisis in the past 20 years.

The idea of “shared risks” has thus become central in the construction of a European identity as regards the environment. This collective awareness of sharing the same risks naturally leads to a European demand in environmental matters expressed in the publication by the Commission in the year 2000 of a white paper on food safety. It is reflected by the very strong increase in the European regulatory mechanism starting in the mid-1980s (use of hormones in beef and milk, GMOs, biodiversity, ecolabeling, issues of waste, global warming, recycling of junked vehicles, animal feed, biosecurity, recycling of electronic components). Now on all these subjects, American legislation is either less stringent or nonexistent.⁷⁰

Today, it is on the question of GMOs that the differences are most perceptible. In the United States, everything has been done to encourage the authorization of GMO crops, even sidelining the Environmental Protection Agency.⁷¹ As a matter of fact, in 2002 the European Union had not granted any more than 18 licenses for biotechnology products, only nine of which involved GMOs, whereas the various American agencies had granted 58 such licenses, including 50 for GMO crops.⁷² Three-quarters of the plantations of crops containing GMOs were thus concentrated in the United States, whereas they are practically nonexistent in Europe except for experimental purposes. Today over 60 percent of the foodstuffs sold in the United States contain GMOs, which shows to what extent this biotechnology is established in the United States and how strong the difference remains with Europe. Remember that Europe has just put an end to the moratorium on GMOs, while subjecting the marketing of any GMO product to stringent traceability requirements. The conflict with the United States thus remains far from settled, as attests Washington’s decision to lodge a formal complaint regarding this issue with the WTO.

Thus, as for the environment, Europe would like to recognize the precautionary principle not only recognized in its case law but enshrined at the WTO. But it must face planet-wide skepticism on this issue. The United States believes that existing safeguards are entirely sufficient and harbors extreme wariness with respect to the precautionary principle. As for developing countries, they

see it either as a luxury of the rich unthreatened by hunger, or as a new strategy designed to prevent them from entering the northern markets.⁷³ It must indeed be clearly understood that this preference for the environment is not a purely abstract one. For although it may reflect irrefutable social preferences, it also expresses interests that lead the European Union to have a much more ambivalent attitude than it might appear to have. As regards biosecurity, for example, Europe successfully demanded recognition of the precautionary principle in the Cartagena Protocol on Biosafety in order to restrict consumption of GMOs. But when certain developing countries demand broad-sweeping international controls on the subject, they come up against European opposition keen to regulate the use of GMOs in the agriculture industry, but not in the pharmaceutical industry, a distinction that seems highly debatable. In this case, restrictive norms are clearly intended to protect commercial interests.⁷⁴

Defense of the Multifunctionality of Agriculture

The other collective preference the European Union clearly displays has to do with agriculture, or more precisely with the principle of multifunctionality of agriculture. Sketched out during the Uruguay Round under the term “integrated rural policy,” multifunctionality was defined in 1999 prior to the Seattle Summit. The idea is simple. It claims that agriculture is not a type of production like any other, because farmers are not there merely to exploit the land like a miner exploits a mine. They live in the midst of an environment that they cultivate and preserve. Agriculture thus has noncommodity functions that prohibit viewing farmers as the miners of the twenty-first century.⁷⁵

The European Union has naturally strived to formulate this position of principle in order to counter critiques coming from those who, especially at the WTO, are demanding that the Common Agricultural Policy (CAP) be dismantled in order to open markets.

This configuration of positions could lead one to believe that there is a zero-sum game between the multifunctionality of

European agriculture and the free trade of agricultural foodstuffs. But in reality, the equation is infinitely more complex than that, because the opponents involved are far from constituting unified or stable groups.

Actually, the European Commission understood a long time ago that the “original CAP model” was simply no longer adapted to the conditions of European and world agriculture. Its productivist logic, which was understandable in the 1960s, ended up increasing the distortions within the agricultural world (because bonuses were given to the most productive) with respect to the world market and destroying the environment (because overproduction was rewarded). Matters have reached a point where the CAP, once held up as a model of multifunctionality, has managed to destroy this so-called multifunctionality, the basis of which remains sustainable development. This explains the necessity to modify the CAP without, for all that, giving the impression that such amendments are being made on the impetus of external constraints.

Using the argument of opening up markets to justify CAP reform had a dual disadvantage: it became even more illegitimate in the eyes of farmers—due to its being imposed from the outside—and lost all margin for negotiation with net exporters of agricultural products. Reforming the CAP under external constraints in the long run boiled down to eroding the very idea of multifunctionality. And so the political message was reinforced that CAP reform above all meets internal considerations and that it is on the basis of such considerations that Europe’s bargaining position on agriculture can be inferred.⁷⁶

To depolarize the situation, Europe thus began breaking down the problem, distinguishing three aspects of what is called agricultural protection: (1) export subsidies, which harm exporting developing countries while aggravating imbalances within Europe to the benefit of certain privileged farmers; (2) border protection, which aims to protect the local production of certain products such as meat, wheat, and sugar; and (3) internal support measures that aimed to sustain farmers’ incomes while encouraging them to convert to more multifunctional activities.

By breaking down the problems, Europe seeks to rebuild its defense. It is no longer a question of defending agriculture across the board, but of defending multifunctionality as long as it does not introduce strong distortions on the world markets. In the long run, it is thus bound to accept the disappearance of export subsidies and to modulate its border protection, but to also maintain support for its farmers.

The implementation of this new framework nevertheless comes up against considerable obstacles. The first arises from the main agricultural exporters in the South, such as Brazil, to accept this delinking of agricultural protection. Their goal is to conquer northern markets and they consider that Europe aims to delay this inevitable perspective by any and all means. The second problem comes from the fact that Europe as a mercantilist actor can advance toward deprotection of its agriculture only if it is controlled; only if other countries that strongly subsidize their agriculture follow suit, such as the United States and China; only if exporters of agricultural products too agree to open their markets; only if, lastly, the concessions made by Europe in agricultural matters are accompanied by an opening up of industrial markets in countries such as Brazil and India. If we add to that the extreme complexity of negotiations and the very large number of actors involved in them, the outcome is a deadlocked and confused situation. From patent failures (Seattle, Cancun) to semi-successes (Doha, the Geneva Accords of 2004), the world trade system is making no headway because the countries of the G-20 have managed to polarize negotiation around a simple principle: the South will make no industrial tariff concessions as long as the countries of the North, particularly Europe, have not made any more specific commitments regarding the reduction of their agricultural protection.⁷⁷ There is nothing surprising about these deadlocks and this slowdown in themselves. The fact that the U.S. government has had such difficulty getting the Congress to adopt a free trade agreement with Central America, whose exports do not exceed those of the state of New Jersey, demonstrates that the preference for free trade remains structurally weak throughout the world.⁷⁸

In response to this situation, the European Union can assert that the agricultural protectionism it is criticized for in no way constitutes an operation of “development denial” to the countries of the South. In fact, none of the southern hemisphere countries share common interests on agricultural questions. Except for the large agricultural-exporting countries such as Brazil, Thailand, or Australia, all the other countries of the South will be penalized by, the opening up and deprotection of European markets particularly those nations that enjoy preferred access to European markets. Actually, there is a divide among the countries of the South between net importers of agricultural products, for whom opening markets and ending subsidies would increase their agricultural bill, and net exporters, who would benefit from the unlikely reduction in support.⁷⁹

But however justified, this line of defense seems threatened by the logic of nondiscrimination that rules world trade. Intuitively, it may seem “useful” or “reasonable” to grant privileged access to the less advanced countries of the South. But besides the fact that it seems difficult to define the principle and conditions on which to exercise this discrimination, it is hard to see why it would apply more to agriculture than to other products. Reference to multifunctionality could then be made to justify such discrimination. But there is no broad consensus on its meaning. Moreover, if a decision is made to grant sugar from Mauritius privileged access to the European market, it would be less to protect the multifunctionality of Mauritian agriculture than to protect a source of guaranteed income that Mauritius would enjoy due to the privileged access. This income would then act as a disincentive for Mauritius to diversify its agriculture.

Collective Preferences as Doctrine?

All this brings us back to our point of departure: to know under what conditions Europe can assert recognition of nonmarket social preferences as a general means of regulating globalization and not only as a set of ad hoc provisions that can reduce the social impact of market liberalization in a given area.

This is precisely the task that European trade commissioner Pascal Lamy set out to accomplish toward the end of his term, by publishing a substantial document entitled "The Emergence of Collective Preferences in International Trade: Implications for Regulating Globalisation."⁸⁰ This essay, which did not receive the Commission's imprimatur, provoked considerable reaction in Great Britain. To a certain extent, this text tends to admit that the effect of norms stops where more fundamental political issues step in. When facing the social resistance that usually confronts the opening of markets, it is not so much norms that are needed (still, they are), but political choices, on which new norms can be grafted. Without analyzing it in depth, Pascal Lamy's argument can be summarized thus: The dynamics of international trade are increasingly interfering with nonmarket social preferences that traditional regulation as practiced by the WTO will have more and more difficulty handling because they will place the liberalization of trade at odds with strong social, cultural, and identity issues.⁸¹ In other words, trade conflicts will become less and less classic trade disputes because they will conflict with different collective preferences. For the moment, there are no guidelines available in the international system that can be used to settle a dispute between trade preferences and environmental preferences, or between trade preferences and social preferences. Furthermore, even if there were aspects of governance capable of arbitrating some of these conflicts, the global institutions that would settle a hypothetical conflict between trade norms and health norms do not exist.

World governance thus has a structural deficit in the hierarchy of norms. To compensate for this deficiency, Pascal Lamy has outlined a sort of provisional honorable exit that would involve having the WTO recognize the existence of collective preferences that can be enforced on the market to create compensatory mechanisms for actors who suffer from the imposition of these preferences. In the case of agriculture, for instance, Europe would have the right to protect its agriculture and its farmers even if this protection put certain countries at a disadvantage, but in exchange, the exporters who lose out would benefit from financial compensation to make up for this loss of income. The right to protection would thus be acknowledged, but this preference would have a cost.

In any event, Pascal Lamy thus proposes a system unlike the traditional safeguard clauses recognized by the WTO, of compensations to be paid immediately to the “victims” (producers) of the safeguard clause. Defense of collective preferences would thus be paid for twice: by protecting a market from the entry of less expensive products and by compensating those whose access to the market, the European market in this case, would be blocked. Why should Europe accept such a system? One reason might be that Europe needs to protect its agriculture due to the wide-ranging social utility that agriculture fulfills. But there is more than that. For the past few years, the Commission—or in any case certain departments of the Commission involved in development issues—has begun to understand that the approach to liberalization through reciprocal trade concessions as practiced with *developed countries* cannot be extended to *developing countries*. That is because the key to development in these countries is not necessarily the opening of their markets but internal socioeconomic reforms. In other words, negotiations should not involve opening European agricultural markets in exchange for opening southern industrial markets, but opening northern markets in exchange for macro-economic conditionality. But such an approach is notoriously complex to implement, all the more so as it introduces a hiatus between European concessions on agriculture and the economic and social reforms in the countries of the South. That explains the mixture of common sense and self-interest with which one might ask why Europe should really sacrifice protection of its agriculture, if the trade-off for this sacrifice is arbitrary access to uncertain or relatively uninteresting markets.⁸²

This idea of resorting to social and identity safeguard clauses has already been discussed by John Jackson and Dan Rodrik.⁸³ But it encounters several difficulties, including knowing who validates the collective preferences in the nation or in an entity such as Europe. Who makes sure that these preferences really reflect the people’s mandate and not the dictates of certain interest groups?⁸⁴

For neoliberal economists, the assertion of collective preferences is based on doubtful reasoning that causes one to lose sight of the one and only arbitrator of preferences: the consumer. Consumers

are the ones who should decide if they wish to eat beef with hormones or not. It is also their responsibility to decide on the potential harmfulness of a product for which the risks are not formally established. Along these lines, making an issue out of collective preferences would thus merely be a new form of protectionism that Europe is trying to establish to protect its agriculture.⁸⁵

Obviously, gaining recognition for collective preferences runs up against considerable obstacles, and converting sectional interests to collective preferences is not self-evident. But at the same time, the reduction of all preference conflicts to conflicts of individual preferences is hardly convincing. Consumer freedom is purely academic when it is reduced to a choice between a potentially harmful but inexpensive product and an expensive product free of all risk. In other words, if beef with hormones is considerably less expensive than traditional beef, consumer choice will be dictated not by preference but by income. It cannot be denied, then, that with regard to certain risks, the assessment and the means of assessing these risks vary from one country to another, from one society to another, and that, very often, the appreciable difference that results is more cultural than strictly scientific. It would for instance be difficult to explain the strong aversion German public opinion has to GMOs without taking into account the trauma caused by genetic engineering during the Nazi era. It would also be groundless to analyze French support for agricultural protection solely in terms of political clientelism; it may be an essential factor, but it does not explain everything. The French relationship to food and the rural world also has a historical dimension. It is not entirely ossified, but it cannot be disregarded either.

This is why, although the notion of collective preference may be debatable, it cannot be rejected out of hand merely on the grounds that it purportedly contravenes the rules and principles of free trade. And in fact, the WTO has already outlined a substantial number of measures that can be opposed to the unconditional opening of markets.⁸⁶ Steve Charnowitz proposes taking the issue of collective preferences seriously, but he suggests that a distinction should be made between preferences that reflect a strictly internal preference and those that have to do with a preference likely to obligate other actors to adopt one's own preferences.⁸⁷

In the case of beef with hormones, one can perfectly accept the idea that Europeans want to guard themselves against this type of food rather than compel others to give it up (internal preference). On the other hand, when the United States declares an embargo on cat and dog fur, it naturally calls up an internal social preference (animal protection), but the goal is more ambitious because it aims to make China abandon certain practices. Thus there can be collective preferences that hardly clash with other's interests and collective preferences more universal in scope (core labor standards) that aim precisely to modify the collective preferences of other societies. This distinction, although methodologically interesting, does not necessarily seem convincing from an operational standpoint.

Actually, the real discriminating variable in this issue resides in the economic stakes a given collective preference represents. As long as the stakes of the preference remain relatively limited (beef with hormones), arrangements can always be found.⁸⁸ If, on the other hand, the precautionary principle is one day used by Europe to prevent the sales of Boeing aircraft, the stakes would be of an entirely different dimension. How then is it possible at the same time to accept the legitimacy of a concept, admit its fragility, and acknowledge the heterogeneity of collective preferences in the world? At first glance, Pascal Lamy's proposal for a broad safeguard clause based on the principle of financial compensation may seem credible and operational. But it runs up against two obstacles. The first is that the compensation mechanism can be seriously implemented only by rich countries. It is indeed hard to see how even an emerging country could compensate the European Union in the name of national collective preferences. Furthermore, the idea of directly compensating producers confronted with enforceable collective preferences is not necessarily always a good idea. It is easy to understand that the United States would compensate cotton producers in Burkina Faso who suffer from the overproduction of American cotton growers. But is it reasonable to compensate Brazilian latifundium whose colossal fortunes overshadow Brazil's criticism of European protectionism?

This is why, given these different constraints, two paths can be envisaged. The first involves integrating collective preferences

into the system of waivers that three-quarters of the WTO members can ratify for fairly long periods of time. The second would involve persuading WTO panels to more boldly take into account the various sources of international law, and not only trade law, when they are called upon to settle disputes involving collective preferences.⁸⁹

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CHAPTER 4

European Governance and American Sovereignism

As discussed earlier, Europe's social preferences affect the rest of the world in highly variable conditions and proportions. To prohibit importation of beef with hormones from the United States reflects a relationship with food that Europeans can maintain without seeking to impose it on other societies. In the latter can reasonably make do with this. Such preferences shall thus be called *defensive social preferences*.

The ban on GMOs is already a more serious issue. For even if Europe manages to limit the use of them at home, it has every interest in ensuring that third world countries also restrict their consumption, or else it may find itself at risk of being "besieged" by them and inevitably obliged to accept GMO products in the long run. This explains its attempt to convince certain southern hemisphere countries to refuse American food aid that contains GMOs. In this case I will speak of *semidefensive collective preferences*.

Lastly, there are social preferences that Europeans can defend only if others also share them (*offensive collective preferences*). Let us take three examples: abolition of the death penalty, environmental protection, and the determination to bring war criminals to trial. In these three cases, however different, it is extremely difficult to think within a strictly European framework, for the content of these preferences is necessarily universal in scope. When one manages to abolish the death penalty at home, one is irremediably tempted

to seek to have it abolished elsewhere; the issue calls up universal and not national categories. And this is, in fact, the order in which things occurred. The spread throughout Europe of the movement to abolish the death penalty eventually prompted Europeans to fight for the abolition of the death penalty in the United States.¹

In environmental matters, it is even more difficult to maintain the discontinuity between the European and world framework because, by definition, greenhouse gas emissions are not confined within national borders. If Europe wants to advance the environmental cause, it must then clearly integrate into world regulation the states most directly involved. This is what it managed to do in strongly encouraging Moscow to ratify the Kyoto Protocol, thus enabling it to come into effect.

The issue is identical regarding questions of international criminal justice. The system's effectiveness depends on the adhesion of the greatest possible number of actors and, in particular, the greatest number of actors likely to be involved in this type of situation.²

This is why Europe's advocacy of the Kyoto Protocol and the International Criminal Court can be said to express a mild form of cosmopolitanism based on universal norms applicable to all individuals regardless of their community affiliations, whether ethnic, religious or national.³ Europe likes to show that its international commitments express "an allegiance to a worldwide community of human beings."⁴ The defense of a certain European preference is thus filtered through a temperate but undeniable cosmopolitanism. Naturally, the theoretical and practical conditions in which this can be exercised are extremely varied and often contradictory. But notwithstanding the content one invests in the European cosmopolitical commitment to deal with questions of global public goods such as the environment world peace; and justice, the question arises also as to whether there is not a conflict between cosmopolitanism and what Alasdair MacIntyre calls "the morality of patriotism."⁵ MacIntyre, speaking from a philosophical standpoint, sees a contradiction between the interests in one's community (the morality of patriotism) and what he calls "the morality of impartiality," a legacy of the Enlightenment.⁶ The morality of patriotism does not exclude reference to universal values or the desire to serve them. MacIntyre simply believes that the best way to do so is to start by taking care of the community that one has

the closest ties with. The morality of patriotism necessarily draws on a certain wariness vis-à-vis abstract universalism.

It would, of course, be too simplistic to see an opposition between the Europeans' moderate cosmopolitanism and MacIntyre's "morality of patriotism" that can be said to characterize the United States. But the parallel is not absurd for all that. The Europeans, who invented modern sovereignty, are induced to take stock of its limits as if they had exhausted its resources. Naturally, the sharing of sovereignty is far from linear and the more or less hidden forms of sovereignty in Europe have hardly been defeated. Nonetheless, since 1957 there has been a basis in Europe on which to share sovereignty that is strongly rooted in the powerful effect of European jurisprudence. This is naturally not the case in other regimes, particularly in the United States. This can explain the conflict in worldviews that may pit Americans against Europeans. The former are attached to national sovereignty, the latter to a preference for governance based on shared sovereignty.

Europe's Normative Achievements

The fact is obvious. The European preference for norms is not necessarily shared by all the other world actors. When these norms concern "world governance," the fact that they are shared or not is decisive. It is, of course, always useful for Europe to be the great champion of basic social norms, because one can always wager that norms will undergo the often slow and necessarily uncertain process of interiorization, which differs precisely from the sovereign, swift, immediate, and binding form of decision making. But banking on the long term also presents considerable risks. It is indeed possible that in the long run, the United States will adhere to the Kyoto Protocol. But this cannot be taken for a strong probability. That is why one cannot study norms without examining the question of their effectiveness. I will thus proceed to assess Europe's normative achievements by comparing them with those of other world actors.

Table 4.1 provides a coherent view. It lists 32 basic documents of world governance considered as such by the United Nations, as well as 8 ILO framework conventions on rights at work.

	<i>EU</i>	<i>USA</i>	<i>Japan</i>	<i>Brazil</i>	<i>Russia</i>	<i>China</i>	<i>India</i>
6. Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (New York, December 18, 2002)	3 + 10 not ratified	no	no	Not ratified	no	no	no
7. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (New York, December 18, 1990)	no	no	no	no	no	no	no
8. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (New York, May 25, 2000)	24 + 1 not ratified	yes	yes	yes	Not ratified	Not ratified	Not ratified
9. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (New York, May 25, 2000)	21 + 4 not ratified	yes	yes	yes	no	Yes	
REFUGEES	2	1	2	2	2	2	0
10. Convention relating to the Status of Refugees (Geneva, July 28, 1951)	25	no	yes	yes	yes	Yes	no
11. Protocol relating to the Status of Refugees (New York, January 31, 1967)	25	yes	yes	yes	yes	Yes	no
PENAL MATTERS	3	0	0	2	1	1	0
12. Rome Statute of the International Criminal Court (Rome, July 17, 1998)	24	Not ratified	no	yes	Not ratified	no	no
13. Agreement on the Privileges and Immunities of the International Criminal Court (New York, September 9, 2002)	10 + 14 not ratified	no	no	Not ratified	no	no	No
14. Convention on the Safety of United Nations and Associated Personnel (New York, December 9, 1994)	25	Not ratified	yes	yes	yes	Yes	no

Continued

	<i>EU</i>	<i>USA</i>	<i>Japan</i>	<i>Brazil</i>	<i>Russia</i>	<i>China</i>	<i>India</i>
ENVIRONMENT	3,56	0	4	4	1	2	
23. Kyoto Protocol to the United Nations Framework Convention on Climate Change (Kyoto, December 11, 1997)	23	not ratified	yes	yes	yes	yes	yes
24. Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam, September 10, 1998)	25	not ratified	yes	yes	no	not ratified	no
25. Stockholm Convention on Persistent Organic Pollutants (Stockholm, May 22, 2001)	22 + 3 not ratified	not ratified	yes	yes	not ratified	yes	not ratified
26. Cartagena Protocol on Biosafety to the Convention on Biological Diversity (Montreal, January 29, 2000)	19	no	yes	yes	no	SpasR	yes
LAW OF THE SEA	2	1	1	1	2	1	2
27. United Nations Convention on the Law of the Sea (Montego Bay, December 10, 1982); Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of December 10, 1982 (New York, July 28, 1994)	25	no	yes	not ratified	yes	yes	yes
28. Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of December 10, 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (New York, August 4, 1995)	25	yes	not ratified	yes	yes	not ratified	yes

Continued

Table 4.1 Continued

	<i>EU</i>	<i>USA</i>	<i>Japan</i>	<i>Brazil</i>	<i>Russia</i>	<i>China</i>	<i>India</i>
DISARMAMENT	2	0	2	2	1	0	0
29. Comprehensive Nuclear-Test-Ban Treaty (New York, September 10, 1996)	25	not ratified	yes	yes	yes	not ratified	no
30. Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their destruction (Oslo, September 18, 1997)	25	no	yes	yes	no	no	no
HEALTH	1	0	1	0	0	0	1
31. WHO Framework Convention on Tobacco Control (Geneva, May 21, 2003)	25	not ratified	yes	not ratified	no	not ratified	yes
LAW OF TREATIES	1	0	1	0	1	1	1
32. Vienna Convention on the Law of Treaties (Vienna, May 23, 1969)	24	not ratified	yes	not ratified	yes	yes	yes
TOTAL	37	11	23	28	27	16	16

Source: Data from the United Nations Treaty Collections (available at <http://untreaty.un.org>) and the International Labor Organization, Ratifications of ILO's Eight Core Conventions (<http://www.ilo.org/>).

The totals take into account only ratified treaties. The table shows, however, cases where treaties have been signed but not ratified. For European ratifications, the figures have been rounded off to show an average of the 25 member states, which does not always produce a square figure. "Yes" means "ratified"; "no" means "not signed." Between these two poles can be found cases in which the documents have been signed but not ratified.

The area covered by these texts is thus fairly broad: human rights (nine documents), legal issues (three, including the Rome Statute founding the International Criminal Court), environmental issues (four, including the Kyoto Protocol), maritime law (two), disarmament (two), health (1 document), refugees (two), terrorism (three), the fight against organized crime and corruption (five), and treaty law (the Vienna Convention).

Why Europe Does Better

Three observations emerge from this table:

The first is that there exists a very strong intra-European normative dynamic, even among new members of the EU. This fairly strong cohesion can be found not only in these documents but also more generally in the votes at the UN—with some very palpable differences nevertheless, depending on whether the convention is voted in the Security Council or the General Assembly.⁷ This means that by joining the European Union, one adheres to a certain “worldview,” a vision based on a preference for norms. But this dynamic of adhesion to a rationale of normative power does not pertain only to the new members. Some founding members have also submitted to it. This is precisely the case in which France found itself in negotiations for the Treaty of Rome regarding the creation of the International Criminal Court.

It is worth briefly reviewing the origins of this project and the stakes involved. There has long been an ambition to establish an international criminal justice system. The first reference to international justice appeared in article 227 of the Treaty of Versailles in 1919, which expressly provided for the prosecution of Emperor Wilhelm II by a special court “for supreme offence against international morality.” But the trial was never to take place. Wilhelm

II was granted exile by the Netherlands, which refused to extradite him on the grounds that political reasons were not valid grounds for extradition.⁸ In 1920, the League of Nations discussed the idea of creating a high court of criminal justice, but it was never really followed through. And yet, there is remarkable continuity in the thinking of legal experts on the subject. In 1922, the International Law Association argued in favor of establishing an international criminal court. In 1935, the Romanian jurist Vespasien Pella published an international penal code. In 1934, the French government submitted to the League of Nations a proposal to create an international criminal court that would prosecute terrorist acts such as those committed in Marseilles in October 1934 against the king of Yugoslavia and the French foreign affairs minister. The dawn of international criminal justice would not come, however, until the aftermath of the Second World War with the creation of the Nuremberg and Tokyo war crimes tribunals. On the legal level, the foundational value of the Nuremberg trials resides in the definition of international criminal offenses: crimes against peace, war crimes, and crimes against humanity. The statute of the International Criminal Court (ICC) is very close to these definitions. Article 5 recognizes four crimes: the crime of genocide, crimes against humanity, war crimes, and the crime of aggression.⁹

The first three of these crimes are defined in detail in articles 6, 7, and 8 of the statute, as opposed to the crime of aggression. But unlike the two existing international criminal tribunals, the International Criminal Tribunal (for the former Yugoslavia) established in 1993 and the International Criminal Tribunal for Rwanda established in 1994, the ICC is a permanent body formed on the basis of an international treaty and not a simple UN resolution. It thus immediately enjoys greater legitimacy because it is out of the grip of the Security Council's political control and any sort of geopolitical tropism in that its jurisdiction is universal. Moreover, and unlike ad hoc tribunals designed to punish, the ICC intends not only to punish but also to dissuade. That said, as soon as it displayed broader ambitions and greater independence, the ICC project inevitably collided with state sovereignty. For even when states remained favorable to the establishment of a permanent court, they could not accept a pure and simple abdication of their political sovereignty. This resulted

in setting up a complex system based on the principle of complementarity between national jurisdictions and international criminal justice. Articles 12 and 17 guarantee the primacy of national jurisdictions to try their own citizens, the ICC acting only as a last resort against a state that refrains from initiating criminal proceedings against perpetrators of serious crimes.¹⁰

In theory, the ICC thus has no reason to act against constitutional states. And yet, some such states have expressed reservations with regard to this mechanism, particularly when they are engaged in peacekeeping operations. Their fear has been to see the ICC stand in for the Security Council in the name of a judicialization (even criminalization) of international politics, which could possibly lead soldiers in countries that are heavily involved in UN operations to be in a position to be prosecuted by the ICC.¹¹ The French and the Americans held similar positions on this point. This is why these two countries (unsuccessfully) defended the triple consent requirement to activate jurisdiction of the ICC: consent of the state in which the acts were committed, consent of the state of which the victims were nationals, and consent of the state from which the alleged perpetrators originated.¹² If such a proposal had been accepted, it would have led to paralyzing the ICC.¹³ At this stage, France was closer to the United States than to Germany, for instance. The distance between the United States and France came at a later time, when the question arose as to whether these positions should be defended at all costs, including that of refusing to sign the document, or whether they should go as far as possible on the path to a compromise. France chose the second option. It decided to bend because it managed to display a certain legal creativeness. But the compromise can also be considered to have been dictated by the constraint of Europe. It was difficult for France to reject a document of such symbolic scope when negotiations had taken place in a European country, nearly all the states of the EU were in favor of it, there were strong pressures from NGOs, and French diplomacy has always wanted to associate its behavior with the pursuit of the ideals enshrined in the Declaration of Human Rights.

In areas where it was able to make itself heard, France clearly managed to influence the Rome Statute, particularly in suggesting

the establishment of a Pre-Trial Chamber—which decides whether a case is admissible—as a framework within which states can dispute the court’s jurisdiction or the admissibility of a complaint.¹⁴ It also managed to introduce into the statute an article—article 124—that allows any state that has become party to the statute to decline the Court’s jurisdiction for war crimes when such a crime has allegedly been committed on its territory or by its nationals. France is, in fact, the only country in the world to have announced its intention to use article 124, supposedly on the grounds of wanting to guard against any idea of universal jurisdiction of the ICC. But this protection remains relative because the principle of universal jurisdiction was already admitted by France when it adhered to the Geneva Conventions.¹⁵ This is why several legal experts, even in France, strongly criticized such reservations.¹⁶ Despite these qualms, France signed and ratified the ICC statute. As a member of the European Union collectively involved in the issue, France could not take the risk of going it alone and eluding such a symbolically strong collective discipline. The United States were not in the same situation, even if the Clinton administration, which had invested considerable energy in prosecuting war criminals from former Yugoslavia, nevertheless saw itself as a party to the ICC and hence signed the Treaty. But the Bush administration reneged on this commitment.

The second point to note about this table is the gap between Europe’s normative achievements and those of other states. Japan, another great soft power, displays the narrowest gap with respect to Europe except, oddly enough, in the field of organized crime and the fight against corruption. But the slimness of this gap should not be overinterpreted. Since 1945, Japan as a state has naturally been seeking to fit its action and its international behavior to a normative rationale. Though it rarely initiates norms, it almost always strives to be part of them except when the normative dynamic, particularly in the field of human rights, enters into conflict with certain discriminatory practices in effect in Japan: harsh treatment of the mentally ill, discrimination against Koreans and certain castes (the Burakumin), reluctance to recognize its historical responsibility in Asia.¹⁷

This normative follow-my-leader attitude does not, for all that, mean that these international norms are interiorized. Iwasawa

has for instance convincingly demonstrated that Japanese courts almost systematically reject arguments for the defense of human rights based on international principles, referring to international courts only nominally, very rarely invoking international jurisprudence and basically believing that international norms produce no additional protection with regard to Japanese constitutional provisions. In this way, no political claims to legal sovereignty are made, but it is openly practiced.¹⁸

Contrary to what might be expected, the gap with Russia is also fairly slim and there are, three complementary reasons for this: a legalistic Soviet legacy as regards form (even if norms were, of course, twisted or flouted); a desire to catch up and adhere to international norms starting in the 1990s; a neo-Sovietism that prompts politicians to express their multilateral good-faith (ratification of the Kyoto Protocol), even if that means integrating the idea of a discrepancy between acceptance (or even ratification of a document) and its implementation. It should be noted, however, that Russia has not yet ratified the treaty founding the ICC, it has not signed the accord on ICC privileges and immunities, and it has not signed two of the four most important conventions on the environment. In other words, the gap with Europe remains significant in sensitive areas.

There remain the cases of China, India, and the United States. With China, there is a very wide gap in the area of rights at work (low rate of ratification of ILO conventions), public freedoms (low rate of ratification of human rights conventions), military power (disarmament), and international criminal issues and organized crime. Despite their very different political systems, India's record is quite similar to China's, as India's reservations pertain to documents likely to conflict with its political sovereignty.

There is nothing about this worldwide normative landscape to reassure Europe, even if it is not set in stone. For Europe must deal with three world actors who do not share its preference for norms. These three states happen to be the powers of today (the United States) and tomorrow (China and India). The assumption can naturally be made that as they develop and integrate world political checkerboard, India and China will come around to sharing this European preference. But the American counterexample, which

will be explored in greater depth, shows that it is not necessarily reasonable to assume this normative teleology will function. The idea that more globalization calls for more interdependence and so more governance is a European hypothesis. But nothing indicates that it is shared by all the other actors.

It is thus essential to show here at once how the preference for international norms took root in Europe, and why, almost symmetrically, there has been a very strong decline of this preference in the United States, a decline that cannot be ascribed to the neoconservative project alone.

The Preference for Shared Sovereignty

The preceding chapters reviewed the historical factors that would rather naturally explain Europe's preference for norms. But this preference derives its full originality from the fact that it is based on an essential principle of European integration: shared sovereignty. It is a principle that serves to harmonize European national positions with respect to the rest of the world.

The preference for shared sovereignty is not simply an act of faith or a political proclamation. It is so legally entrenched that, as Joseph Weiler says, the European Union's operational mechanism is no longer governed by general principles of international public law—which traditionally governs relations between states—but by an interstate structure specific to the European states.¹⁹

What characterizes the European legal system is the fact that it is essentially based on all whole series of mechanisms that place national legal systems under the authority of European law. The most crucial of them has to do with what is called the direct effect principle. It came about in 1963 and established the presumption that community norms should be considered as national norms.²⁰ It is extremely broad in scope, because it no longer makes European states the necessary intermediaries of international law. A European citizen can enforce the rule of European law on his or her own state if the latter happens to violate it.²¹ The revolutionary principle of direct effect was strengthened by a second principle that was just as decisive: that of *primacy*. Established in 1964, it comes down to

saying that within the community space, any community norm, whatever its status, wins over any contrary national norm, irrespective of whether it came before or after.²² These two principles combined underscore to what extent Europe has, on the legal level, interiorized the submission of national laws to European law. This historical event makes it naturally predisposed to accept implementation of rules that, on a global scale, will take primacy over the law of various states.²³ In other words, the EU attitude is, "What we have done amongst ourselves, the world can try to do as well." Europe does not officially present itself this way. But such discourse is part of its relationship to the world, an unprecedented way of relating to the world and the law that in today's globalized context clashes with a form of sovereignty that is taking the form of a real counterrevolution in the United States.

The American Counterrevolution

At first glance, the United States—the epitome of the constitutional state—has an impressive track record as a normative power, even in recent years. Between 1993 and 2000—a period that corresponds to the Clinton presidency—the president of the United States submitted 184 treaties to Congress for ratification, 170 of which were approved at the end of 2002.²⁴ But this raw data warrants a closer look. In fact, out of these 184 treaties, 126 were bilateral treaties and 40 of them multilateral treaties. Although the Senate approved 126 of the 130 bilateral treaties, it ratified only 31 of the 40 multilateral treaties. Moreover, out of these 31 approved treaties, 24 approvals were conditional, which means that unconditional ratification is no longer at all the norm in the United States.²⁵ The conditional nature of these ratifications is symbolized by the extremely long time it takes from the moment these treaties are submitted to Congress to the time a decision is made. For the 31 above-mentioned international treaties, this timeframe was on the average just over six years.²⁶ Leaving the quantitative dimension aside to consider the qualitative nature of the treaties, American reluctance seems even greater. Out of the 32 international documents the United Nations considers as

being central to world governance, the United States had ratified only nine of them in 2005. Nine of the treaties have not yet been sent to Congress, twelve of them were ratified after an average of eleven years, and nine of the treaties ratified have conditions attached to them. Thus, out of the 40 major international treaties (see table), the United States has ratified only 11 of them compared to 34 for the European Union. There is obviously an increasing political reluctance on the part of the United States to endorse global choices made by the international community in areas that pertain to the management of global public goods such as the environment, health, criminal justice, the fight against pandemics, and other such areas. From the American perspective, the preferences generally challenged have to do with the model of energy consumption, capital punishment, abortion, arms control, or the status of religion in public life.²⁷ How can such reluctance be explained?

The first reason has to do with the fact that the new regulatory instruments of globalization finalized by treaties or conventions differ from the major traditional treaties in both form and content. Treaties supposed to regulate globalization no longer have the strictly interstate nature of major traditional treaties. They are instead intersocietal treaties that precisely establish a relationship between national collective preferences.²⁸

Let us take the example of the environment. The United States was for a long time world leader in this area as much from the standpoint of initiating accords as from the position of signing and ratifying them.²⁹ But since the Rio Earth Summit in 1992, which still serves as a reference for global environmental governance, American reluctance has increased, particularly because the United States has no longer been the initiator of these new treaties. It just so happens that these new treaties are based on the 1992 Rio Declaration that lays down two principles that the United States energetically opposes: the precautionary principle and the principle of differentiated responsibility of states depending on their level of development.³⁰ They do not systematically oppose these two principles in and of themselves, but they want to prevent them at all costs from becoming principles of customary international law that would impose on them *de facto* responsibilities and obligations

they would not be able to depart from.³¹ The United States wants to avoid being caught up in a legal maze of which they do not control all the ins and outs.

A second explanation for American reluctance to sign international treaties applies both to the environment and global public goods on the whole: It pertains to the transformation of the instruments of world governance. In the classic international legal schema that has dominated so far, states negotiate, sign, and ratify treaties that then come into force. Today, the dynamics of world agreements is slightly different. Given that right from the start the idea is to involve the greatest number of actors, the documents outline framework provisions and it is the job of the conference of the parties to specify the details of them. The result is that framework treaties on global governance are looking more and more like international organizations that carry out actions according to a collective process in which no actor taken individually controls the game.

Symmetrically, these documents generate models of normative conduct there again produced by the dynamic nature of the negotiations and the protocols implemented.³² This dynamic, which encourages the existence of pivotal actors, does not necessarily work in favor of large states. The ICC statute for instance stipulates that its area of jurisdiction may be extended by a two-thirds majority.

What the United States fears is that sovereign states will lose their control in the face of an emerging global legal corpus where commitments made by states would be administered, interpreted, and implemented by multilateral institutions, thus transforming international cooperation into international law.³³ The United States refusal to ratify the Kyoto Protocol or the ICC statute clearly expresses these fears.³⁴ The body of law created by courts such as the ICC is argued to have the major disadvantage of being based on a principle of authority that leaves no room for the power of representative democracy.³⁵ But it is interesting to note the coincidence in the timings of the rise of legal revisionism in the United States that is increasingly hostile to the interiorization of international law by American law and the emergence of a political, ideological, and militant sovereignty training its sights on "world governance."

American Legal Revisionism

American legal revisionism was spawned by two American legal scholars, Curtis Bradley and Jack Goldsmith. In an article published in 1997,³⁶ these two authors criticized the increasing and direct intrusion of international law in American law with no control or mediation from representatives of the American people. More precisely, they dispute the idea that customary international law (CIL)³⁷ is self-executory by American courts without having first been ratified or implemented by the U.S. Congress itself.³⁸ They deem this position, which they call “modernist,” contrary to the principles of separation of powers, federalism, and representative democracy. To them, assimilating CIL with federal law is nothing short of illegitimate.³⁹ The internal order remains fundamentally distinct from the international order and, under such conditions, the federal authorities alone are entitled to enforce and interpret CIL.

This legal sovereigntism aims to reverse a trend that was set by the famous *Restatement of the Foreign Relations Law of the United States*, which is widely taken as a reference for legal specialists, whether they are professors, lawyers, or judges.⁴⁰ This *Restatement*, produced by internationalist legal scholars, confirms the idea that international law is clearly part of federal American law, which is precisely what Bradley and Goldsmith dispute. In support of their thesis, the two authors refer to a highly substantial body of Supreme Court jurisprudence in a degree of detail that will not be repeated here.⁴¹ On the other hand, what is worth remembering about this revisionist movement is its political significance and the contrast it offers with regard to the European position. In a complementary article, Curtis Bradley carries his reasoning further. He disputes the self-executory inclusion of customary international law in federal American law by restating the preceding arguments, but this time he adds more political than legal arguments: Unlike the customary international law that prevailed in the nineteenth century and up until the Second World War, the new customary international law is highly focused on human rights, being based on political declarations rather than practices established by states; instead of seeking to regulate relations between states, it attempts to control the way a state treats its own fellow citizens, particularly

as regards human rights, thus creating a conflict between domestic law and international law.⁴²

Actually, American legal revisionism boils down to challenging two principles that the European states have all approved: the principle of direct effect and that of the primacy of Community law. In addition, there is another evolution that Europeans deem positive but that American revisionists fear above anything else: the constitutionalization of international law in the sense of a body of law granting primacy of individual rights over those of states.⁴³

Recognizing citizens' rights over and above their state amounts to admitting that an authority other than the American state can have control over American citizens. This fundamental postulate reflects the confidence Americans place in their own institutions—and the implicit wariness they have for systems other than their own—thus refusing to unbind the exercise of law from its national framework, deemed to be the only legitimate framework in a democracy, as well as to accept changes in the domestic order imposed from the outside.⁴⁴

The Attack on Global Governance

Actually, and over and above its strictly legal aspects, this form of “revisionism” is interesting especially in its political implications. Empirically, the intrusion of international law in American law hardly seems established. Even when, at the end of the 1980s, at the behest of the executive, the U.S. Congress decided to ratify four major human rights treaties (Convention on the Prevention and Punishment of the Crime of Genocide, International Covenant on Civil and Political Rights, Convention against Torture, International Convention on the Elimination of All Forms of Racial Discrimination), each time it expressed reservations that removed any self-executory character from these documents such that, without explicit and specific legislation passed by Congress, the treaties could have no legal value on American soil.⁴⁵

Moreover, in reaction to any attempt to use international treaties as arguments, in particular to stay executions, the United

States courts have systematically refused to accept their enforceability on federal or state law.⁴⁶ The International Protocol on Civil and Political Rights held up by American plaintiffs was deemed not admissible by the American courts precisely because, among the reservations made by the Senate when the document was ratified, there figured the refusal to accept this protocol as a source of national law.⁴⁷

The screening of international law through national lenses thus remains substantial in the United States, with perhaps the exception of the Alien Tort Claims Act (ATCA) that Andrea Bianchi rightly considers an American “anomaly” and that the “revisionists” have, in fact, used as a starting point for their offensive.⁴⁸ The ATCA, which actually goes back to the eighteenth century, installed before its time a sort of universal jurisdiction that allows a foreigner residing in the United States to sue a person or a state outside of the United States as long as the offenses invoked were against the law of nations or a treaty signed by the United States.⁴⁹ On the shelf for nearly two centuries, this act was reactualized when in 1980 an American court handed down a now famous decision (*Filartiga v. Peña-Irala*) that authorized a Paraguayan citizen to bring a lawsuit against a Paraguayan police officer accused of torture.⁵⁰ It should be noted here that the acceptance by an American court of the principle of universal jurisdiction came at a time when the Carter administration had made human rights a political crusade after the debacles of Vietnam and Watergate. There is hence nothing surprising about the fact that legal revisionism coincides with the reassertion of American national power. Seen from a European perspective, this relation between case law and politics may seem shocking. But in the United States there is nothing shocking about it, because, as Rubenfeld points out, “if the law is to be democratic, the law and the courts that interpret it must retain strong connections to the nation’s democratic political system.”⁵¹ In other words, when the American legal authorities change their viewpoint, the law has to adapt to this change in the name of the primacy of politics over law. Naturally, this interpretation is not shared by the entire American legal community. There is a whole “internationalist” current among those who argue in favor of an increased inclusion of international documents and norms in domestic law.⁵² But

that has hardly prevented American legal revisionism from radicalizing. Eric Posner for instance goes much farther than Bradley and Goldsmith. In answer to the question "Should a state obey international law?" he very clearly replies "no," even if that state is already bound by an international treaty. According to him, consenting to a document is more like a promise than a legal obligation. For a promise to become a legal obligation, it must meet certain criteria that do not meet with international consensus. International law thus can be binding only if it is rational for the states to comply with it.⁵³ Of course, he does not describe the content of this rationality. But he does underscore to what extent the idea of norm can be disputed, even rejected. The idea that an international norm can lead to a change in American legislation is massively rejected by the American legislator for whom no international law can override American law.⁵⁴

The interest of this debate is that it is powerfully conveyed by the American neoconservatives working first within the framework of foundations, and then within the Bush administration. Its figurehead is John Bolton, the U.S. ambassador to the United Nations, who was appointed in August 2005 by President Bush despite U.S. Senate reservations and resigned in December 2006.

His thesis, however unconvincing, has the merit of being clear. According to him, globalization has given rise to a sort of "globalist ideology," the benchmark for which remains the Brundtland Report on global governance, and the dynamics of which threaten the United States' political sovereignty, its political system, and the international flexibility it needs to act in the world.⁵⁵

Bolton identifies four areas in which globalism is a threat: the conditions for recourse to force, human rights, NGOs in the development of formal and informal world regulation.

As regards recourse to force, it is the ICC, the Convention on Anti-Personnel Mines, and the Comprehensive Nuclear-Test-Ban Treaty (CTBT) that are identified as sources of global governance nibbling away at American sovereignty. And, in fact, the United States has ratified none of these three treaties, thereby contradicting Bolton's claim that "globalists" have won the game.⁵⁶ Moreover, the Bush administration undertook an offensive to limit the effects of international treaties that might undermine

its sovereignty. In May 2002, it announced its withdrawal from the Rome Statute. Three months later, the U.S. Congress passed a law allowing the United States to sign immunity agreements with foreign states. Since that day, the United States has managed to sign 75 immunity agreements, 32 of which are with signatory states of the Rome Statute.⁵⁷ The extradition agreement signed with Great Britain in March 2004 seems to include a nonextradition clause.⁵⁸ In fact, the United States has managed to protect itself against any utilization of the ICC against its own citizens.

Fire on Europe!

The Americanist and antiglobalist line of argument is a familiar one. It essentially says that world governance aims to keep American political sovereignty in check and place it under the authority of nondemocratic institutions.⁵⁹ This feeling has naturally been reinforced since September 11, 2001, to the extent that the sovereignist logic has been extended to the rules of war. Eric Posner, who in a 2003 article expressed the belief that states had no moral obligation to obey international law, repeated the offense in 2005 by stating that the fight against terrorism exempted the United States from feeling bound by the rules of war and even called on the United States to devise implicit norms in this area to serve its own interests.⁶⁰

But beyond its criticism of global governance, what is interesting to note about American revisionism is the role it gives Europe as a vehicle of global governance and thus as a potential adversary of the United States. Bolton writes, for instance, that in many respects Europe has replaced the Third World in globalist rhetoric. "Not content alone with transferring their own national sovereignty to Brussels, they have also decided, in effect, to transfer some of ours to worldwide institutions and norms, thus making the European Union a miniature precursor to global governance."⁶¹ Such ideas lead Jeremy Rabkin to believe that the most fundamental source of conflict likely to oppose the United States and Europe will not be any subject in particular but the very concept of sovereignty. For Rabkin, Europe constitutes a model of shared sovereignty that, if

it were to spread, would erode the sovereignty of nation-states.⁶² In support of his argument, he takes the example of the environment where, as I have pointed out elsewhere in this chapter, green states have pulled in tow those that were less so. The fact is proven and undebatable. But more important than the fact itself is the way it is interpreted. Rabkin believes that from a sovereignist standpoint, encouraging other states to align their position along that of a group of states—in this case proenvironmental states—is an infringement on state sovereignty and that from a legal standpoint, this process is reprehensible.⁶³ In his opinion, European member states have a tendency not only to influence one another, but also to be overly influenced by NGOs, particularly environmentalist ones.⁶⁴

In its radicalism, American legal revisionism takes into account the entire body of global regulation, including trade regulation through the WTO,⁶⁵ the only international agency the Bush administration has not attacked. In the archipelago of global governance, the WTO remains a preserved oasis for reasons that have to do with Republican free trade ideals and the many lines of cleavage within this institution. In many cases, the United States are, for instance, less isolated than the Europeans precisely because their demands in terms of environmental preservation, health, food, and social norms are not as strong as those of the Europeans.

In any event, and over and above the ideological activism of the neoconservatives who are also sovereignists, looms a deeper issue, there again related to what I have called the Euro-American *chassé-croisé*.

As I wrote in *The Great Disruption*, the Euro-American conflict is primarily a conflict of experience. By that I mean that the trajectories of the United States and Europe diverge because the two entities find themselves at difference historical moments. They do not experience these moments in the same manner. I have demonstrated this as regards environmental questions. Twenty years ago American standards were higher than European standards. Since then, the relationship to risk has been inverted. The same holds true for the relationship to law. According to Robert Pildes, who wrote some enlightening pages on the topic, Euro-American differences over international law also have to do with this conflict

of experience. Europeans, according to him, are caught in a logic of constitutionalization of the law, a logic that even the British can no longer escape and that they would like to extend to the international sphere; whereas the Americans express increasing disenchantment with regard to the judicialization of their social and political system: “It is quite intriguing—and enormously significant in this context—that the attachment to legalism and judicial institutions outside the United States is reaching this peak in the same period in which within the United States there has been general and increasing skepticism about judicial institutions.”⁶⁶ Thus, at a time when Europe sees in law, and thus in norms, a resource for expressing its identity and organizing the world, the United States sees in it a potential means of stifling its autonomy at a time when it no longer has the power to be the initiator of everything.

CHAPTER 5

Is Constitutionalizing the World Order the Answer?

At that point, the question for Europe becomes: How should it use its preference for norms? Should it wave them like a flag in international forums even if Europe does not have the means to plant them firmly on the international scene? Or on the contrary, should Europe more boldly assert its preference for norms so that it becomes shared by the entire world system? In that case, the issue would seem to be to standardize norms, codify them, make them consistent, and rank them, in other words, to constitutionalize the world order. The outcome of global governance would logically be the constitutionalization of the world order.

Constitutionalizing the world order means providing it with normative coherence by

- devising norms for all areas of global activity, creating a legal continuity between internal order and international order;
- giving citizens rights that are guaranteed to be enforceable on their own states;
- ranking norms in such a way that they enter into contradiction with one another as little as possible;
- setting up bodies to arbitrate the inevitable conflicts between norms;
- codifying in as much detail as possible the procedures for implementing these norms;

- prescribing legitimate conduct that flows from the choice of these norms.

Constitutionalizing the world order thus means changing the structuring principle of the international system. It would no longer be a matter of guaranteeing sovereign equality of states but rather state compliance with the world constitutional order.

The order of factors would thus be inverted. Recognition of state sovereignty would be subject to a certification process based on compliance with the world constitutional norm, held to be superior.

Is it to Europe's benefit to embark on this path, assuming it is in a position to do so?

Before answering this question, I should first undertake to sketch out a normative picture of the world in the age of globalization. This picture is fundamentally baroque in that it blends contradictory forms.

The Baroque World Picture

From the European viewpoint, the picture of the world is made up of forms that without a doubt reflect its preferences, even its institutional model.¹

The first element in this picture has to do with the undeniable interweaving of national order and international order, particularly between national law and international law. Many legal principles born and applied within the internal order itself are increasingly extended internationally to the point of becoming standards of international life. This is particularly the case of human rights and democracy.²

Alongside such internationalization of internal standards, there is an equally powerful process of internalization of international norms. More and more world standards are being integrated into national legislation, including constitutions. Swiss law has constitutionalized the principal of non-refoulement laid out in the UN convention relating to the status of refugees and is about to do the same for the protection of children, this being in compliance with

the principles of the International Convention on the Rights of the Child.³ And France has enshrined the precautionary principle in its constitution.

The second element of the picture has to do with the emergence of documents aiming to frame the regulation of global public goods and not only the regulation of relations between states. Underlying the ICC and the Kyoto Protocol is the idea that there are global public goods that warrant preservation over and above national prerogatives. Their protection requires the adherence of the entire world community.⁴ One might certainly object that nearly all the international treaties and conventions are universal in scope. But there will always be a difference between treaties whose effectiveness requires the endorsement of the greatest number of actors and those whose effectiveness requires the endorsement of the most powerful actors.

The third element of the picture has to do with the increasing pluralization of the international system, which is less and less state-centric. Naturally, the role of states remains decisive at every stage of the process of "normalization." But the role of market actors or NGOs cannot be neglected in the success of certain treaties (Kyoto, ICC) or in the failure of others (MAI for instance). Even more fundamentally, it can be said that the sovereign state is no longer the exclusive source of legitimacy for international norms.⁵

The last element of the picture has to do with the appearance of regulatory systems that are binding for states, as can be seen in the judicialization of dispute settlement procedures at the WTO. Such judicialization, far from being on the wane, is on the rise to the benefit of developing countries who use it more and more to break down the barriers of European agricultural protection, particularly in certain areas such as sugar and cotton.

We are thus a far cry from the commonsense perception that would like to accredit the idea of a totally deregulated world. All the more since alongside the international or global regulation of states is the powerful process of self-regulation initiated by market actors.

But because the picture of the world is baroque, it is naturally threatened by conflicting forces and processes. The first has to do with the fragmentation of global governance processes, a

fragmentation that results both from legal activism in various domains and from the impossibility of linking them and even less of ranking them. One of the major difficulties that global governance encounters flows precisely from the lack of regulation of regulations, whereas the interpenetration of globalized fields of action is intensifying. The whole difficulty of reconciling trade and the environment, state sovereignty and respect for human rights, free movement of capital and obstacles to the free movement of people results precisely from the difficulty of arbitrating between these different preferences.

The second problem results from differences in the degree of elaborateness of global governance processes. In some areas (trade), normativity is advanced or relatively advanced, whereas in others (economic and social rights), it has not made very much progress. Such that the rights of globalization often appear ahead of the globalization of rights.⁶

The third problem is to be found in the heterogeneity of actual mechanisms for implementing the fragments of global governance. The only area in which an obligatory regime of sanctions exists is trade, through the WTO dispute settling mechanism. In all other areas, the power to sanction is very weak (social measures) or discretionary (recourse to force).

The fourth problem, which is perhaps the most serious of all, has to do with the resistance or “exit” mechanisms from the world game, mechanisms that can be seen very clearly at work in the United States. As I have shown, such conduct draws on legal arguments—there is no international legitimacy that can be enforced on the national legitimacy born of representative democracy—as well as on more classic political arguments referring to states’ freedom of choice in a “anarchic world.” The U.S. government’s decision to agree to deliver civilian nuclear equipment to India—not a signatory to the Treaty on the Nonproliferation of Nuclear Weapons—while denying Iran—a signatory of the NPT—the right to acquire civilian nuclear power is indicative of this freedom of choice exacted by the United States. The fact that this country is at the crux of the system of opposition to the logic of global governance is, of course, a major political fact. But the problem is likely to amplify if the emerging major powers join

the United States in their argument against global governance. In a substantial critique of global governance, Indian legal scholar B.S. Chimni discusses seven objections that he summarizes by what he calls the emergence of a global state working for transnational capital and the dominant states and against the interests of peoples and states of the Third World.⁷ Naturally, in these critiques there is a very strong ideological dimension that in a way is poles apart from American criticisms. But where these recriminations meet is in the undermining of state sovereignty to the benefit of multilateral institutions or NGOs and in the erosion of national control mechanisms that alone have any real legitimacy.⁸

How then, from such a contradictory global context, can a line of thought and action be drawn that takes charge of globalization without yielding to a mechanical globalism based on a simple transposition of national mechanisms to a global level, with all the implied inherent risks of political and identity dispossession? How can sovereignism and the attendant regime of exceptions to the rule be refuted without neglecting the reality of processes and national identities?

As I have said before, Europe does not have to choose between governance and sovereignism. However, it does have to choose between two highly different modalities of governance through norms. These two modalities are *ethic governance*, the ambition of which would be to constitutionalize the world order, and *political governance*, which would seek to seal the cracks in global governance without ever yielding to the temptation of acting as a great architect. The first form should be discouraged. The second should be prescribed.

The Dangers of Constitutionalizing the World Order

Indeed, given the contradictory dynamics of the world system and the extreme complexity of the processes underlying it, Europe's temptation might be to want to overstandardize norms by using a method that actually is not so very remote from that of the European Convention: since the processes are complex, since

citizens fail to understand the rationality behind them, since the mechanisms of legitimation seem to be disputed or blocked, since individual states can no longer handle the European dynamic on their own, it is time to undertake a task of clarification, simplification, and relegitimation of the treaties that would lend the European project coherence. It would be entirely exaggerated to interpret this exercise, today reduced to naught by the failure of the French and Dutch referendums, retrospectively as an excessively voluntaristic and senseless exercise. But the determination it expressed cannot be denied: that of constitutionalizing Europe and its political future based on the idea that, by the magic of a text reputed to be simpler, major contradictions would have been overcome, historic ambiguities lifted, and resistance defused. Naturally one might point out, and rightly so, that in taking over negotiation of the Constitutional Treaty, states obliterated the “constitutionalist” advances of the text. But this explanation—accurate in itself—is hardly enough to explain the failure of the referendum method. It can instead be ascribed basically to the ambition, even the pretension, of wanting to constitutionalize European political life in the absence of a real European *demos*. This created the impression of an attempt to “force the document through,” even if, in fact, the final treaty contained very few advances. This also explains the campaigning at cross purposes in which those in favor of the “yes” vote minimized the advantages of the text whereas its adversaries overstated them better to combat them.

If I discuss the Constitutional Treaty in connection with global governance, it is precisely because there is a very comparable ambition at the world level, particularly in Europe, that aims to constitutionalize the international order through law.⁹ This idea of constitutionalizing the world order is particularly strong in Germany. It draws on three hypotheses: the deepening ethical dimension of international relations, the increasing demand to make these norms effective, and the partial emancipation of these dynamics from state will.¹⁰ However appealing it may seem on the surface, this approach presents considerable dangers.

For a political ensemble such as Europe to have ethical preferences is not only praiseworthy but indispensable. Believing in law rather than force, believing in deliberation rather than authority,

believing in a plurality of actors rather than their conscription under the state banner are all social preferences that have an indisputable ethical content Europe should promote. But there is a fundamental difference between conceiving political action on the basis of ethical principles or strong normative preferences and seeing political action as the remote-controlled arm of these ethical preferences.

Reducing politics and political action to a mere ethical implementation amounts to denying the plurality of determinants of political action and to de facto exempting these ethical preferences from any democratic political control on the pretense that they have undergone public and democratic deliberation. To embark on this path would be to embark on a path that Kant called despotism, which he defined in particular as the intention of making men virtuous citizens:

Woe to the legislator who wishes to bring about through coercion a constitution directed to ethical ends, for he would thereby not only achieve the very opposite of ethical ends, but also undermine his political ends and render them insecure.¹¹

Morality, according to Kant, is the common test of the common law and not the experience of the exercise of freedoms. To constitutionalize the world order is precisely to seek to transform a community of values into a political community, to the point of taking one for the other, no longer distinguishing between common trials and public experience. This is why Europe should remain Kantian not in the sense that Kantian orthodoxy might mean, but in the sense that Kant gave to politics and the mortal danger of confusing ethics, morality, and politics.

Let us take an example. Suppose that the environmental preference is constitutionalized on a global scale. That would mean that violating the Kyoto Protocol would be likened to destroying a global public good and that, moreover, the Security Council would consider the destruction of a global public good as a threat to peace. It is easy to imagine that violating the Kyoto Protocol would legalize the Security Council's recourse to force against a recalcitrant state. We would resort to war to protect the environment.

The move from environmental protection to recourse to force would be not only entirely legal but also perfectly coherent, because respect for the norm would have been placed legally above all political judgment. With this example it is obvious that constitutionalizing the environmental world order, with all the sanction mechanisms it implies, would erode the capacity of politics to assess the balance of risks induced by a possible recourse to force before acting. On the other hand, if political reason recommended not resorting to force, it is politics that would then be in breach of the ethical principles it is supposed to enforce.

Naturally, constitutionalization of the world order would not necessarily lead to war. But the aim here is to point out that the clarifying and simplifying virtue implicitly expected of the constitutionalization of the world order is both illusory and dangerous. Illusory, because the law in general and norms in particular provide a means of governing and codifying only what people are prepared to codify and not what we would like to force them to accept as a common rule. Dangerous, because all “major clarifications,” or those that supposedly are, lead to rejections if the norm is too strong and strictly binding. In Europe, it is already plain to see to what extent community norms, however rational, very often provoke forms of rejection. The fact that these rejections are irrational, incoherent, or groundless makes no difference. Norms have a regulatory but not salvational function. To constitutionalize the world order would be to succumb to a salvational vision that believes that by carrying a process to its logical conclusion, we can settle the world’s problems. That would be giving in to an ideal of perpetual equilibrium—but an ideal that has absolutely nothing to do with Kantian philosophy. Kant harbored profound hostility toward dogmatism, a belief that consisted in confusing the idea with the result.¹² Constitutionalizing the world order is precisely believing that principles founded and constructed on the demand for justice can lead only to “just” choices. Confusing an idea with the result is thus to demonstrate an inability to imagine that a just principle can lead to a morally unjust or politically disastrous result. Kant, moreover, never thought that perpetual philosophical peace implied the emergence of a constitutional state or a rational consensus about rules that allowed free discussion in a

controlled and peaceful manner.¹³ It is on the contrary the condition in which ideas can assert their force, hone their powers, and increase their strength.¹⁴ In other words, a normative order must always be founded on the tensions that clear a space for political action and the indetermination that it involves. There again, the French debate on the Constitutional Treaty turns out to be instructive. The controversy that raged over Part Three, the part of the treaty that constitutionalized EU policies, is very indicative of the problem. Adversaries to the treaty pointed out that constructing European policies would end up rigidifying them, carving them in stone, and devitalizing them to the point of making them intangible. Whether this argument is grounded or not matters little here. The main thing is simply to see and to measure how much overconstitutionalization of a political order can be experienced as the negation of political autonomy as long as the political body does not spontaneously appear in favor of approving such constitutionalization. Kant warned against hollow and inapplicable principles. Closer to us, Robert Schuman contrasted “single plans” and “concrete achievements.”

If the constitutionalization of the European political order seems extremely risky, it is hardly difficult to imagine that the constitutionalization of the world order would be explosive. Why? For at least three fundamental reasons.¹⁵

The first is that aside from the principal of equal sovereignty among states, there are few principles on which the actors of the world system agree.

The second reason is that the constitutionalization of the world order would not automatically offer superior guarantees to the most vulnerable actors of the world system. Even where there already exist fragments of constitutionalization of the world order, as is the case with the WTO, it is plain to see that the formal equality among states with respect to trade cannot overcome the real inequality among states. All states have the right to apply sanctions, for instance. But the way their effects are distributed is totally unequal depending on whether they are declared by a rich country against a less rich country or by a less rich country against a rich country. If the European Union declared sanctions against Peru, Peru’s loss of the European market would be incommensurable.

On the other hand, if Peru were to sanction the European Union, the cost to the latter would be insignificant. To that should be added the fact that constitutionalization necessarily implies proceduralization and that its costs are, there again, always higher for the weaker countries than for the stronger countries.

Lastly, formal equality with respect to norms is often eroded by the fact that the reciprocal right to inspection it carries is rarely operative. Let us take the example of the environment. Through their state governments or NGOs, rich developed societies will always have the means to verify a given country's compliance with a given norm. But do poorer countries really have the means to verify that rich countries are not causing harm to the environment? Can we imagine an Indian NGO coming to France to criticize environmental damage caused by farmers in Brittany, whereas the reverse seems an already secured possibility? Certainly, we can imagine that the world community deems that the preservation of certain global public goods must be defended unconditionally. But that boils down to saying that there are "global processes" whose implementation can be enforced based on choices made democratically by a political ensemble.

Many arguments militate in favor of this, particularly when a process produces externalities that overreach the national framework. But however justified they may be, such arguments cannot be taken for granted and especially cannot be imposed in the name of a "superior human reason" that all people have not accepted.

This entire line of argument may seem to be a charge against the primacy of norms, an encouragement toward unilateralism, even recourse to force. But that is not the case.

Respect for freely agreed upon norms remains the most effective bastion against violence and force and the least evil means of protecting the weak against the unilateralism of the most powerful. From this perspective, Europe does not have to choose between norms and force.

But the resistance that excessive normativity provokes—rightly or wrongly—within Europe should motivate it to use greater self-restraint and introspection when it considers constitutionalizing the world order. Europe must remain Kantian in that it must keep in mind that the will to combat despotic behavior in the world,

particularly that of the most powerful, should not lead to a global despotism adorned with the best of intentions. Between refusing to settle the world's problems by simply and selfishly invoking one's own preferences and disregarding those of others, and believing that the world's problems can be solved once they are brought under the wing of a stable and overarching norm, there is a considerable margin of appreciation that is precisely that of politics. On the global scale, like on the European scale, only "concrete achievements" will enable governance to make progress.

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CHAPTER 6

Norms and Geopolitics

For 15 years now, Europe has been facing, as I have recalled, the realities of a multifarious world that it could not simply ignore. Its normative ambition is thus now more than ever subject to the reality principle. This is because the more norms are applied to situations remote from the context in which they were conceived, the more they run the risk of noncompliance. Europe thus has three choices: it can either be proactively more demanding as regards respect for the norms it propagates, take liberties with the norms that it formally prescribes, or enter into a more or less muffled clash with its partners.

The first possibility would involve spelling out, clarifying or toughening norms that it exports whenever it meets situations in which the dissemination of norms can no longer be taken for granted.¹ This is the scenario that prevailed during enlargement toward the Central and Eastern European countries (CEEC) after the end of the cold war. In 1993, at the Copenhagen Summit, the European Union agreed to CEEC membership in principle. But it attached the start of membership talks to an unprecedented formalization of the accession criteria for joining the European Union. These accession criteria are those well-known conditions that were to become the Copenhagen criteria, laid down as follows:

- *Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of the law, human rights, and respect for and protection of minorities.*

- *Membership requires the existence of a functioning market economy to cope with competitive pressure and market forces within the Union.*
- *Membership presupposes the candidate ability to take on the obligations of membership including adherence to the aims of political economy and monetary Union.²*

But in addition to these three formal conditions, there is an additional, more informal condition that states that “*the Union’s capacity to absorb new members while maintaining the momentum of European integration is also an important consideration in the general interest of both the Union and the candidate countries.*”³

At the time, this criterion was not perceived as such and most conditionality studies do not recognize it as a criterion in and of itself. But with the opening of accession talks with Turkey, it was clearly “reactivated,” particularly by those member states hostile to Turkey’s membership.⁴ This latter criterion is interesting in the perspective examined here, because it shows to what extent a conditionality that is also a norm can give rise to extensive uses that are at odds with the European discourse claiming that norms are a codification of relations between equals. Accession talks with Turkey are no longer even a case of conditionality in which the norm-maker imposes its norm on the norm-taker. Rather, the European Union is using a rationale in which it alone estimates its capacity to welcome a new member state, a decision that is not open to dispute.

Europe has thus embarked on a totally different logic in that it leaves itself a discretionary margin of appreciation that is totally disconnected with the partner’s performances. The criterion relative to its absorption capacity thus boils down to saying that, even assuming the applicant country fulfills all the accession criteria, membership could still be denied.

The first three Copenhagen criteria do not go that far. For even if many dispute the clarity and precision of these criteria, which are also too vague not to be open to interpretations of pure political contingency, they nevertheless fit within a contractual normative framework. If an applicant country fulfills its obligations, it is qualified to join the EU.

For all that, the relative clarity in which this conditionality is exercised should not make us lose sight of its profoundly

asymmetrical nature. To become a member, a country must satisfy the Copenhagen criteria and adopt the 80,000–page long *acquis communautaire* in its entirety. This is a take-it-or-leave-it condition. What is commonly referred to as “talks” is actually a process by which the European Union verifies that the applicants have indeed incorporated the *acquis communautaire* into their domestic legislation, chapter by chapter, page by page.⁵ In practice, the reality has turned out to be more complex. In fact, the broader and more massive the conditionalities, the more they leave room for arbitration between the various priorities, thereby creating a degree of leeway for the applicants.⁶ However, neither the rigor of European conditionality nor, on the other hand, the interstices left open to the local actors by such conditionality suffice to explain the success of European enlargement to Central and Eastern Europe. It has to do with the fact that right from the start the perspective of membership exerted a considerable power of attraction over societies in which the system they were leaving—communism—had not only failed but, what’s more, also restricted state sovereignty. So even before European conditionality was exercised, the elites had interiorized it, so to speak, as soon as they were assured locally of a consensus to join the European Union.⁷ Thus, through electoral competition, the political forces in favor of membership won the game on the domestic checkerboard even before the opportunity to engage in accession talks was put to debate.

This was thus a far cry from the zero-sum game in which an external actor attempts to impose a norm on an actor that wants nothing to do with it. This still did not make it a game between equals, because the conditionality was defined by the norm-maker. The context was instead one in which asymmetry was interiorized due to the tangible rewards involved in complying with it.⁸

Norms and Asymmetry

Reproducing this pattern becomes problematic when Europe can no longer commit to offering a reward as substantial as accession. Its entire neighborhood policy, the famous European Neighborhood Policy (ENP), is designed to solve this problem, which can be

summarized thus: Europe is no longer able to or no longer wants to offer membership as a perspective to its neighbors, while leading them to believe that this fundamental change will not make a big difference to them. But the distinction makes a big difference. It first makes a difference to Europe, which can no longer use the perspective of membership as a disciplinary mechanism first to discipline its neighbors. It also makes a big difference for its partners, for which the cost of compliance with European standards from both economic and political standpoints is not apparently offset by decisive advantages. Now if membership policies have succeeded despite the initially asymmetrical nature of the relations between the EU and its candidates, it is because the trade-off in terms of costs and benefits was established from the start.⁹

From the standpoint of perceptions, we must first take into account states that refuse from the start to accept the ENP framework as an overall contractual framework for their relations with Europe. This is the case of Russia, which was initially part of the system and later withdrew from the initiative. Now consider those who do not accept this framework but have no choice for lack of anything better. This is the case of Ukraine, for which the only serious political perspective with Europe is membership and which sees the ENP as a mechanism to delay its accession.¹⁰ We must take into account also the case of countries that have no problem formerly entering this framework, but do not seem for all that to have made up their mind to accept all the modalities, especially if they contain new obligations. Take, for instance, Algeria: because it constitutes a precious source of energy supply for Europe, it knows perfectly well that Europe will not risk imposing on it political conditionalities or economic reforms it does not want to implement. The only potential interest Algeria has in the ENP framework is the free circulation of people. But it knows that Europe is not prepared to grant this.¹¹ That leaves most others—countries for which there is no chance of joining the European Union in the next 10 to 15 years and for which the principle advantage is to attract European resources in an attempt to build viable states. The remainder is a particular set of countries that have specific expectations with regard to Europe and for which the formal framework governing relations with Europe is of little importance or even

signification. All this makes it legitimate to wonder whether ENP is not mainly a political-institutional system that holds meaning first and foremost for the EU itself.

Indeed, the ENP was fundamentally designed as a policy of nonmembership, even if it was bureaucratically conceived by those who are responsible for enlargement.¹²

Initially entitled *Wider Europe* in 2003, it was pared down to the European Neighborhood Policy the following year, precisely to underscore the fact that being a European neighbor in no way implies being a member of Europe.¹³ In this perspective, the major political fact resides in the discarding of any political right to joining European Union even for states whose Europeanity is not disputed.¹⁴ Like any policy, it rests on explicit and implicit. What has been made explicit is that Europe has an interest in being surrounded by a “ring of friends” that have the characteristic of being economically prosperous, politically stable, and well governed.¹⁵ What has been left unsaid is a desire to avoid unintentionally importing security risks into the EU from unstable or little-developed countries in the form of uncontrolled migration, Mafia-like conduct, or terrorist action. This point is the most fundamental one, because deep down it is the only characteristic shared by countries as different as Moldavia, Lebanon, and Tunisia. The ENP actually constitutes a very classic semiperiphery control policy that aims to set up a virtuous circle encompassing development, democracy, and good governance so as not to jeopardize Europe’s security and stability. It is the very example of a *milieu goal policy*.¹⁶ Europe thus does geopolitics with norms.

Europe does not claim to be creating this circle. But it hopes to encourage it while believing that it has neither the power nor the will to impose its own norms.¹⁷ The question should then be posed in the following terms: What can the partners find that is new or attractive enough to embark on the path offered by Europe through its ENP? The answer is probably “not much,” except for some of them to whom the ENP is a necessary step on the road to accession.

On the economic and trade level, for instance, the ENP offers “deep trade and economic integration with the EU” that one imagines might take the route of what is again called “deep and comprehensive free trade agreements.”¹⁸ But what is really meant by

“deep and comprehensive free trade agreements”? The European Commission’s answer is the following: “a deep and comprehensive FTA should cover substantially all trade in goods and services between the EU and ENP partners including those products of particular importance for our partners and should include strong legally-binding provisions on trade and regulatory issues.”¹⁹ In exchange for greater access to its market, Europe demands that its partners comply with its constraints in terms of technical norms and standards, industrial policy, intellectual property, rules of origin, taxation, public procurement, and the like.²⁰ In other words, Europe is striving to wrest bilateral recognition for norms that it is unable to impose on a global scale. “Adopt our norms and in exchange, we’ll open our markets.” But this apparently fair deal is actually deeply imbalanced and not always attractive. Imbalanced because the concessions made by the two parties are not equal in nature. When Europe, through a bilateral treaty, offers a country greater access to its market, it is apparently granting a favor with respect to other partners. But this preference is fragile: on one hand, because nothing prevents Europe from granting it to a country in competition with another, on the other, because nothing proves that in the event of a multilateral agreement, the preferences granted to the two countries will not eventually diminish, or even disappear. Moreover, the existence of a free-trade agreement does not prohibit maintaining limitations on sensitive agricultural or industrial products, not to mention the movement of people.²¹

Europe will have nothing to lose. On the contrary it stands to gain. For in exchange for granting tenuous and relative preferences, it will have wrested from its partners lasting concessions in the regulatory areas that interest it, as we have seen, to the utmost.²² Indeed, that the ultimate objective of Europe is to “*share a common regulatory basis and similar degree of market access*” confirms the potential imbalance of such agreements. Moreover, there is no evidence to show that a free-trade agreement presents truly new opportunities in terms of access to the European market. Europe’s partners are usually fettered in their export policy to Europe either by internal difficulties preventing them from increasing their exports, or by drastic EU regulatory obstacles that Europe forces them to accept precisely in the framework of free-trade agreements or preferential

accords. Certainly, Europe's partners are not required to adopt the full spectrum of the *acquis communautaire*. But this freedom has a price: not being allowed to fully integrate into the single market, thus making the idea of access to "everything but the institutions" entirely theoretical. Incidentally, this offer is ambiguous. For although, for Europe, it means "don't get discouraged, because finally you can have almost everything," this may well be interpreted by its partners as "even if we do everything the way they do, they'll never accept us." Misunderstandings notwithstanding, this approach poses a real political problem: "everything but the institutions" means that these countries will never be able to take part in defining the European policies that they will have nevertheless adopted. They are thus bound to remain forever norm-takers. From that standpoint, the ENP constitutes a mechanism aimed at normalizing the asymmetry between Europe and its noncommunity partners. Actually, in many cases, already fairly extensive and usually underutilized access to the European market is much less valuable than some form of regional integration, for instance. The ENP is built on a foundation that exacerbates bilateralism. It naturally claims to foster development of regional integration. But in actual fact, it does not give itself the means to realize it, especially when obstacles to this integration are highly political in nature. We know, for instance, that regional integration in the Maghreb is hindered by the Algeria-Morocco rivalry and that the European Union obviously does not have the means to settle it. In fact, the ENP has given rise to no new trade initiative moving toward "*deep integration*." The Balkans are covered by the famous Stabilization and Association Agreement (SAA), the Mediterranean countries by the Euro-Med agreements. The only two free-trade agreements offered have been to countries that are not covered by the ENP: South Korea and India. Talks with Ukraine in view of an "enhanced agreement" are underway. But this is primarily a formula aimed to mollify the Ukrainians who seem disappointed by the lack of a membership calendar.

These difficulties are multiplied when shifting from the economic sphere to more sensitive areas such as those pertaining to good governance or human rights. In theory, the ENP is meant as a comprehensive policy in the sense that it intends to tie in the

various dimensions of its cooperation with its neighbors. But in practice, this ambition is seriously belittled as soon as political questions are touched on.

For the same question arises once again: What benefits do authoritarian political regimes derive from complying with the rules of good governance and democracy if the incentives to change are weak? Incentives can be understood either as possible sanctions the European Union would apply to recalcitrant countries, or on the contrary rewards it would offer in exchange for compliance with these norms. In view of the results obtained so far, ENP achievements are modest.

To realize this, it is methodologically interesting to compare three European instruments: the 2004 *Strategy Paper*, the *Country Reports* and the *ENP Actions Plans*. The *Strategy Paper* defines a general framework of the ENP, the *Country Reports* its specific application, the *Action Plans* their implementation by both parties.²³ In these three documents, the common policy reference point is that of *shared values*. The 2004 *Strategy Paper* claims to link the level of ambition of relations with its neighbors “to the extent to which those values are effectively shared.”²⁴ But this principle is ignored in practice since the ENP does not constitute a new legal instrument able to enforce commitments taken in a framework of partnership or association agreements. Moreover, the European Commission seems to interpret article 2 (pertaining to respect for human rights) of these agreements in the Euro-Mediterranean framework in a very minimalist sense.²⁵ Lastly, the financial instruments, such as the MEDA program, that Europe has made available with respect to the Mediterranean countries make very little reference to respect for human rights.²⁶

One first notes that no *Country Report* or *Action Plan* has been drafted for four countries integrated into the ENP. These countries are Belarus, Algeria, Libya, and Syria. Although the absence of Belarus can be explained by this country’s very slim political achievements, explicitly acknowledged by the EU, the other three cases are different. These are sensitive countries with which the EU and its member states have important political or economic relations but with respect to which it hesitates to take a confrontational position, particularly as regards democracy and human

rights. The lack of an *Action Plan* with these countries thus reflects either the European preference for stability of these three regimes, where Islamism represents a threat, or the lack of a basis for agreement between the EU and these countries, or possibly both. Even in countries that have managed to reach an agreement with the EU about *Action Plans*, there is a total lack of EU discussion with local NGOs dealing with human rights issues.²⁷

Structurally, the ENP seems extremely poorly equipped to come to the aid of civil society NGOs.²⁸ Although it may deny this, Europe actually practices a very classic double standard. In human rights matters, the EU is much more intrusive with European countries such as Moldavia or Ukraine, which are likely to join someday in the future, than with Arab countries.²⁹ Moreover, even when critiques are directed at the same Arab countries in the *Country Reports*, which engage the EU alone, they tend to disappear in the *Action Plans* drafted in conjunction with the local governments. The *Action Plan* with Egypt for instance states that the two parties pledge to “strengthen the culture of respect for human rights and fundamental freedoms in Egypt and the EU.” This is a very vague commitment, but it has a powerful political meaning, for the Egyptians in any case. The commitment to strengthen “the culture of respect for human rights” is perfectly acceptable, for who could claim that it has no improvements to be made in this regard? It is all the more acceptable since it is followed by the phrase “in Egypt and in the EU,” which for the Egyptians means that even the Europeans could make improvements in their human rights record.

As we can see, the normative nature of the European power raises many more questions than one might have thought. And if these issues are worth examining in order to understand Europe in the world, such analysis, in order to make sense, must now make reference to questions of reception. The next step is an in-depth reflection on the theory of reception in international relations that, applied to Europe, would enable us to consider it as a living, complex, and contradictory actor, and not as an idealized actor whose preference for norms is seen as a guarantee of its good faith and disinterestedness.

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C O N C L U S I O N

The crucial question for the international system is and will remain that of order. What should be done so that the political entities that compose it can ensure their survival without doing so at others' expense or, more precisely, in such a way that the conditions posed by a political community for its own survival do not accentuate the disorder of the entire world system?

In an attempt to answer this focal question, I formed the hypothesis at the beginning of this book that there were two possible visions: governance and sovereignty. Between these two conceptions, Europe has made clear its choice for governance. This choice is made necessary by the historical conditions of its political refoundation since 1957 as a political ensemble that is not a state: it is not the ultimate guarantor of its own security and it wants to protect itself through norms to avoid having to face the trial of confrontation.

There is little chance that this reality will change very much in the course of the coming decades. This is why, even if Europe were to provide itself with a military force, that would not make it a hard power. For Europe to become a hard power, it would take some form of federalization of its foreign policy. This is hardly possible without federalizing the European political system, if security and defense are admitted to constitute the hard core of state sovereignty. The only likely possibility is that Europe's foreign policies will be harmonized according to a logic of socialization among European political actors, interdependence among societies, rationalization of military spending, and convergence of interests. This process is and will remain uncertain. It has every chance of remaining

ambiguous. If we look at what has happened in Europe since 1989, the major event has been Germany's keeping a political distance from the United States. But this distantiation has not really created any strong European dynamic. The Franco-German couple so talked about has produced nothing tangible since Maastricht, except perhaps a reinforcement of classic interstate rationales. Europe is not at risk of imploding, but it is highly likely to operate on the basis of a baroque compromise between shared norms (rule of law, respect for freedoms, market regulation, environmental protection) and competition between states (diplomacy and economics). European power remains enigmatic. Under such circumstances, political distantiation with the United States will always remain relative. Certainly, in order to assert itself, Europe will always have to react by stressing its difference from the United States. But the end of classic Atlanticism does not for all that automatically trigger a fundamental distantiation. All the more so since China's rise in power is highly likely to prompt Europe to move closer to the United States.

This is why, and without indulging in futurology, it is reasonable to believe that five stable and distinctive features will continue to characterize European power.

The first is the declared and fully assumed refusal of any notion of European supremacy over the rest of the world. This refusal of any idea supremacy *ipso facto* goes along with a refusal to think of the world from the Schmittian perspective of friend versus foe. Europe is and will remain Kantian. There is little chance of its becoming Schmittian. That is what sets it apart most from the United States and what its preference for norms is based on. Naturally, neither China nor India nor Russia spontaneously shares this vision. But it is not by mimicking the major powers that Europe will promote its interests and values. Europeans in any event have no inclination to embark on this path. The race between global governance via norms and "realist" governance by states has clearly begun, and its outcome is uncertain. This is all the more true since realism can be taken to mean different things. In its chemically pure form, realism does not let ideological considerations get in its way. It reasons in terms of power struggles but respects state sovereignty. The U.S. policy under the Bush administration is neorealist in nature. It starts

from a balance of power overwhelmingly in favor the United States but uses it to promote an ideological vision that refuses to sanctify the sovereignty of other states. The theory of regime change used in Iraq is well and truly an expression of this neorealism. But the more time goes by, the more the limits of this new paradigm will come to light. Barring an always possible headlong flight into madness, regime change theory is highly likely to stop in Baghdad. But reverting to a more classical realist position will not necessarily make the United States more accommodating as regards issues of global governance.

The second feature of European identity is that of a necessarily more self-centered power than other state powers, precisely because its very structure forces it to undertake many internal arbitrations that national power does not need to do or less so. Consequently, its political reactivity will always be slower and weaker. But it can turn this weakness into an asset, considering that the game of power rests not only on reactivity but also on a capacity to modify the game by relying on the long-term effects of the choices made rather than on their immediate consequences. After all, the business in Iraq shows that “change through force” has turned out to be ambiguous to say the least, even with respect to the objectives that it had assigned itself. Europe can rightly believe that international norms may have greater power to transform the world order in the long run than a strategy of destruction or confrontation that may prove to be spectacular in the short run but totally unsuccessful in the long haul. It is even perfectly possible to think that Europe’s political ambition should involve not shifting from soft power to hard power, but acting in such a way that today’s issues of soft power do not become tomorrow’s conflicts of hard power, precisely because they were not settled in time. If no concerted policy action takes responsibility for climate change, for example, it is highly likely that environmental wars will break out in the future when the most powerful feel threatened. It nevertheless remains true that all issues are not conceivable in terms of soft power, some of them being hybrids between hard and soft power. Nuclear proliferation is a good example of this overlapping. That said, should the possibility of a transformative power be accepted without seeking to idealize it?

As regards the rest of the world, Europe will always appear as a power that is both more attractive and less convincing. More attractive because, not being a hard power, it seems a more reasonable power, more sensitive to other people's arguments, more willing to compromise than to enter into confrontation. But at the same time, it will prove to be less convincing, and even less credible, precisely because it is not a coercive power. This is the viewpoint of China, India, and Russia. It points up the ambivalence of European power as well as the disadvantages of what is commonly called multipolarity. For it all depends on what is meant by multipolarity. If advocating multipolarity means promoting a sort of world pluralism to counterbalance the unilateral hegemony of the United States, there is no reason to harbor reservations about this idea. All the more so since the multiplication of sources of wealth and power is a process underway that American unilateralism can mask or curb but not prevent. On the other hand, if multipolarity means a sort of organized pluralization of the world around power clusters that revive the tradition of power politics, Europe has no advantage in embarking on this path. This is so for a simple reason: China, India, and Russia are seeking the construction of a multipolar order, not necessarily to build a multilateral world but to acquire a privileged status that will enable them to negotiate on equal footing with the United States. Multipolarity in their eyes is merely a means of gaining recognition as a major power by the United States, even if it means acting on the international stage—once this recognition is obtained—in a largely similar way to the United States. In that case, it is not at all certain that norms can triumph over force.

Europe will always have a decisive comparative advantage over the rest of the world each time that shared sovereignty seems more beneficial than sovereignty. The development of this advantage will depend not only on the context in which it can be used (the environment rather than defense) but also on the nature and the state of the world cycles. Since the end of the cold war, we have been in a strong multilateral cycle symbolized by the Rio Earth Summit in 1992 and the powerful sovereignist cycle that appeared with September 11, 2001. Naturally, cyclical effects always ripple out beyond the boundaries that are supposed to contain them, such

that environmental multilateralism, for instance, did not end with September 11. But on the other hand, no one yet knows how much longer the world political cycle born on September 11 will last. The world cycle is definitely unfavorable to Europe, but that of course does not mean that it should abandon its principles. On the contrary, the countercyclical influence that Europe could have in a world once again caught up in sovereignty may turn out to be beneficial. All the more so since signs of disenchantment with the meager results of the neoconservative counterrevolution are beginning to appear even in the United States.

Norms are and will remain not only Europe's best shield but also its finest banner. The collective capacity to resort to force will never constitute a political goal in itself for Europe. Even if the pursuit of norms seems less rewarding or spectacular than taking the route of force, they cannot be abandoned and even less underestimated. The sizeable and inevitable qualitative mutations of the world undergo long, chaotic, and reversible maturation phases. It is not because human rights violations are abundant, constant, and sometimes increasing that the defense of these rights should not be pursued. It is not because great harm is being done to the environment that one should give up promoting the idea that protecting it involves protection of global common goods and that it is not a national responsibility one can shirk.

Europe has no other choice and no other aim than to defend norms on the world scale. But as it intensifies this attitude, it will have to defend itself against any attempt to constitutionalize the world order. Such an approach would inevitably lead to a cemetery of good intentions. It would also be a negation of its Kantian heritage.

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NOTES

1 Why Europe Cannot Be a Superpower

1. Michael E. Smith's book, *Europe's Foreign and Security Policy. The Institutionalization of Cooperation*, Cambridge, Cambridge University Press, 2004, is typical of this approach. His meticulous analysis of the procedures, regulations, and declarations is totally dissociated from any attempt to analyze their effectiveness or content.
2. Jean Monnet, *Mémoires*, Paris, Fayard, 2004, p. 371.
3. Russia's case is a clear example of this. In the early years following the collapse of the Soviet Union, it seemed to turn its back on its past in an attempt to "Westernize" and even renounce its role as a superpower. Since Vladimir Putin has taken office, the ambition is obvious to reappropriate the Soviet legacy to attempt to position Russia in the sphere of superpowers.
4. Out of the six major geographical spaces, only India, with 3.2 million square km, is slightly smaller in area than the European Union (3.9 million square km). But the configuration of the two spaces is very different. The surface areas of the other spaces are Russia, 17 million square km; the United States, 9.6 million; China, 9.5; and Brazil, 8.5 million.
5. The Americans ended up turning down China's offer on national security grounds, which indeed confirms the hypothesis of an apparently purely economical representation of geopolitical stakes.
6. *Financial Times*, June 27, 2005.
7. National Intelligence Council, *2020 Project. Mapping the Global Future*, GPO Washington, 2004, p. 63.
8. *Le Monde*, July 3–4, 2005.
9. This perception in fact does not entirely exclude more traditional reasoning put forth by certain European member states that see Russia as a world "power center" that must be treated tactfully, also on certain occasions it may counterbalance American power. That is very likely France's viewpoint, as well as Germany's and England's.

10. Cited in *EU Energy Policy: Internal Developments and External Challenges*, The Economist Intelligence Unit, 2006.
11. *Ibid.*, p. 43.
12. Marie Mendras, "Back to Besieged Fortress?" (mimeo), March 2007.
13. This point is remarkably shown in the study by A. Correljé and C. van der Linde, "Energy Supply Security and Geopolitics: A European Perspective," *Energy Policy* 34 (5), March 2006, pp. 532–543.
14. As reported by Ron Suskind in the *New York Times Magazine*, October 17, 2004.
15. It should be obvious that in this author's eyes, such distinction does not carry any normative judgment. A new reality can be created for the worse and be subjected to this same reality for the better.
16. Javier Solana, *A Secure Europe in a Better World. European Security Strategy*. Brussels, December 12, 2003. Available at http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/FR/reports/76256.pdf
17. *Financial Times*, July 1, 2005.
18. H. Kissinger and L. Summers, *Renewing the Atlantic Partnership*, New York, Council on Foreign Relations, 2004.
19. This demand is backed by London, which, on the other hand, is fiercely opposed to changing the voting system to a qualified majority for matters of external policy and European defense.
20. According to François Heisbourg, 90% of the American troops no longer come under NATO or European command. *Le grand schisme d'Occident*, Paris, Odile Jacob, 2005, p. 127.
21. On the details of the Europe–United States confrontation over Galileo, see the essay *Bruxelles–Washington. La relation atlantique sur le métier. La République des Idées*, by Florence Autret. Available at the Fondation Jean Jaurès Web site <http://www.jean-jaures.org/>.
22. World Public Opinion, *Views of European Union's Influence*. Available at <http://www.worldpublicopinion.org/pipa/articles/>.
23. Peter Mandelson, "The Global Economic Agenda: Europe and India's Challenge," EU Commission, January 13, 2005. Available at http://ec.europa.eu/commission_barroso/mandelson/speeches.
24. Arvind Virmani, *A Tripolar Century: USA, China and India*, New Delhi, Indian Council for Research on International Economic Relations, March 2005. Available at www.icrier.org.
25. "The United States is in the process of deciding a strategic transformation for the 21st century that hinges on a trio composed of the United States, China and India," *Le Figaro*, May 31, 2007.
26. Virmani, *Tripolar Century*.
27. The Indian report, drafted in response to a European document, "An EU-India Strategic Partnership" states significantly that this partnership expresses "a level of relationship higher than that maintained by either side with non strategic partners, and immune from the vicissitudes of either side's

relationship with a third party.” The sense of the message is clear: we are not a partner like the others.

28. I refer to the presentations given by Indian colleagues during the symposium “Are European Preferences Shared by Others?” Paris, CERI/Centre d’Etudes Européennes de Sciences Po, June 2006.
29. Joseph Nye, *Soft Power. The Means to Success in World Politics*, New York, Public Affairs, 2004.
30. Actually, Nye seems divided between the practical *binary* distinction between hard and soft power and his effort to conduct a *ternary* analysis of the international system in which he sees three dimensions: the diplomatic-strategic, economic interdependence, and cultural interdependence. This is why in his more recent book, he talks less about the distinction between hard and soft power than about soft power, economic power, and military power. He also acknowledges that economic power has a coercive dimension.
31. It should nevertheless be remembered that for the millions of people anxious to flee poverty to survive, that Europe remains an exceptionally attractive geographical space that the Europeans are seeking precisely to render less attractive. The attraction differential between the United States and Europe enters into play with regard to very narrow but very decisive population segments—researchers, for instance.
32. “Hard Power, Soft Power and the Goals of Diplomacy,” in David Held and Mathias Koenig-Archibugi (eds.), *American Power in the XXI Century*, Oxford, Polity Press, 2004, 299 p.
33. See Zaki Laïdi, “Les métaphores du Titanic,” *Tribune de Genève*, June 13–14, 1998.
34. Regarding these debates, see Philippe Crouzet and Nicolas Véron, “La mondialisation en partie double. La bataille des normes comptables,” *Cahiers d’En Temps Réel* (3), April 2002. Available at www.entempsreel.org.
35. R. Daniel Kelemen and Eric C. Sibbitt, “The Globalization of American Law,” *International Organization*, Winter 2004, pp. 103–136.
36. Joseph Nye writes that “Power in the global information age is becoming less tangible and less coercive.” *The Paradox of the American Power*, p. 11. It is likely, however, that Nye’s naivety is calculated. Nye is a multilateralist democrat. His analysis has a specific political function: it aims to make the American political elites understand that the United States has so many trump cards to play in the world that it stands nothing to gain in resorting too hastily to the use of armed force.
37. The states of the European Union produce an average of 764 films per year, behind India (877) but ahead of the United States (611). *European Audiovisual Observatory*, 2004. Available at <http://www.obs.coe.int/medium/prod.html.fr>.
38. Jean Michel Baer, “L’exception culturelle. Une règle en quête de contenu,” *Cahiers d’En Temps Réel* 11, October 2003. Available at www.entempsreel.org.

39. American films occupy 75% of the movie screens and 73% of the television screens in Spain. In France, the proportions are 56% and 28% respectively. (Source: European Audiovisual Observatory. 2002 figures).
40. This indubitable reality carries no value judgment as to the legitimacy of such a regime. Tyler Cowen, for instance, believes that cultural trade fosters diversity within societies and reduces it between societies. Conversely, French-style cultural protectionism supposedly maintains a diversity between France and the United States, for example, but such protection translates into a reduction in the diversity within the national sphere (Tyler Cowen, *Creative Destruction. How Globalization Is Changing World's Cultures*, Princeton, Princeton University Press, 2002). Françoise Benhamou confirms this last argument in showing that the increase in the proportion of French songs in musical programming—subject to quotas—leads to an unexpected reduction in the offer on the radio: fewer than 3% of titles make up 70% of the programming. Cultural exceptionalism thus does not coincide with cultural diversity. Needless to say that such an assertion virtually passes for blasphemy in France. (Françoise Benhamou, “L’exception culturelle. L’exploration d’une impasse,” *Esprit* 5, May 2004, pp. 85–113.)
41. See Tony Judt and Denis Lacorne (eds.), *With US or against US, Studies in Global Anti-Americanism*, London, Palgrave Macmillan, 2005.
42. *Financial Times*, June 30, 2005.
43. Charles Kupchan, *The End of American Era*, New York, Knopf, 2003, p. 149.
44. *Idem.*
45. *Ibid.*, p. 143.
46. Some authors did not wait for the demise of the Constitutional Treaty to sing the praises of the political achievements of the European Union as an international actor. Hazel Smith, for instance, wrote unabashedly that “In practice, the Union can now intervene in almost any area of the world in almost any aspect of foreign policy.” Hazel Smith, *European Union Foreign Policy. What It Is and What It Does*, London, Pluto Press, 2002, p. 267. Such optimism is baffling.
47. Cited in Jean-Louis Quermonne, *Le système politique de l’Union européenne*, Paris, Montchrestien, 2005, 6th edition.
48. Jeremy Rifkin, *The European Dream*, Cambridge, MA, Polity Press, 2004, p. 209.
49. *Ibid.*, p. 208.
50. *Ibid.*, p. 83.
51. *Ibid.*, p. 213.
52. Robert Kagan, “Power and Weakness,” *Policy Review* 113, June–July 2002, <http://www.mtholyoke.edu/acad/intrel/bush/kagan.htm>.
53. This obviously does not mean that the reality of the world can be compared exclusively to a billiard game between states, which is the principal error of “realist” analyses.

54. For Christopher Hill, power involves the concentration of decision-making authority, such that it is hard to imagine the emergence of a Super European power without a Super State. *Super State or Superpower? The Future of the European Union in World Politics*, London, LSE, July 2002, p. 14.
55. Joseph Weiler, "Fédéralisme et institutionnalisme: Le *Sonderweg* européen," in Renaud Dehousse (ed.), *Une constitution pour Europe?* Paris, Presses de Sciences Po, 2002, p. 156.
56. Idem.
57. Miguel Maduro, cited by Weiler, in "Fédéralisme et institutionnalisme," p. 166.
58. Renaud Dehousse and Olivier Duhamel, "Beaucoup de bruit pour presque rien? Deux lectures contradictoires de la constitution européenne," Paris, *Cahiers d'En Temps Réel* 19. Available at www.entempsreel.org.
59. See Arjun Nijebver, *The First Dutch Referendum*. Pre-ballot Assessment, May 2005.
60. Interview with Joseph Borell, president of the European Parliament, *Libération*, July 12, 2005.
61. Jacques Lacan, *Le Séminaire*, Livre III, *Les Psychoses*, cited in Slavoy Zizek, *Que veut l'Europe? Réflexions sur une nécessaire réappropriation*, Paris, Climats, 2005, p. 81.
62. It should be pointed out that in France the 2005 referendum campaign crystallized actually around "the social question" and not around the question of sovereignty, as was the case during the Maastricht Treaty referendum campaign.
63. I draw here on Zizek's comments in *Que veut l'Europe?* p. 58.
64. Jacques Rupnik, "Europe. Les malentendus de l'élargissement," Paris, *Cahiers d'En Temps Réel*, April 8, 2003. Available at www.entempsreel.org.
65. Robert Cooper, "The New Liberal Imperialism," *The Guardian*, April 7, 2002.
66. 78% of Europeans say they are in favor of a European defense and security policy. Eurobarometer 62, May 2005. www.europa.eu.int/comm/public_opinion/standard.
67. This was very aptly demonstrated by Hubert Védrine, "Single foreign policy cannot be defined by decree. You can replace one currency with another. . . . You cannot decree that next March 1, we will all think the same thing about the Middle East." *Face à l'Hyper-puissance*, Paris, Fayard, 2003, p. 330.
68. *Le Monde*, July 1, 2005.
69. The German Court of Justice in Karlsruhe, for instance, blocked the implementation of a European arrest warrant following a request to extradite a German citizen from Spain.
70. *The Economist*, July 23, 2005.
71. "Questions terroristes," En Temps Réel/ENS seminar, May 2005.

2 Norms over Power

1. Johan Galtung, *The European Community: Superpower in the Making*, London, George Allen & Unwin, 1973.

2. François Duchêne, "Europe's Role in World Peace," in R. Mayne (ed.), *Europe Tomorrow: Sixteen Europeans Look Ahead*, London, Fontana, 1972; "The European Community and the Uncertainties of Interdependence," in M. Kohnstamen and W. Hager, *A Nation Writ Large? Foreign Policy Problems before the European Community*, Basingstoke, Macmillan, 1973; John Galtung, *The European Community. A Superpower in the Making*, London, Allen & Unwin, 1973 and Andrew Shonfield, *Europe: Journey to an Unknown Destination*, London, Allen Lane, 1973.
3. On interdependence, the starting point is Joseph Nye and Robert Keohane's book, *Transnational Relations and World Politics*, 1972; on the decline of war, Alastair Buchan, *Change without War: The Shifting Structures of World Power*, London, Chatto & Windus, 1973.
4. F. Duchêne, "The European Community," in M. Kohnstamen and W. Hager, *A Nation Writ Large?* p. 20.
5. Edwar Carr, *The Twenty Years' Crisis, 1919–1939: An Introduction to the Study of International Relations*, London, Macmillan, 1962.
6. Hedley Bull, "Civilian Power Europe: A Contradiction in Terms?" *Journal of Common Market Studies* 21 (2), 1982, pp. 149–164.
7. *Ibid.*, p. 157.
8. In the internationalist literature a whole series of essays have appeared on the emergence of international regimes inspired by institutionalism. See Stephen Krasner (ed.), *International Regimes*, Ithaca, Cornell University Press, 1991.
9. H. Maull, "Germany and Japan. The New Civilian Powers," *Foreign Affairs* 69 (5), 1990, pp. 91–106.
10. K. Twichett (ed.), *Europe and the World: The External Relations of the Common Market*, St. Martin's Press, 1976.
11. Bull, "Civilian Power Europe," p. 151 and Christopher Hill, "The Capability-Expectations Gap, or Conceptualizing Europe's International Role," *Journal of Common Market Studies* 31 (3), September 1993, p. 309.
12. Hill sees Europe as a regional peacemaker, mediator of conflicts, global actor, bridge between the rich and poor, and co-supervisor of the world economy.
13. *Ibid.*, p. 315.
14. *Ibid.*, p. 322.
15. See, for example, Smith, *Europe Foreign and Security Policy*.
16. Ian Manners, "Normative Power Europe: A Contradiction in Terms?" *Journal of Common Market Studies* 40 (2), 2002.
17. R. Rosencrance, "The European Union: A New Type of International Action," in Jan Zielonka (ed.), *Paradoxes of European Foreign Policy*, The Hague, Kluwer Law International, 1998, pp. 15–23.
18. Manners, "Normative Power Europe," p. 239.
19. *Idem.*
20. Thomas Christiansen, "Legitimacy Dilemmas of Supranational Governance: The European Commission between Accountability and Independence," in M. Nentwich and A. Weale (eds.), *Political Theory and the European Union*,

- London, Routledge, 1997; J.H.H. Weiler, *The Constitution of Europe*, Cambridge, Cambridge University Press, 1999; Brigid Laffan, "The European Union Polity: A Union of Regulatory, Normative and Cognitive Pillars," *Journal of European Public Policy* 8 (5), 2001, pp. 709–727.
21. Manners, "Normative Power Europe," art. cit.
 22. My analysis of constructivism owes much to John Ruggie's article, "What Makes the World Hang Together? Neo-utilitarianism and the Social Constructivism Challenge," *International Organization* 52 (4), Autumn 1988. See also Jeffrey T. Checkel, "Social Constructivism in Global and European Politics" (A Review Essay) in ARENA, working papers WP/15/03.
 23. Stefano Guzzini, *Constructivism and the Role of Institutions in International Relations*, Copenhagen, CPRI. Available at <http://www.ciaonet.org/wps/gus06/>.
 24. Joseph Nye, "Neorealism and Neoliberalism," *World Politics* 40 (2), 1988, p. 240.
 25. *Ibid.*, p. 241.
 26. Kenneth Waltz, *Theory of International Politics*, Reading, MA, Addison-Wesley, 1979.
 27. Martha Finnemore and Katheryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52 (4), Autumn 1998, p. 891.
 28. Martha Finnemore, "Norms, Culture and World Politics: Insights from Sociology's Institutionalism," *International Organization* 325, 1996.
 29. Manners, "Normative Power Europe."
 30. Robert Rosencrance, *The Rise of the Trading State: Commerce and Conquest in the Modern World*, New York, Basic Books, 1986.
 31. Manners, "Normative Power Europe," p. 241.
 32. *Ibid.*, p. 243
 33. Romano Prodi, "2000–2005: Shaping the New Europe," speech before the European Parliament in Strasbourg, February 15, 2000.
 34. Manners, "Normative Power Europe," p. 245 and 248.
 35. "The European Union... is tending to impose on national actors a convergence of national public policies by means of norms laid down." Christian Lequesne, "The European Union: How to Deal with a Strange Animal," in Marie-Claude Smouts, *The New International Relations. Theory and Practice*, London, Hurst, 2001, p. 126.
 36. Patrick Artus and Charles Wyplosz, *La Banque Centrale Européenne*, Paris, Conseil d'Analyse économique, La Documentation Française, 2002, 181 p.
 37. Jean Pisani-Ferry and Elie Cohen, "Les paradoxes de l'Europe-puissance," *Esprit*, August–September 2002.
 38. For the details of the normative system of "exceptional circumstances," see Richard Baldwin and Charles Wyplosz, "The Economics of European Integration," Chapter 14. Available at www.unige.ch/wyplosz/, p. 11.
 39. Quermonne, *Le système politique de l'Union européenne*, p. 70.

40. "Setting development as a goal means instituting new rules. . . . These rules must be adapted to the situations experienced in developing countries. For if they are expected play on an equal footing with developed countries such as the US or the EU, they are likely to be swept aside." Pascal Lamy, "L'Europe: Le développement pour objectif, le commerce pour instrument," International Conference on Globalization, November 26, 2002.
41. "Europe has developed an innovative technique for governance that goes radically beyond the nation-state paradigm by inaugurating elements of transnational governance." Pascal Lamy, *La démocratie-monde. Pour une autre gouvernance globale*, Paris, Le Seuil, 2004, p. 56.
42. Kalypso Nicolaïdis and Robert Howse, "This is my EUtopia. . . Narrative as Power," *Journal of Common Market Studies* 40 (4), 2002, p. 771. Regarding the importance of the discourse on power in general, see Karoline Postel-Vinay, *L'Occident et sa bonne parole. Nos représentations du monde de l'Europe coloniale à l'Amérique hégémonique*, Paris, Flammarion, 2005.
43. There is nothing automatic, however, about this reality. In the case of GMOs, 22 states out of the Union's 25 recently refused to lift the safeguard clauses against introducing GM rapeseed and corn, contrary to the EU Commission's opinion recommending states to condemn recourse to safeguard clauses. Finding itself at odds not only with European member states but also with European public opinion on such a sensitive subject, the EU Commission is taking the risk of seeing its legitimacy weakened. *Le Monde*, June 26–27, 2005.

3 Norms for What Preferences?

1. Friedrich Kratochwil, "How Do Norms Matter?" in Michael Byers (ed.), *The Role of Law in International Politics*, Oxford, Oxford University Press, 2000, p. 60.
2. Interviews. This very personal speech by Fischer did not reflect the views of the German chancellor, as could be seen a few months later at the Nice Summit in the pugnacity with which he defended strictly German interests. It would appear, however, that Joschka Fischer's speech had to do more with domestic political considerations than with a truly well-developed European ambition. I owe this interpretation to Renaud Dehousse.
3. Thierry Le Roy, "L'union européenne et la souveraineté à la française: Le point de vue d'un juriste," *La Revue Tocqueville* 19 (2), 1998, p. 41.
4. See Andrew Moravcsik, "Taking Preferences Seriously: Liberal Theory of International Politics," *International Organization*, Fall 1997.
5. Kenneth Waltz, "Reflections on Theory of International Politics: A Response to My Critics," in Robert Keohane (ed.), *Neorealism and Its Critics*, New York, Columbia University Press, 1986, p. 331.
6. *The National Security Strategy of the USA*, September 2002, p. 1.

7. The five threats identified are terrorism, nuclear proliferation, regional conflicts, failed states, and organized crime.
8. Carl Schmitt, *Le nomos de la Terre*, Paris, PUF, 1998, p. 35.
9. Ibid.
10. Solana, *Secure Europe*.
11. EDA. *An Initial Long-Term Vision for European Defence Capability and Capacity Needs*. <http://www.operationspaix.net/An-initial-long-term-vision-for>
12. Ibid., p. 9.
13. Immanuel Kant, *Perpetual Peace and Other Essays on Politics, History and Morals*, Indianapolis, Hackett Publishing Inc., 1983 (new edition).
14. See Clara Portela "Community Policies with a Security Agenda: The Worldview of Benita Ferrero-Waldner," EUI working papers. RSCAS 2007/10. Available at <http://cadmus.iue.it/dspace/handle/1814/6752>.
15. EDA, *Initial Long-Term Vision*, *ibid.*, p. 13.
16. William Wallace, "Is There a European Approach to War?" *European Foreign Policy Unit*, working paper 2005/2, March 2005. Available at www.Ise.ac.uk/Depts/intrel/pdfs/EFPU%20Working%20Paper%202005%202%20WW.pdf
17. Solana, *Secure Europe*.
18. Raymond Aron, *Paix et Guerre entre les nations*, 8th edition, Paris, Calmann-Lévy, 2004.
19. Robert Kagan, "Power and Weakness," *Policy Review* 113, June–July 2002, art. cit.
20. Thomas Hobbes, *Leviathan*, London, Oxford University Press, 1996, p. 508.
21. Kant, *Perpetual Peace*.
22. Jürgen Habermas, *La Paix perpétuelle. Le bicentenaire d'une idée kantienne*, Paris, Le Cerf, 1996, p. 56.
23. Ibid.
24. Aron, *Paix et Guerre entre les nations*, p. 5.
25. Carl Schmitt, *La notion de politique; Théorie du Partisan*, Paris, Flammarion, (Champs) 1992, p. 80.
26. Ibid., p. 73.
27. Etienne Balibar, "Le Hobbes de Schmitt, le Schmitt de Hobbes," in Carl Schmitt (ed.), *Le Leviathan dans la doctrine de l'Etat de Thomas Hobbes. Sens et échec d'un symbole politique*, Paris, Seuil, 2002, p. 38.
28. See Zaki Laïdi and Pascal Lamy, "A European Approach to Global Governance," in *Progressive Politics* 1 (1), September 2002.
29. Balibar, "Le Hobbes de Schmitt," p. 36.
30. *Trade Policy in the Prodi Commission. 1999–2004. An Assessment*. Available at http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_120087.pdf.
31. Out of the 26 trade conflicts brought before the WTO in which the European Union is implicated, in 13 of them the dispute is with the United States. In 10 of these 13 conflicts, Europe is the complainant. The other three conflicts, in which the United States is the complainant, have to do with issues with a

- strong societal and identitarian dimension (GMOs, hormones, designations of origin).
32. European Commission. *General Overview of Active WTO Dispute Settlement Cases with the EC as Complainant or Defendant*. Brussels, June 30, 2004 (mimeo).
 33. Lionel Fontagné, Michel Fouquin, Guillaume Gaulier, Colette Herzog, and Soledad Zignago, *European Industry's Place in the International Division of Labor: Situation and Prospects*, Brussels, CEPII-CIREM 2004.
 34. Vincent Aussilloux and Edouard Bourcieu, *L'émergence de la Chine dans l'économie mondiale: Quels enjeux pour l'industrie européenne?* (mimeo).
 35. *Trade Policy in the Prodi Commission. An Assessment*, p. 54.
 36. *Ibid.*, p. 10.
 37. It is, however, far from certain that in the case of CAFTA (Central America Free Trade Agreement), environmental or social concerns were discussed. The United States imposes a low level of conditionality. The aim of the project seems fairly political. CAFTA overcomes the hurdles encountered in setting up the free trade area of the Americas and also counters the regional activism of Hugo Chavez's administration in Venezuela.
 38. This is one of the reasons that led to listing the "Singapore questions" on the agenda of the last WTO negotiations. The multilateral framework thus prevents it from suffering too much from the competition distortions due to corruption without having to wonder if European economic actors do not share partial responsibility in this game.
 39. Kari Tapiola, "Core Labor Standards and Globalization," July 2002. Available at www.adb.org/SocialProtection/tapiola.pdf.
 40. Interviews, Brussels, December 2001.
 41. See John Chenoy and Anuradha Chenoy, "The Social Clause as an Ideology," *The Third World Network*. Available at <http://www.aidc.org.za/?q=book/view/64>
 42. James Galbraith, "Why Populists Need to Re-think Trade," *The American Prospect*, May 10, 2007.
 43. Sandra Polaski, "Protecting Labor Rights Through Trade Agreements: An Analytical Guide." Available at <http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=15796>
 44. It would seem that regulatory obstacles to trade directed by Europe penalize more the developing countries among the OECD members. Anne-Célia Disdier, Lionel Fontagné, and Mondher Mimouni, "The Impact of Regulations on Agricultural Trade: Evidence from SPS and TBT Agreements." CEPII, February 2007. Available at www.cepii.fr/anglaisgraph/workpap/summaries/2007/wp0704-.htm.
 45. Lionel Fontagné, "Quelle spécialisation optimale pour la France?" *Esprit*, June 2007, p. 23.
 46. H. Selin and S. Vandever, *Raising Global Standards, Hazardous Substances and E-waste Management in the EU*. Available at <http://www.encyclopedia.com/doc/1G1157196839-.html>
 47. *Ibid.*

48. Ibid.
49. Ibid.
50. F. Ackerman, E. Stanton, and R. Massey, *European Chemical Policy and the United States: The Impacts of REACH*. Available at <http://ase.tufts.edu/gdea/Pubs/wp/0606-USREACH.pdf>
51. Zaki Laïdi, *The Normative Empire. The Unintended Consequences of European Power*. Garnet Policy Briefs Number 6, February 2008, p. v.
51. S. Gstöhl (2007) *Political Dimensions of an Externalization of the EU Internal Market*, Bruges: Collège de Bruges, EU Diplomacy Papers 3.
52. In the *shrimp* conflict, the United States was criticized for not having first tried to negotiate an agreement with Asian states before applying sanctions. In the *gasoline* conflict, the United States was charged with discriminating against Latin American imports. But in both cases, enforcing environmental norms was recognized as legitimate by the United States.
53. The WTO decision in the appeal on the shrimp-sea turtle dispute in November 2001, in fact, overturned the preceding jurisprudence in that it more clearly recognized the precedence of environmental rules over trade. Regarding the interpretation of this panel, see Peter Singer's remarks, *One World*, New Haven, Yale University Press, 2002, p. 67 and 70.
54. This demand, which was answered in a climate of deep wariness of developing countries and the United States toward any linking of trade and the environment, had little effect, all the more so as it can prove to be even counterproductive. The Doha declaration limited application of the relationship between MEAs and the WTO to those that are party to the MEAs in question, whereas the WTO environmental panels have developed a jurisprudence that does not take into account whether a state is party to an MEA (*La politique commerciale de la Commission Prodi*, p. 38).
55. David Vogel, "The WTO, International Trade and Environmental Protection: Europe and America Perspectives," p. 19. Available at the author's Web site <http://faculty.haas.berkeley.edu/vogel/greengiantfeb.pdf>.
56. W. Grant, D. Matthews, and P. Newell, *The Effectiveness of European Environmental Policy*, London, McMillan Press, 2000, p. 35.
57. David Vogel, "The Politics of Risk Regulation in Europe and the United States," *Yearbook of European Environmental Law* 3, p. 39.
58. Natalie McNellis, "EU Communication on the Precautionary Principle," *Journal of International Economic Law*, 2000, pp. 545-551.
59. Commission of the European Communities, *Communication on the Precautionary Principle*, COM (2000) 1, Brussels, CEC.
60. Alasdair Young, "The Incidental Fortress: The Single Europe Market and World Trade," *Journal of Common Market Studies* 42 (2), 2004, p. 410.
61. See Tim Flannery, "Endgame," *New-York Review of Books*, August 11, 2005.
62. Regarding this point see the inspired viewpoint of Adam Werbach, president of the Sierra Club, "Is Environmentalism Dead?" Available at <http://www.grist.org/news/maindish/2005/01/13/werbach-reprint/>.

63. Andrew Jordan and Timothy O'Riordan, "The Precautionary Principle in Contemporary Environmental Policy and Politics," in C. Raffensperger and J. Trickner (eds.), *Protecting Public Health and the Environment*, Washington DC, Island Press, 1999, p. 21.
64. E. Soule, "Assessing the Precautionary Principle," *Public Affairs Quarterly* 14 (4), 2000, p. 318.
65. David Vogel, "The Protestant Ethic and the Spirit of Environmentalism: The Cultural Roots of Green Politics and Policies," September 2001, Haas School of Business, p. 11. Available at <http://faculty.hass.berkeley.edu/vogel/>.
66. See Albert Weale, "Environmental Rules and Rules-Making in the European Union," *Journal of European Public Policy*, 1996.
67. Alexis Roy and Pierre-Benoît Joly, "France: Broadening Precaution Expertise," *Journal of Risk Research* 3 (3), 2000, pp. 247–254.
68. Vogel, "Politics of Risk Regulation," p. 67.
69. Marsha Echols, "Food Safety Regulation in the European Union and the United States: Different Cultures, Different Laws," *Columbia Journal of European Law* 4 (4), 1987, pp. 525–543.
70. Vogel, "Politics of Risk Regulation," p. 18.
71. *Ibid.*, p. 19.
72. David Vogel, "'The Hare and the Tortoise,' Revisited. The New Politics Consumer and Environmental Regulation in Europe." Available at <http://faculty.hass.berkeley.edu/vogel/uk%20oct.pdf>.
73. See Olivier Godard, "Environnement et commerce international. Le principe de précaution sur la ligne de fracture," *Futuribles*, March 2001, pp. 37–62.
74. Robert Falkner, "The European Union as a Green Normative Power. EU Leadership in International Biotechnology Regulation," Center for European Studies, working paper series n° 140 (2006), p. 8. Available at www.ces.fas.harvard.edu/publications/docs/pdfs/Falkner.pdf.
75. Franz Fischler, "Rural Development and Fisheries. European Agricultural Model in the Global Economy," speech to the Second International Conference on Globalization, Université de Louvain, November 26, 2002. See also Pascal Lamy, Conférence-Débat *The Economist*, October 3, 2002. On the European discourse on multifunctionality as regards free trade, See Eve Fouilleux, "CAP Reforms and Multilateral Trade Negotiations: Another View on Discourse Efficiency," *West European Politics* 27 (2), March 2004, pp. 235–255. This special issue, coedited by Vivien Schmidt, is one of the most valuable sources for analysis of European discourse.
76. *La politique commerciale de la Commission Prodi*, p. 30.
77. *Financial Times*, July 29, 2005.
78. On CAFTA, see *International Herald Tribune*, July 28, 2005. On the slim preference for free trade, see Zaki Laïdi, *The Great Disruption*, Cambridge, MA, Polity Press, 2007.
79. See Joseph Stiglitz and Andrew Charlton, "A Development Round of Trade Negotiations?" Available at www2.gsb.columbia.edu/faculty/stiglitz.

80. Available at <http://trade.ec.europa.eu/doclib/html/118925.htm>.
81. "Collective preferences in international trade are by no means new... It is only recently that the issue has risen to prominence, as the world economy has become more integrated, the range of traded goods and services has increased and the level of public awareness has risen, resulting in more and more disputes (the turtle-shrimp case, hormones, asbestos etc.), perceived as disputes about collective preferences," pp. 5–6.
82. "The specific problem of integrating developing countries calls for questioning the approach of trade liberalization through reciprocal trade concessions," Commission memo, December 1999 (mimeo).
83. John Jackson, *The World Trading System*, Cambridge, MA, MIT, 1992 and Dani Rodrik, "Labor Standards in International Trade," in Robert Z. Lawrence, Dani Rodrik, and John Whalley (eds.), *Emerging Agenda for Global Trade*, Baltimore, Johns Hopkins University Press, 1996.
84. See Charles Wyplosz's remarks, "Comment on Pascal Lamy. From Social to World Preferences" (mimeo).
85. See the opinions in the *Financial Times*, February 6 and 10, 2004, and those of European business, "UNICE Slams Lamy over 'Collectives Preferences,'" *European Report*, May 2004.
86. Steve Charnowitz, "An Analysis of Pascal Lamy's Proposal on Collective Preferences," *Journal of International Economic Law* 8 (2), 2005, pp. 453–454.
87. *Ibid.*, p. 463.
88. *Ibid.*, p. 464.
89. These two proposals were formulated by Marco Bronkers, "Exceptions to Liberal Trade in Foodstuffs," in *EEA, EU and WTO Law: The Precautionary Approach and Collective Preferences*, December 10, 2004 (mimeo).

4 European Governance and American Sovereignism

1. Manners, "Normative Power Europe," art. cit.
2. Naturally, no country is targeted in terms of international criminal justice, but some countries may feel more vulnerable to such legal action because, by political will or by tradition, they are highly engaged in international military operations in which some of their soldiers may end up implicated.
3. Europe has in fact very clearly understood the full political benefit it could draw from an international stance that would allow it to appear as the world champion of "global public goods" and, by virtue of this very fact, as the promoter of values transcending the sovereignty of nation-states.
4. See Samuel Scheffler, *Boundaries and Allegiances. Problems of Justice and Responsibility in Liberal Thought*, Oxford, Oxford University Press, 2001. Also see David Held's essential work, *Global Covenant, The Social Democratic Alternative to the Washington Consensus*, Cambridge, MA, Polity Press, 2004.

5. Alasdair MacIntyre, "Is Patriotism a Virtue?" in R. Beiner (ed.), *Theorizing Citizenship*, 1995, New York, State University of New York Press, pp. 209–228.
6. Ibid.
7. See Bardo Fassbender, "The Better People of the United Nations? Europe's Practice and the United Nations," *EJIL* 15 (5), (2004), pp. 857–884.
8. Pierre Brana, *Rapport 2141*, French National Assembly, February 15, 2000, p. 7. *Rapport fait au nom de la Commission des Affaires Etrangères sur le projet de loi autorisant la ratification de la Convention portant Statut de la CPI* (cited hereafter as *Brana Report*).
9. Statute of the International Criminal Court. Available at [www.icc.cpi.cut/docs/baisdocs/rome-statute\(f\).html](http://www.icc.cpi.cut/docs/baisdocs/rome-statute(f).html).
10. Brana, *Brana Report*.
11. This fear appears groundless today. Since the war in Iraq, British soldiers accused of abuses have been brought before British courts and tried by them. No one mentioned the idea of bringing these soldiers before the ICC, which proves that the principle of complementarity can indeed function. See Philippe Sands, *Lawless World. America and the Making and Breaking of Global Rules*, London, Penguin, 2005, p. 59.
12. Brana, *Brana Report*, p. 4.
13. Article 12 of the Statute allows ICC jurisdiction only if the country on whose territory the crimes were committed (or the country of which the accused is a citizen) is party to the treaty. The ICC's universal jurisdiction is, in fact, recognized only by the UN Security Council. Cf FIDH. *Rapport Cour Pénale Internationale: "La route ne s'arrête pas à Rome,"* November 1998 (266). Available at www.fidh.imagnet.fr/rapports/r266.htm.
14. Brana, *Brana Report*, p. 42.
15. Ibid., p. 28.
16. Ibid.
17. Philip Altson, "Review Essay. Transplanting Foreign Norms: Human Rights and Other International Legal Norms in Japan," *EJIL* 10 (3), 1999. Available at www.ejil.org/journal/vol10/n3/rev.html.
18. See Y. Iwasawa, *International Law, Human Rights Law and Japanese Law: The Impact of International Law on Japanese Law*, Oxford, Clarendon Press, 1998.
19. Joseph Weiler, "The Transformation of Europe," *Yale Law Journal*, June 1991, p. 2407.
20. Joseph Weiler, "Une révolution tranquille. La CJCE et ses interlocuteurs," *Politix* 32 (3), (1995), p. 121.
21. Weiler, "Transformation of Europe," p. 2412.
22. Weiler, "Une révolution tranquille," p. 122.
23. Regarding the articulation of the European legal order and world legal order, see the volume edited by Vincent Kronenberg (ed.), *The European Union and the International Legal Order: Discord or Harmony?* La Haye, TMC Asser Press, 2001.

24. David Sloss, "International Agreements and the Political Safeguards of Federalism," *Stanford Law Review* 55 (May 2003), p. 1984.
25. *Ibid.*, p. 1985.
26. *Ibid.*
27. This said, even if this new situation must be taken into account, it does not entirely explain the U.S. wariness toward world norms that, moreover, the United States has often contributed to forging, particularly in matters of security: the ABM Treaty in 1972, rejection of the Convention on Biological and Toxic Weapons, definition of a new nuclear strategy in violation of art. VI of the NPT (See Jonathan Greenberg, "Does Power Trump Law?" *Stanford Law Review*, May 2003, p. 1814.
28. John Ruggie, "American Exceptionalism, Exemptionalism and Global Governance," p. 5 in Michael Ignatieff (ed.), *American Exceptionalism and Human Rights*, Princeton, Princeton University Press (available at the Kennedy School of Government Web site, *Faculty Research Working Papers Series*. February 2004. Page references are to the working paper).
29. Glennon and Stewart, "The United States: Taking Environmental Treaties Seriously," in Weiss E. Brown and H.K. Jacobsen (eds.), *Engaging Countries: Strengthening Compliance with International Environmental Agreements*, 1998, Cambridge, MA: MIT Press, pp. 174–175.
30. Jutta Brunnée, "The United States and International Environmental Law," *EJIL* 15 (4), 2004, p. 629
31. *Ibid.*, p. 630.
32. *Ibid.*, p. 637.
33. Jed Rubenfeld, "The Two World Orders," *Wilson Quarterly*, Autumn 2003, p. 34.
34. See Paul Stephan, "International Governance and American Democracy," *Chicago Journal of International Law*, Autumn 2000.
35. *Ibid.*, p. 38.
36. Curtis Bradley and Jack Goldsmith, "Customary International Law as Federal Common Law: A Critique of the Modern Position," *Harvard Law Review* 110 (4), 1997, p. 815.
37. Customary international law is defined as "the set of unwritten norms resulting from a general and consistent practice of states that they follow from a sense of legal obligation." *Restatement (Third) of Foreign Relations Law of the United States*, § 701, Philadelphia, American Law Institute, 1987.
38. *Ibid.*
39. *Ibid.*
40. John Ruggie, "American Exceptionalism," p. 23.
41. Andrea Bianchi, "International Law and US Courts: The Myth of Lohengrin Revisited," *EJIL* 15 (4), 2004, pp. 773 and 775.
42. See Curtis Bradley, "International Delegations, the Structural Constitution and Non-self Execution," 2000, *Stanford Law Review* 55, May 2003.

43. Peter Spiro, "Treaties, International Law and Constitutional Rights," *Stanford Law Review*, May 2003, p. 2.
44. Andrea Bianchi, "International Law and US Courts," p. 780.
45. Christian Vergaris, "The Federalism Implications of International Human Rights Law," *The Federalist Society for Law and Public Policy Studies*, p. 9. Available at www.fed-soc.org.
46. *Ibid.*
47. Jack Goldsmith, "Should International Human Rights Law Trump US Domestic Law?" *Chicago Journal of International Law*, Autumn 2000, p. 328.
48. Andrea Bianchi, "International Law and US Courts," p. 777. In fact, the new point of departure for American legal sovereignty came in 1985 with Washington's decision to withdraw from the compulsory jurisdiction of the International Court of Justice.
49. Judiciary Act of 1789, chapter 20, § 9 (6), 1 Stat. 73, 77.
50. "The Federalism Implication," p. 5.
51. Jed Rubenfeld, "The Two World Orders," pp. 22–36.
52. See inter alia, Peter Spiro, "The New Sovereignists: American Exceptionalism and Its False Prophets," *Foreign Affairs*, November–December 2000 as well as Anne-Marie Slaughter, "Building Global Democracy," *Chicago Journal of International Law*, Autumn 2000.
53. Eric Posner, "Do States Have a Moral Obligation to Obey International Law?" *Stanford Law Review*, May 2003, p. 1918.
54. Kenneth Roth, "The Charade of US Ratification of International Human Rights Treaties," *Chicago Journal of International Law*, Autumn 2000, p. 138.
55. John Bolton, "Should We Take Global Governance Seriously?" *Chicago Journal of International Law*, Autumn 2000, p. 220.
56. *Ibid.*, p. 205.
57. Sands, *Lawless World*, p. 64.
58. *Ibid.*, p. 67.
59. Paul Stephan, "International Governance and American Democracy," *Chicago Journal of International Law*, Autumn 2000, p. 249.
60. Eric A. Posner, "Terrorism and the Law of War," *Chicago Journal of International Law*, Winter 2005, p. 433.
61. Bolton, "Should We Take Global Governance Seriously?" p. 220.
62. Jeremy Rabkin, "Is EU Policy Eroding the Sovereignty of Non-members States?" *Chicago Journal of International Law*, Autumn 2000, p. 273.
63. *Ibid.*, p. 279 and 280.
64. *Ibid.*, p. 72.
65. See Jeremy Rabkin, *The Case for Sovereignty. Why the World Should Welcome American Independence*, Washington, AEI Press, 2004.
66. Richard Pildes, "Conflicts between American and European Views of Law: The Dark Side of Legalism," *Virginia Journal of International Law*, Autumn 2003, p. 147.

5 Is Constitutionalizing the World Order the Answer?

1. Anne-Marie Slaughter, "The Real New World Order," *Foreign Affairs* 76, September–October 1997.
2. Anne Peters, "Global Constitutionalism Revisited," p. 3. Available at <http://law.ubalt.edu/asil/peters/html>.
3. Ibid.
4. The notion of global public goods applies to the set of problems for which the most relevant community of reference is the global community and not the national community. See Mattias Kumm, "The Legitimacy of International Law: A Constitutionalist Framework of Analysis," *EJIL* 15 (5), 2004, p. 923.
5. Ibid.
6. See the works of Mireille Delmas-Marty, particularly *Trois défis pour un droit mondial*, Paris, Seuil, 1998.
7. B.S. Chimni, "International Institutions Today: An Imperial Global State in the Making," *EJIL* 15 (1), 2004, p. 2.
8. Ibid.
9. Armin von Bogdandy, "Globalization and Europe: Law to Square Democracy, Globalization and International Law," *EJIL* 15 (5), 2004, p. 894.
10. See among other sources of this German school, Christian Tomuschat, "International Law as the Constitution of Mankind," in United Nations, *International Law on the Eve of the Twenty-First Century*, 1997.
11. Kant, *Perpetual Peace*.
12. Ibid., p. 33.
13. Ibid.
14. Ibid.
15. On the dangers of European ethnocentrism, see Matti Koskenniemi, "International Law in Europe: Between Tradition and Renewal," *EJIL* 16 (1), 2005, pp. 113–124. The author's relativism is excessive, but his appeals for caution are not entirely groundless.

6 Norms and Geopolitics

1. It is, for instance, revealing to note that the Netherlands, in discussions about a simplified treaty, have requested that the Copenhagen criteria be incorporated into the treaties.
2. European Council in Copenhagen. Presidency conclusions June 21–22, 1993. Available at ue.eu.int/ueDocs/cms_Data/docs/pressdate/en/ec/72921.pdf
3. Michel Emerson, Senem Aydin, Julia De Clerck-Sachsse, and Gergana Noutcheva, "Just What Is the 'Absorption Capacity' of the European Union?" CEPS policy brief. September 2006. Available at shop.ceps.be/BookDetail.php?item_id=1381

4. Ibid., p. 3.
5. Andrew Moravcsik and Milada Anna Vachudova, "National Interests, State, Power and EU Enlargement," *East-European Studies and Societies* 17 (1), 2003, p. 7. Available at www.ces.fas.harvard.edu/publications/docs/pdfs/Moravcsik_Vachudova.pdf.
6. James Hugues, Gwendolyn Sasse, and Claire Gordon, *Europeanization and Regionalization in the EU's Enlargement to Central and Eastern Europe: The Myth of Conditionality*, New York, Palgrave Macmillan, 2004, 231 p.
7. Geoffrey Pridham, "European Union Accession Dynamics and Democratization in Central and Eastern Europe: Past and Future Perspectives," *Government and Opposition* 41 (3), 2006, p. 386.
8. "The rewards of membership were so substantial that eventually all plausible candidates in the region come around to electing a pro-EU government and get to work on fulfilling the membership requirements." Milada Ana Vachudova, *The Leverage of International Institutions on Democratizing States: Eastern Europe and the European Union*. EUI working papers. Available at www.iue.it/RSCAS/WP-Texts01_33.pdf
9. "A state adopts EU rules if the benefits of EU rewards exceed the domestic adoption costs," Franck Schimelfennig and Ulrich Sedelmeier, "Governance by Conditionality: EU Transfer to the Candidate Countries of Central and Eastern Europe," *Journal of European Public Policy*, August 2004, p. 664.
10. "We do not accept any substitute for European policy like the one proposed by the concept of Europe Neighborhood Policy." Ukrainian ambassador's statement before the Parliamentary Cooperation Committee. February 15, 2007.
11. See the Algerian ambassador's remarks to the EU. "The most important market liberty for Algeria, the free circulation of people, has been withdrawn from the EU's offer and cannot be found in the Action Plan," in *The Greening of the European Neighborhood Policy*. Available at atassets.panda.org/downloads/enpandtheenvironment.pdf.
12. Judith Kelley, "New Wine in Old Wineskins: Promoting Political Reforms through the New European Neighborhood Policy," *Journal of Common Market Studies* 44, March 1, 2006, p. 30.
13. The March 13, 2003 document was entitled *Wider Europe: Neighborhood: A New Framework for Relations with Our Eastern and Southern Neighbors*. A year later, *Wider Europe* vanished behind the *European Neighborhood Policy* in the *Strategy Paper*. The *Strategy Paper* talks about offering a different perspective from membership, whereas the 2003 edition confines itself to saying this new policy "would not in the mid term include a perspective of membership," p. 5.
14. "For European ENP partners, the ENP does not in any way prejudice the possible future development of their relationship with the EU," *European Neighborhood Policy, Strategy Paper*. 2004. Available at ec.europa.eu/world/enp/pdf/com06_726_en.pdf. p. 13.

15. "The premise of ENP is that the EU has a vital interest in seeing greater economic development and stability and better governance in its neighborhood." EU Communication for the Commission to the Council and the European Parliament on strengthening the European Neighborhood Policy. December 4, 2006. Available at atec.europa.eu/world/enp/pdf/com06_726_en.pdf
16. Arnold Wolfers contrasts *milieu goals* and *possession goals*.
Milieu goals are out not to defend or increase possessions they hold to the exclusion of others, but aim instead at shaping conditions beyond their national boundaries.... It is one thing to be in good physical of financial condition within an orderly and prosperous community, but quite another thing to be privileged by the wealth of one's possessions in surroundings of misery, ill health, lack of public order and widespread resentment. *Discord and Collaboration. Essays on International Politics*.
Available at www.mtholyoke.edu/acad/intrel/pol116/wolfers.htm.
17. *European Neighborhood Policy, Strategy Paper*.
18. *Ibid.*, p. 4.
19. *Ibid.*, p. 4, author's emphasis.
20. *Ibid.*, p. 4.
21. Stephen Woolcock, "European Union Policy towards Free Trade Agreements," EUPE, Working Brussels Papers—3/2007. Available at www.ecipe.org/pdf/EWP-32007-.pdf
22. Often European discourse on reciprocity is belied by European practices. For instance, certain agreements mention mutual recognition of rules and standards but in practice the European Union expects its partners to conform to European standards. Stephen Woolcock, p. 8.
23. But the essential point is that the *Country Reports* come out of the EU Commission alone, whereas the *Actions Plans* express an agreement between the EU Commission and the partner countries. Pinpointing the differences between the two documents is thus a means of measuring the gaps between European expectations and what the EU can really wrest from the countries involved in the ENP.
24. *European Neighborhood Policy. Strategy Paper*, May 15, 2004, p. 3.
25. Michelle Pace, "The EU Surrounded by a 'Ring of Friends': The Impact of the ENP on Europe's South." Available at www.bisa.ac.uk/2006/pps/pace.pdf.
26. E. Emerson and G. Noutcheva, "From Barcelona Process to Neighborhood Policy: Assessments and Open Issues," CEPS, Working Document (220), Brussels, 2005, p. 6. Available at shop.ceps.be/BookDetail.php?item_id=1209-10k
27. "It is unfortunate that the actions plans agreed between the EU are negotiated behind closed doors without consultation of NGO's, especially those involved in the question of human rights." Euro-Mediterranean Human Rights Network. Available at http://ec.europa.eu/world/enp/pdf/com06_726_en.pdf

28. See Kristi Raik, "Promoting Democracy through Civil Society," Brussels, CEPS Working Document 237, February 2006. Available at shop.ceps.be/downfree.php?item_id=1298
29. Giselle Bosse, "Values in the EU's Neighborhood Policy: Political Rhetoric or Reflections of a Coherent Policy?" *European Political Economic Review* Summer 2007, p. 49. This hypothesis is confirmed by the fact that the *Actions Plans* for countries such as Ukraine are, from the standpoint of political conditionality, very close to the Accession Partnerships signed with the applicant countries. See Elena Baracani, "ENP Political Conditionality. A Comparison between Morocco and Ukraine," CEPS, April 21–22, 2006 (mimeo), p. 12. The Commission has already admitted as much in a document put out in 2006 on the ENP that indicates "*Moldova and Ukraine have already undertaken more substantial commitments in the human rights and governance field than have other ENP partners,*" p. 2. Commission Staff Working Document. Accompanying the communication from the EU Commission to the EU Council and the European Parliament on strengthening the ENP. Overall assessment—December 4, 2006. Available at <http://euromedrights.net/usr/00000026/00000027/00000029/00000844.pdf>

Conclusion

1. This is unfortunately the trap Mark Leonard falls right into in *Why Europe Will Run the 21st Century*, London, Fourth Estate, 2005.
2. Richard Haas, "Regime Change and Its Limits," *Foreign Affairs*, July–August 2005.

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