

PARLIAMENTARY DIPLOMACY AND THE NORTH-SOUTH DIALOGUE

Noel Lateef*

I. INTRODUCTION: DELIMITATION OF THE PROBLEM

The search for a right answer to a question of law is rarely relegated to theory in a mature legal system. Legal reasoning should and usually does eventuate in practice. Diplomacy, as a kind of problem-solving, enjoys no such assurance. Revisionist actors in the North-South dialogue avoid the fact that world order is achieved without the intervention of an omniscient global-ordering device (GOD), *i.e.*, a monolithic body or hodgepodge of international organizations with a "roving jurisdiction to do good." In a world replete with diverse passions and interests, which cannot be exorcised by even the most interventionist GOD,¹ the cogwheels of the international system catch as states pursue primarily national objectives. What order is achieved is the product of interaction among states. Hence, the rational conduct of international relations requires procedural sophistication: revisionist actors must not overtax diplomatic infrastructure and expect fruitful outcomes; status quo actors would do well to appreciate the importance of flexibility without overlooking the observation of Justice Holmes that "the substance of the law is secreted in the interstices of procedures."²

*The author served in the State Department (1977-78) on the staff of Ambassador Jean Wilkowski, United States Coordinator for the U.N. Conference on Science and Technology for Development. He is presently at the Yale Law School researching the interaction of law and development. The assistance of Myres S. McDougal, W. Michael Reisman, and Eugene V. Rostow is gratefully acknowledged.

¹ Alexander Hamilton observed: "Though nations in the main are governed by what they suppose their interest, he must be imperfectly versed in human nature who . . . does not know that [kind or unkind] dispositions may insensibly mould or bias the views of self-interest." *Quoted in* G. STOURZH, *ALEXANDER HAMILTON AND THE IDEA OF REPUBLICAN GOVERNMENT* 92 (1970).

² *Quoted in* G. BALL, *DIPLOMACY FOR A CROWDED WORLD* 193 (1976). Procedures regulating statist interactions are critically important. The international system would be unraveled routinely without common adherence to adjective law, independent of the platforms advocated by revisionist actors seeking substantive due process on a global scale. It is argued

A. *Dirigiste v. Interactive Models*

Generalizing from their domestic orders, many member states of the Group of 77³ (G-77) approach international life transfixed in a *dirigiste*, or directive, model. The single most distinctive characteristic of the dirigiste model is the emphasis it places on central guidance, to the neglect of interactions.⁴ Politics in this model becomes the "administration of things."⁵ The political system, i.e., the administrative organization, is geared to making decisions on the basis of elite conceptions of the "correct" answers.

The dominant value expounded in the interactive model—a value notable for its role in both the development of market theory and liberal political theory—is that of decentralized decisionmaking by individuals or firms expressing their desires and seeking to maximize their welfare as they perceive it. Economic decisionmaking is dispersed to the greatest possible degree. The mechanism of checks and balances is particularly prized, preventing action by any one authority until widely sanctioned. Certain key interaction patterns are valued as though ends in themselves. Such patterns permeate the interactive legal system, tending to tip the scales in favor of form over substance. Consequently, in the hierarchy of judicial objectives, a fair trial will be superordinated to the fact of guilt or in-

in the present essay that governments cannot afford to factor out diplomatic procedures from the policymaking process in foreign affairs. The availability of promising procedures and the political and legal opportunity and transactions costs they entail must be considered integral to the policy decision itself. Thus, a systematic framework for viewing the interaction between substance and procedure is desirable.

³ The 112 or so developing countries until recently were usually lumped together as "Third World", although this appellation is no longer in vogue. With the great riches accruing to oil-producing countries, plus a "middle class" of rapidly growing economies, some observers now distinguish a "Fourth World" subgroup consisting of the poorest nations. Some use the term "Fourth World" for nations on the verge of economic take-off and "Fifth World" for the very poorest. "The Group of 77" is still used to designate the entire grouping when they take common positions in such fora as the United Nations Conference on Trade and Development (UNCTAD).

⁴ Policy is usually incremental. It "is made" by moving from package deal to package deal without, to the detriment of the outcome, much thought for an overall scheme or a total design that takes into account immediate crises, intermediate trends, and long-range probable developments. This is not to refute the desirability of a *contextual* approach. Harold Lasswell has written: "Unless tentative value judgments are reviewed in the context of a total conception of the preferred form of social order, unnecessary inconsistencies and omissions occur." Lasswell, *Clarifying Value Judgment: Principles of Context and Procedure*, 1 INQUIRY 87 (1958).

⁵ Samuel P. Huntington states: "Men are . . . reluctant to give up the image of social harmony without political action. This was Rousseau's dream. It remains the dream of statesman and soldier who imagine that they can induce community in their societies without engaging in the labor of politics." S. HUNTINGTON, *POLITICAL ORDER IN CHANGING SOCIETIES* 10 (1968).

nocence. The interactive model favors policymaking structures which are sensitive to pluralist ideals in ensuring that all parties to a controversy have a role in its resolution. But the right to be heard is not a guarantee that one will be listened to, and, again, substance may be the casualty of form. Nonetheless, fair procedures ensure the integrity of democracy defined, in the apt phrase of Lord Bryce, as "government by public opinion."⁶ In contrast, procedures are nonessential in the dirigiste model.⁷ Yet, were it not for the procedural framework sanctioned in the interactive model, there would be no North-South dialogue in the first place.

Sweeping programs such as the New International Economic Order (NIEO) and the New International Legal Order (NILO) are the inevitable products of a dirigiste approach to world ordering. These seemingly synoptic plans slough over the crucial role of interactions in world politics;⁸ their proponents appear more concerned with ends than means.⁹ This posture undermines parliamentary diplomacy,¹⁰ which, in the past, provided evidence of the possibili-

⁶ See J. BRYCE, 2 *THE AMERICAN COMMONWEALTH* 259-66 (1904).

⁷ Modern-day China, with a population of 800,000,000, has a mere 3,500 lawyers. See V. LI, *LAW WITHOUT LAWYERS* 10 (1978).

⁸ The present international climate is reminiscent of the accusations bandied about after the beginning of World War I, condemning the diplomacy of the Old World for failing to prevent the outbreak of war and for hastening its arrival. Similarly, revisionist actors predict dire consequences if reforms in world politics are not instituted forthwith.

After the war, President Woodrow Wilson publicly espoused the replacement of the secret, undemocratic, and bankrupt diplomacy of Europe by open negotiations and democratic control of foreign relations in the American pattern. "Wilsonian diplomacy" also came to mean popular debate of foreign policy and the replacement of power politics by global collective security functioning under "parliamentary" procedures. Although many of these lofty objectives were never realized, they nonetheless entered the corpus of normative aspirations of international law. The revisionists point to a number of contemporary developments giving rise to a new diplomacy, which they contend is no less revolutionary than the Wilsonian attempt. Although the new diplomacy purports to be democratic, it is sadly deficient in this respect. The emergence of a dirigiste diplomacy has been one of the chief factors contributing to the present crisis in multipartite fora, such as those of the United Nations.

⁹ The G-77 flouts McClelland's key finding that "[t]he achievement sequence more often dwells on obstacles to success and specific means of overcoming them, rather than on the goal itself, the desire for it, and the emotions surrounding attaining or failing to attain it." D. MCCLELLAND, *THE ACHIEVING SOCIETY* 195 (1961).

¹⁰ Parliamentary diplomacy, a term derived from a certain similarity between international conferences and national parliaments, overlaps largely with conference diplomacy, and is described by Dean Rusk as a

type of multilateral negotiation which involves at least four factors: First, a continuing organization with interests and responsibilities which are broader than the specific items that happen to appear upon the agenda at any particular time—in other words, more than a traditional international conference called to cover specific agenda. Second, regular public debate exposed to the media of mass communication and in touch, therefore, with public opinion around the globe.

ties of cooperation, even in a world scarred by cleavages, when a major interest common to all was at stake. If the United Nations is to be relevant through the last quarter of the twentieth century, it must arrest the present trend toward being long on extremist doctrine and short on constructive procedure.¹¹ Otherwise, even the most innocuous issues on the international agenda will be contentious, as tactics in politicized fora are exploited by participants who lose sight of their real interests and succumb to the temptation of scoring propaganda points. In this climate, parliamentary diplomacy is flaccid; individual state reactions are disciplined and subordinated to group interests. Conformity becomes an ideal. There is a breakdown in articulate give and take as participants lose their ability to communicate sincerely with others who have a different view.

Greater awareness of the class interest of the Third World¹² in social and economic reform has focused attention on the capacity of the international system for a revisionist bias. The claims collected under the NIEO call can be viewed as a class action suit filed in the fora of the international community. However, the "jural relationships" in this class action may render the class suit spurious because a common relief is not sought. Indeed, there exist "class contradictions." Rich OPEC states are developing GNPs per capita rivaling those of the wealthiest industrialized nations. As with municipal civil procedure, a central dilemma is the tension between substance and form.¹³

Parliamentary diplomacy conceived as adjective law, by definition, exists for the sake of something else. To what substantive ends should procedure be a handmaiden? Parliamentary diplomacy is a means of augmenting other inducements that

Third, rules of procedure which govern the process of debate and which are themselves subject to tactical manipulation to advance or oppose a point of view. And lastly, formal conclusions, ordinarily expressed in resolutions, which are reached by majority votes of some description, on a simple or two-thirds majority or based upon a financial contribution or economic stake—some with and some without a veto.

Rusk, *Parliamentary Diplomacy—Debate vs. Negotiation*, 26 WORLD AFFAIRS INTERPRETER 121, 123 (Summer 1955).

¹¹ When extremism prevails, a Kuhnian dilemma ensues in which the two models are pitted against one another in such a manner as to make the debate circular. Each side uses its model to argue in that model's defense.

¹² See note 3 *supra*.

¹³ See Max Weber's treatment of "the insoluble conflict between the formal and substantive rationality of the law" in R. BENDIX, MAX WEBER: AN INTELLECTUAL PORTRAIT 484 (1977).

states have for conducting themselves in conformity with constitutive prescriptions. These inducements include the admonitory effect of the substantive law (e.g., duty to adhere to the doctrine of *pacta sunt servanda*), minimizing uncertainty by resolving legal and extra-legal controversy, and the avoidance of costs resulting from a failure to give effect to the goals of constitutive law.

In pleading for a greater share of the global wealth, the G-77 perceives itself to be presenting the historic meaning of a universally-binding constitutive document, the U.N. Charter. This school of interpretation looks to the Charter's article 55, which states that the U.N. shall promote "higher standards of living, full employment, and conditions of economic and social progress and development," and article 56, according to which "all Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55." The G-77 has succeeded in promoting economic development as an overriding objective of U.N. activities. This influence on U.N. agenda formation has been engineered to a large extent through parliamentary diplomacy. However, as a decisionmaking technique, parliamentary diplomacy has been overtaxed.¹⁴ Increasingly, contemporary debates between North and South concerning the options that will promote the largest net aggregate of common interests are showing strain. Without a more systematically developed and carefully refined approach to parliamentary diplomacy, constitutive prescriptions originating from this process will exhibit little content or creativity. Much of the confusion attending contemporary discussion of items on the North-South agenda might, for example, be removed if claims were encouraged by procedural means to be posited in terms of factual differentiation rather than in the question-begging terms of "equity" and "efficiency."

Parliamentary diplomacy can be a medium for the manipulation of interdependence by competing states, individually or in groups,

¹⁴ To inquire into parliamentary diplomacy is to examine the quality of constitutive process and authoritative decision in public international law. Procedures used in multipartite fora of the United Nations system affect the critical value choices underpinning constitutive prescriptions. As a policy instrument for achieving authoritative adjustments in the effective distribution of world values, parliamentary diplomacy—when the process is working—contributes to clarity descriptively, about what values are regarded as best serving common interests of the international community. For a discussion of authoritative decision, see McDougal, *Some Basic Theoretical Concepts about International Law: A Policy-Oriented Framework of Inquiry*, 4 J. CONFLICT RESOLUTION 337 (1960).

for their own benefit. However, its democratic nature raises the policy issue of reasonableness in common interest.¹⁵ An expansion and strengthening of parliamentary diplomacy to promote reasonableness in world politics does not require the kind of centralization of power that world federalists have envisaged.¹⁶ It requires that international organizations be allowed to develop greater autonomy, not in the sense of ceasing to be "expressions of the interests of particular states or other international actors,"¹⁷ but in the sense of expressing world order interests, those long and short-term interests of states which aim, if not at maintaining the system, at least at maintaining moderation.¹⁸

Although parliamentary diplomacy rarely imposes a direct constraint on the behavior of states, it serves nonetheless as an "institutional device for communicating to the policymakers of various states a consensus of the nature of the international system."¹⁹ Thus, it can be argued that this communication function acts as an indirect constraint. Parliamentary diplomacy coordinates expectations and communicates claims that can provide states with a zone of predictability or comity. While it is beneficial for expectations in interstate relations to be synchronized, the decentralized nature of the international system is not conducive to control of uncertainty.

The pressure of a crisis-ridden system tends to put the competitively urgent above the cooperatively important. The language of the interactive model is drowned out by the language of the dirigiste model. However, proponents of the dirigiste model should not forget that public bargaining is the central function of international organization:

Depending on the politics of the Organization (U.N.) there is constantly present within it a bargaining process and potential to

¹⁵ As one commentator has noted:

International law, like all law, gains some strength from the liveliness and precision of our potential sense of guilt; but it also is supported by any expectations of the actors that their long-term interests may be convergent, or even by the expectation of each actor that his own divergent interests will prevail in the long run.

Deutsch, *The Probability of International Law*, in *THE RELEVANCE OF INTERNATIONAL LAW* 81 (K. Deutsch & S. Hoffman eds. 1968).

¹⁶ Keohane, *Institutionalization in the United Nations General Assembly*, 23 INT'L ORGANIZATION 859, 862 (1969).

¹⁷ *Id.* See also E. HAAS, *TANGLE OF HOPES: AMERICAN COMMITMENTS AND WORLD ORDER* 220 (1969).

¹⁸ S. HOFFMAN, *GULLIVER'S TROUBLES, OR THE SETTING OF AMERICAN FOREIGN POLICY* 233 (1968).

¹⁹ Coplin, *International Law and Assumptions about the State System*, 17 WORLD POL. 615, 617 (July 1965).

encourage trade-offs and compromises between opposed groups of states. For instance, the United States may exchange its support or abstention on the issue of Chinese representation. Such bargains may be tacit, implicit, or explicit. It is difficult, of course, to gain insight into the dynamics of this bargaining process and virtually impossible to acquire data on specific bargaining patterns. Nevertheless, the bargaining process that takes place in various United Nations arenas determines to a great extent the shape of action that is undertaken.²⁰

To a large extent, United Nations conferences have been ignored as an arena for discerning bargaining patterns in parliamentary diplomacy. Disciplined inquiry that does not lapse into formalistic or sentimental modes of analysis rarely is evident in the postmortem analyses done by diplomatists. Yet, the international conference is at the operational core of the sovereign state's new negotiatory life in a diplomatic topography of unbounded multilateralism. With the number and diversity of U.N. sponsored conferences growing rapidly, it would be helpful to standardize procedures for identification of conference themes and evaluation of conference outcomes and implementation. In large part, because conferences have been perceived as epiphenomenal, their significance has been framed in dirigiste terms. In other words, meaning has been conferred upon conferences *a priori* and in tandem with overarching designs. Approached as interactive devices, greater intellectual investment in the study of the politics of conference diplomacy could reap such benefits as forum cost-effectiveness, improved and more realistic policy outcomes, and insights into international agenda formation and control.

B. *The Conference Coordinate*

In 1979, 900 conferences were attended by official U.S. delegations.²¹ To be sure, the 1970s were the decade of the U.N. mega-conferences: the U.N. Conference on the Human Environment (Stockholm, 1972); U.N. World Population Conference (Bucharest, 1974); U.N. World Food Conference (Rome, 1974); U.N. World Conference on Human Settlements (Vancouver, 1976); and the U.N. Conference on Science and Technology for Development (UNCSTD) (Vienna, 1979). These conferences were billed by the U.N. as global

²⁰ Falk, *The United Nations: Various System of Operation*, in *THE UNITED NATIONS IN INTERNATIONAL POLITICS 197* (L. Gordenker ed. 1971).

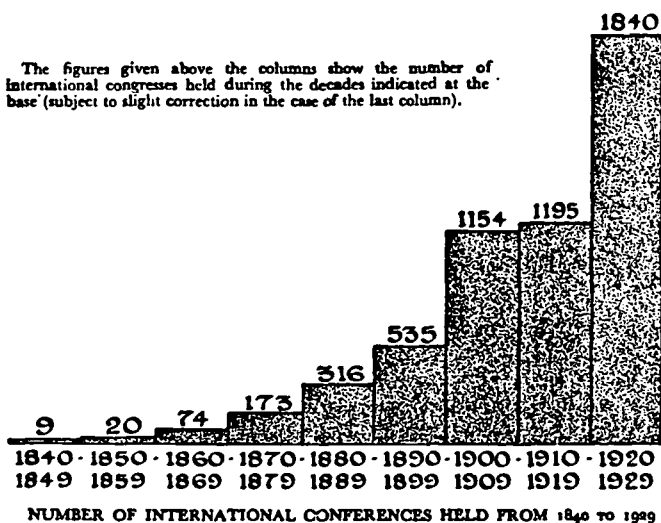
²¹ Inter-office memorandum (Dec. 7, 1979). Office of International Conferences, Bureau of International Organization, Department of State.

inquiries into alternative futures for the human race.²² The importance to the world community of the U.N. Conference on Trade and Development and the U.N. Law of the Sea Conference has conferred upon these conferences long-term institutional legitimacy. However, in the 1970s, a host of less-publicized conferences were convened, including, to name a few, the U.N. Cocoa Conference, U.N. Conference on the Standardization of Geographical Names, U.N. Conferences to Consider Amendments to the Single Convention on Narcotic Drugs, the U.N. Wheat Conference, several Regional Cartographic Conferences, and the U.N. Pledging Conference on the United Nations Industrial Development Organization (UNIDO).

If the twentieth century has witnessed a boom in conference diplomacy, this diplomatic model is not new.²³ Even before intermittent diplomacy was overtaken by permanent diplomatic representation in the fifteenth century, situations had developed in which bilateral channels were inadequate because problems often arose between more than two states. Consequently, con-

²² Report of the Secretary-General on Work of Organization, at 135, U.N. Doc. A/10001 (June 16, 1974).

²³ A pocket book on the League of Nations, prepared for "senior boys in the Public Schools" and commissioned by a subcommittee of the Head Masters' Conference, notes that "contraction of the world" had produced "notable examples of the interdependence of nations." One example is to be seen in the swift growth of the number of International Conferences, meetings of people from many countries to talk over things that concern them all. N. SMITH, *THE DAWN OF WORLD ORDER* 61 (1932). The following graph appeared in the book:



cerned parties would enter into multilateral negotiations in the form of the international conference.²⁴

In the contest of power processes and the relation of doctrines and practices vis-a-vis agreements, deprivations, and private associations to world order values, conference diplomacy offers general procedures by which international community coercion is organized and exercised. Conference diplomacy affects the outcomes of the comprehensive world constitutive process of authoritative decision.²⁵ The different types of decisions that fall under this rubric are conveniently categorized by Myres S. McDougal and Harold D. Lasswell in terms of seven functions: intelligence, promotion, prescription, invocation, application, termination, and appraisal.²⁶ In contrast to the conventional description of the different phases in authoritative decision in such terms as "legislative", "executive", "judicial", and "administrative", the categories identified by McDougal and Lasswell permit both greater precision and comprehensiveness in describing the various authority functions encompassed by conference diplomacy.

1. *The Intelligence Function*

Conferences are an important tool of discovery for both governmental and nongovernmental actors. Two central purposes of

²⁴ Procedural matters were not always resolved with dispatch. The Congress of Westphalia (1664-1668) lasted so long because, aside from the substance of negotiation, many complicated and delicate problems of procedure and precedence had to be resolved. For example, it took about five years to work out the arrangements for safe conducts and acceptable meeting places before the sessions could convene, and it required seven months to satisfy all parties regarding the "full powers" of the delegates.

²⁵ For further discussion, see Part I, § D. *infra*.

²⁶ Succinctly defined, those functions are:

- (a) Intelligence: Obtaining information about the past, making estimates of the future, planning;
- (b) Promoting: Urging proposals;
- (c) Prescribing: Projecting authoritative policies;
- (d) Invoking: Confronting concrete situations with provisional characterization in terms of a prescription to concrete circumstances;
- (e) Applying: Final characterization and execution of a prescription in a concrete situation;
- (f) Terminating: Ending a prescription or arrangement without the scope of a prescription; and
- (g) Appraising: Comparison between goals and performance.

McDougal & Lasswell, *Criteria for a Theory About Law*, 44 S. CALIF. L. REV. 362, 387 (1971). See also H. LASSWELL, A PREVIEW OF POLICY SCIENCES 85-97 (1971); McDougal, Lasswell & Reisman, *The World Constitutive Process of Authoritative Decision*, in 1 FUTURE OF THE INTERNATIONAL LEGAL ORDER 73, 131-54 (R. Falk and C. Black eds. 1969).

discovery are to narrow the issues and to obtain necessary factual information. All international conferences involve exchanges of information to a varying degree. Intergovernmental conferences specifically organized to exchange information on a certain subject or series of related subjects are somewhat similar in character to private scientific congresses. Examples are the U.N. Conference on the Application of Science and Technology to Less Developed Areas (Geneva, 1963), the U.N. Conference on the Peaceful Uses of Atomic Energy (Geneva, 1955, 1958, 1964), and the U.N. Conference on Science and Technology for Development. On a smaller scale, many committees, subcommittees, and working parties of the U.N. and the specialized agencies work for the exchange of information.

2. *The Promoting Function*

By drawing attention to issues, conferences add intensity of demand to expectation. In other words, conferences contribute to advocacy of policy alternatives. The promotion of peace has been the subject of numerous conferences, ranging from the San Francisco Conference of 1945, which decided on the text of the United Nations Charter, to the 1966 conference of the Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space, which agreed on a draft Treaty on Principles Governing the Activities of States in the Exploration and Uses of Outer Space. Ideally, the Islamic Republic of Iran could have called an international conference to air its grievances against the United States and to make known its preferred bilateral relationship rather than taking the personnel of the U.S. Embassy in Tehran hostage.

3. *The Prescribing Function*

This is a key function in the annual conferences of the major organs of the United Nations and its specialized agencies. The U.N. General Assembly, the U.N. Economic and Social Council, the Assembly of the World Health Organization, the plenary conferences of the International Labor Organization, FAO, UNESCO, WHO, ITU, etc., all serve as a forum for possible adoption of both binding and nonbinding recommendations to governments.

There are also conferences where general discussion takes place, yet where the practice of making recommendations to governments on the basis of draft resolutions submitted by delegations is exceptional. Examples are the annual meetings of the Governors of the International Bank for Reconstruction and

Development (IBRD) and the International Monetary Fund (IMF). At these meetings, a number of formal decisions relating to the operations of the IBRD and the IMF are taken. One of the principal binding decisions made, usually in the plenary conference of an organization, is approval of the budget of the organization and the manner in which it is assessed. Once this decision is made, every government is bound to pay its share according to the approved scale of assessment.

4. *The Invoking Function*

Conferences can improve access to invocation. For instance, in this context, individuals increasingly are being accorded the competence to invoke processes of transnational decision for protection of their rights. Bodies contributing to this trend include the United Nations Commission on Human Rights, the Human Rights Committee under the International Covenant on Civil and Political Rights and its Optional Protocol, the Committee on the Elimination of Racial Discrimination, the European Commission on Human Rights, and the Inter-American Commission on Human Rights. Similarly, the Governing Board of the International Labor Organization, the Executive Board of the World Health Organization and of UNESCO, the Executive Committee of the World Meteorological Organization, the Administrative Council of the International Telecommunication Union, the Executive Boards of the International Bank for Reconstruction and Development and the International Monetary Fund, the Governing Council of the United Nations Development Program, and the Executive Committee of the Program of the U.N. High Commissioner for Refugees, all routinely confront concrete situations that require provisional characterizations of events in terms of community prescriptions.

5. *The Applying Function*

Conferences are useful for marshalling consensus and for negotiating formal instruments for codifying consensus. The following are from a long list of examples:

- (a) The International Atomic Energy Agency Statute Conference (New York, 1956), which, on the basis of a draft prepared by an intergovernmental committee, considered, modified, and then approved the statute for a new international organization;
- (b) The Law of the Sea Conferences of 1958 and 1960, which

drew up draft treaties defining various rights and obligations of states; and

(c) The Stockholm Conference of 1967, where the convention establishing the World Intellectual Property Organization (WIPO) was approved.

Various periodic conferences also serve to negotiate international agreements. The U.N. General Assembly, over a period of nearly twenty years, drafted and then approved (in 1966) the International Human Rights Covenants (one on Economic, Social, and Cultural Rights and one on Civil and Political Rights). The annual conferences of the International Labor Organization often consider and approve draft conventions concerning labor matters.

The principal objective in application is to put prescriptions into controlling practice. To perform the applying function, international bodies monitor, investigate, and otherwise satisfy themselves—often by convening conferences—that prescriptions are being observed.

6. *The Terminating Function*

Budgetary appropriations often determine the continuing implementation of a prescription or mark its demise. For the U.N. Development Program, the program of the U.N. High Commissioner for Refugees, the World Food Program, and various other programs, annual conferences are held in which governments announce their voluntary contributions for the next year. On one hand, these pledging conferences provide the necessary indication of how much financial support a program will have in the coming year, and, on the other hand, they speed up the decision of each government on its financial contribution. Most governments prefer to avoid the embarrassment of informing a pledging conference that they are not yet in a position to announce their contribution.

7. *The Appraising Function*

Conferences dealing with the establishment of a new organization and the elaboration of its statute usually are confronted with a series of separate, identifiable questions of considerable importance, such as:

- (a) the criteria for admission as a member;
- (b) the rules for voting;
- (c) the relations to existing organizations working in the same or allied fields; and

(d) the powers of the organs that will govern the new organization or program.

Each of these various issues may give rise to differences of opinion. For example, on the question of membership, certain countries advocate universality of membership with any state allowed entry. Other countries advocate a more limiting entry clause, excluding states that are not members of the United Nations or of any specialized agency or that are not parties to the statute of the International Court of Justice. On voting, numerous systems are available, each having its supporters and opponents. If there is to be a clause that important questions shall be decided by a two-thirds majority vote, the definition of "important questions" can cause long and difficult discussions. There may also be efforts to write into the statute some sort of conciliation procedure prior to voting.

Discussion of the relations and the division of activities between existing organizations and the new body will find partisans of these organizations defending the latter's postulated interests. When UNCTAD was established, certain countries believed that the autonomy and work fields of GATT should be protected. The precise relationship between UNCTAD and GATT, however, was not spelled out in the resolution establishing UNCTAD. The result was a certain amount of continuing uncertainty as to the division of work between the two organizations. When UNIDO was established, existing specialized agencies concerned with certain aspects of industrialization stressed that their areas of activity should not be encroached upon by UNIDO. For example, the ILO was anxious to ensure that its extensive activities in the field of vocational training would not be affected unfavorably. This assurance was obtained by a modification of the text of the draft resolution establishing UNIDO.

The size and attributes of the organs administering a new body is another issue on which there may be a division of views. Some countries prefer that a maximum of powers be given to the all-membership organ (the "general conference" or "assembly"); others prefer that the limited-membership "executive committee" or "board" be given considerable authority. The preference may be affected by a state's estimate of the likelihood that it will be elected to the "executive committee" type of organ.

Appraising applies the intelligence and promoting functions to the continuous task of selecting policy options acceptable to the community. As a decision function, appraising bridges the interactive and dirigiste models—neither can afford to be wholly

oblivious to gaps between performance and postulated goals. By focusing inquiry on authority functions rather than on authority structures and by appraising the adequacy of decision processes to secure desired outcomes, it may be possible to achieve a more realistic perspective of the role of parliamentary diplomacy in international life.

C. *The United Nations Support Role*

Much of the responsibility for organizing intergovernmental conferences devolves upon the U.N. Despite the magnitude of conference-servicing costs, both absolutely and as a percentage of total U.N. expenditure (\$43.9 million and 16.9 percent in 1975), little attention has been given to refining procedures for determining conference-servicing requirements.²⁷

At present, the Economic and Social Council (ECOSOC) continues to coordinate the program meetings within its substantive turf. Preparation of the overall annual calendar of U.N. conferences was the responsibility of the Secretary-General from 1970 to 1975. Since 1975, this task has fallen upon the re-established Committee on Conferences, which also has responsibility for reviewing the pattern of conferences, acting on behalf of the General Assembly in dealing between sessions with requested departures from the calendar, and offering recommendations on the optimum apportionment of conference resources.²⁸

One of the most obvious problems facing the Committee on Conferences is the wide variety of subjects which come before the U.N. A conference cannot be convened to address each item that comes up. By the same token, even when a subject falls within its jurisdiction, many U.N. organs will be unqualified to consider a specific problem. Conferences, by narrowing the terms of reference on a set of issues, can attract the requisite pool of competence. This problem of diffusion is magnified for many countries, which must instruct and dispatch qualified delegations.

When you look at the hundreds of items on the U.N. agenda throughout the year in its various bodies, you suspect that there are many governments who simply do not instruct their

²⁷ U.N. Doc. E/L. 1664/Add.3 Administrative and Financial Implications of Recommendations are contained in E/L. 1664. For a discussion of multiple issues and U.N. overcommitment, see Young, *The United Nations and the International System*, in *THE UNITED NATIONS IN INTERNATIONAL POLITICS* (L. Gordenker ed. 1971).

²⁸ See G.A. Res. 3351, 29 U.N. GAOR, Supp (No. 31) 124, U.N. Doc. A/9631 (1979).

delegates on the entire spectrum of policy represented by such agenda. . . . How many nations, for example, have national interests which are sufficiently universal in scope and character as to engage them soberly and responsibly in all the principal items on the agenda.²⁹

In the economic domain, issues may have important financial or commercial implications. Therefore, except when minor matters of procedure are involved, most delegations hesitate to take definite action without clearance from their home offices. Delegations that take a position on issues with financial implications without satisfying themselves that the financial authorities of their government will in fact support their positions are placing themselves and the conference in danger of irresponsible action. Conversely, a delegation that is able to back its position with financial resources is able to play a more effective role at the conference.

Related to the problem of coordination of policy within a delegation is the difficulty of coordinating policy in a national capital among the authorities concerned. The importance of this problem was recognized early in the history of the United Nations (Resolution 125 of the second session of the General Assembly urged governments to establish appropriate procedures). In 1948, UNESCO and the International Institute of Administrative Sciences undertook a study on "National Administration and International Organizations," which analyzed some of the factors influencing instructions to delegations at international meetings.³⁰ At its twenty-second session, the Economic and Social Council adopted Resolution 630A II, which invited governments to provide information on their procedures for ensuring coordination at the national level. This survey, which was later submitted to the twenty-sixth Session of ECOSOC,³¹ contains valuable information on national coordination in respect to U.N. matters. However, ECOSOC made no comments or recommendations on the subject, which involves delicate questions of domestic government policies. If a government has a complex or decentralized system which affects the authority and speed of the central authorities in issuing instructions, it may be at a disadvantage in multipartite fora relative to governments whose national decisionmaking process is concentrated and quick.

²⁹ Rusk, *supra* note 10, at 129.

³⁰ INSTITUT INTERNATIONAL DES SCIENCES ADMINISTRATIVES, NATIONAL ADMINISTRATION AND INTERNATIONAL ORGANIZATIONS: A COMPARATIVE SURVEY OF FOURTEEN COUNTRIES (1951).

³¹ Report of the Secretary-General, U.N. Doc. E/3107 (1959).

Finally, there is the question of coordination among blocks of states. A present characteristic of the diplomatic landscape is the tendency of the G-77 to act politically in unison against the economic interests of many of its members. Among the OECD countries, the failure to act in unison economically has incurred political costs. A curious feature of Law of the Sea politics has been the degree to which those members of the G-77 that are land-locked and shelf-locked are mesmerized by their coastal brethren. At the U.N. Conference on Technical Cooperation among Developing Countries (TCDC), on the other hand, a serious coordination problem developed among Western countries, which could not even agree to meet to exchange views or to discuss substantive policy issues.³² The principal obstacle to such desirable coordination was a preconference, policy-level decision by the Scandinavian governments to avoid giving the appearance that the Western states were taking or attempting a joint approach to the substance of the Conference's work. The decision to follow "New York Rules" for OECD coordination, which are limited to procedural matters, and not "Geneva" or "Vienna Rules," which allow for substantive coordination, was particularly harmful to the West at UNCSTD a year later.

One of the principal stumbling blocks to a constructive outcome at UNCSTD was the open advocacy of the Conference Secretary-General of G-77 positions. A conference secretariat can play no less significant a role in the smooth running of a conference than individual delegations. Walter Bagehot suggested that in a constitutional monarchy, a sagacious king would only want three rights: the right to be consulted; the right to encourage; and the right to warn.³³ These rights extend fully to the secretary-general. However, the secretariat must adopt a neutral posture toward all parties if it is to maximize its utility. Gunnar Myrdal notes: "The ECE Secretariat has in a few cases even been the neutral link which has permitted government contacts that otherwise would have been difficult or impossible to establish."³⁴ That is not to say that a strong secretariat is undesirable.³⁵ Effective leadership is

³² Dep't of State Unclassified Cable No. 7208 ¶ 14 (1978). The cable, sent from Buenos Aires in Sept. 1978, was drafted by Hervy Clark, Harry Glazer, and John McDonald, Jr.

³³ W. BAGEHOT, *THE ENGLISH CONSTITUTION* ch. III (1964).

³⁴ G. MYRDAL, *REALITIES AND ILLUSIONS IN REGARD TO INTERGOVERNMENTAL ORGANIZATIONS* 23 (1955).

³⁵ A State Department survey of the U.N. mega-conferences of the 1970s included the following illustration:

especially important in giving meaning to the prescribing function in international law.³⁶

D. *As a Source of Law*

The tools and rules of international statecraft are functionally blurred. International law creates, or consists of, both, as the case may be. As with every legal system, international law is in constant flux; its adequacy, merits, and defects, like those of every legal system, depend in large measure on the foresight and originality of thought that contribute to the creation, adaptation, and perfection of the rules and institutions on all levels.

The impact of a conference via an international organization on rules and attitudes cannot be minimized. For example, on the recommendation of the International Monetary Fund, exchange transactions, yesterday punishable as black market operations, become permissible today and are, in fact, encouraged under a new financial policy. A vitally important part of parliamentary diplomacy, including its convention-making efforts, is directed at inducing changes in the municipal legal system, be it the extension of the political rights of women or the prohibition of certain types of forced labor, or the sale of narcotics, or racial discrimination, and so on.

The U.N. conference passes a resolution to establish a new international organization and endows it with certain legal prerogatives. However, to increase its authority with governments, new techniques must be developed, of which the most common to emerge (in international as in municipal government) is

Secretariat Intensity			
A	B	C	D
Statutory Position of executive head	Personality of executive head	Confidence in secretariat	Secretariat intensity
(1) strong	active	great	high
(2) weak	active	great	high
(3) weak	active	average	medium
(4) weak	passive	small	low

Memorandum at 3 (illustration II); UNCSTD Coordinator's Office, Dept. of State (June 9, 1978).

* See McDougal & Reisman, *The Prescribing Function: How International Law is Made*, 6 YALE J. WORLD PUB. ORD. 286 (1981). See also R. HIGGINS, THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITED NATIONS 5 (1963); Falk, *On the Quasi-Legislative Competence of the General Assembly*, in THE STATUS OF LAW IN INTERNATIONAL SOCIETY 174-84 (R. Falk ed. 1970).

rulemaking. The rules may be those required for operating a postal system, for governing trade relationships, for the naming or preparation of drugs, or for the classification of statistics. These vary in the degree of their *binding* quality. Some rules are totally binding and invariable obligations from which no reservation can be made, as in most ILO Conventions. Next, there are the conventions that are amended successively so that, although the obligations are binding once accepted, a party can choose the degree to which it will extend its own commitment. Several Inter-governmental Maritime Consultative Organization (IMCO) Conventions,³⁷ discussed below, are of this variety. Another type is the convention to which reservations can be made, such as that of the UPU. In addition, there are the recommended practices, for example in the International Civil Aviation Organization (ICAO). Furthermore, compliance with ILO recommendations is urged, but not obligatory.

Perhaps the most important element that affects the character of the rulemaking authority is the nature and persistence of the *pressures* which can be brought to bear at a later stage to secure conformity. These may have more effect than constitutional rules in determining the degree of authority gained. Examples of pressures include organized cross-questioning and confrontation employed in ILO and WMO, implementation procedures used in ICAO, demands for regular information and subsequent questioning used in WHO, direct committee action to secure observance of the Convention on the Elimination of Racial Discrimination, expert and independent monitoring and assessment as used in ITU, surveillance and cross-questioning used in IMF, and on-the-spot inspection as used in the International Atomic Energy Agency (IAEA).

Rulemaking, however, is only the first and most basic technique developed. Another is that of *standard-setting*: the promulgation, not of explicit and definite rules, but of a general level of attainment within a particular field. Some of the standards laid down by ICAO and ILO are of this variety, as are many of those established in the field of human rights. They allow a greater degree of latitude in the *manner* by which a standard is achieved than a rule; this usually means that the obligations are looser (and sometimes easier to evade). Many of the same techniques are used to ensure compliance with rules in the applying function: confron-

³⁷ See note 40 *infra*, and accompanying text.

tation, cross-questioning, and regular reports. But because the tests of compliance are more vague, because verification procedures are often lacking, and because in some cases the areas concerned are more sensitive politically, it is doubtful that such a high degree of compliance usually is attained.

A useful index of conference effectiveness is its impact not as much on national policies as on legal codes. The codification of international legislation ranges from the other-worldly (1974 Convention on Registration of Objects Launched into Outer Space) to the viscerally mundane (1948 Convention on the Prevention and Punishment of the Crime of Genocide). The evidence would suggest that the U.N. specialized agencies have had considerable impact on states via standard-setting and rule-promulgating, as well as on discovery procedures. Indeed, at TCDC, these organizations were excluded from the Conference Working Group and its smaller Contact Group because they had perturbed the G-77.

The ILO, in particular, has been very effective. Its General Conference, which met in Geneva in June 1976, approved measures to strengthen the impact of ILO labor standards. At that conference, ninety-four cases of progress were reported by fifty-five countries that changed their law or practice as a result of ILO interventions. However, the Conference discussed problems that had arisen in forty-eight countries. It observed that sixteen countries had not supplied required information that year. The Conference Committee on the application of Conventions and Recommendations drew attention to problems of implementation of specified ILO standards in Ethiopia, Haiti, Indonesia, Liberia, the Philippines, Uganda, USSR, Tanzania, and Uruguay. Its formal requests that their governments make every effort to ensure real progress are a stinging form of public chastisement.

Conferences often are important redirectional devices for U.N. agencies. For example, the World Employment Conference, which also met in Geneva in June 1976, called on the ILO to establish a worldwide program in support of household surveys to map the nature, extent, and causes of poverty, to help countries establish the necessary statistical and monitoring services, and to formulate basic needs policies and to measure progress toward their achievement. A Declaration of Principles and Program of Action directed the ILO to make its technical services available to member countries in carrying out policies for technology choice, migration, and adjustment assistance. The Director-General of ILO, Francis Blanchard, summing up the results of the Conference, noted that the basic needs strategy was backed

unanimously and he predicted that it would become a touchstone for development policies.³⁸ Evidence exists that it has had considerable impact, particularly on donor foreign aid programs.³⁹

The interface between the conference, the international organization, and legal codification is illustrated clearly in the establishment of a stable international forum to induce greater interstate cooperation in sea transport. The Inter-Governmental Maritime Consultative Organization (IMCO) was conceived at the U.N. Maritime Conference in Geneva in March 1948. However, it was not until 1958 that the IMCO Convention requirement that it be ratified by twenty-one states was met. Since becoming operative, IMCO has played an active role in the promotion of maritime safety.

This effort is typified by a number of international conventions of which IMCO is custodian and which have been drawn up at diplomatic conferences convened by IMCO. These include the International Convention for the Safety of Life at Sea (the SOLAS Convention), the International Convention on Load Lines, and the International Convention on Tonnage Measurement of Ships. It is interesting to note that the last of these was a thorny problem, which IMCO inherited from the League of Nations and which the organization resolved successfully in 1969 after ten years of gruelling work.

IMCO also has drafted several codes relating to general safety standards, which as yet do not have mandatory force. Among these are the Code for the Construction and Equipment of Tankers, the Code for the Construction and Equipment of Ships carrying Dangerous Chemicals in Bulk, and the Code for the Construction and Equipment of Ships carrying Liquefied Gases in Bulk (the "Gas Carrier Code").

To promote maritime safety, internationally agreed upon standards are necessary for the safe loading and stowage of cargoes. Here, IMCO's major contribution is the International Maritime Dangerous Goods Code, which has achieved worldwide recognition throughout shipping industries. In that massive tome, which is updated constantly to keep pace with the appearance of new products, dangerous goods are classified according to their inherent properties and hazards, and comprehensive guidelines are given on their packaging, labelling, handling, and stowage. Other types of cargo are covered by the Code of Safe Practice for Bulk

³⁸ 13 U.N. CHRONICLE 42 (July 1976).

³⁹ See, e.g., U.S. AGENCY FOR INT'L DEV., AGRICULTURAL DEVELOPMENT-POLICY PAPER (1978).

Cargoes (dealing with ores, ore concentrates, and similar commodities) and the Code of Safe Practice for Timber Deck Cargoes. Again, these codes are recommendatory in character.⁴⁰

Finally, rules have to be framed to regulate navigation at sea to prevent collisions. Here, the International Regulations for Preventing Collisions at Sea are the principal tool; they were extensively revised by IMCO and given the status of a Convention in 1972 at a conference convened by IMCO. IMCO is endeavoring, in collaboration with the ILO, to draw up minimum international training and certification standards to be debated at a conference in 1981.

In 1954, the United Kingdom convened a conference to consider the urgent question of controlling marine pollution caused by oil discharged from ships—a growing menace stemming from the switch from coal to oil both as a means of ship propulsion and as an industrial fuel. The resulting instrument—the International Convention for the Prevention of Pollution of the Sea by Oil (1954), designated IMCO as its depositary as soon as the organization should come into being. Thus, IMCO has been active on the legal aspects of marine pollution. Three instruments adopted under its aegis testify to the success of its efforts: the 1969 Convention relating to Intervention on the High Seas and its 1973 Protocol (dealing with the rights of States to take action on the high seas against the threat of pollution to their coasts and amenities), the 1969 Convention on Civil Liability for Oil Pollution Damage, and the 1971 Convention on the Establishment of an International Compensation Fund for Oil Pollution Damage (covering the payment of adequate compensation for damage which States or individuals may suffer). These instruments are the direct results of IMCO's post-Torrey Canyon program.

II. GOAL CLARIFICATION

A. *The New Diplomatic Topography*

A diffusion of power⁴¹ and the accelerated development of a global economy have altered diplomatic topography. A participation explosion in international life has been accompanied by a quantum increase in the competence of foreign diplomatic resources. Another consequence of increased participation is a

⁴⁰ Meetings of the Committee of Experts on the Transport of Dangerous Goods are convened regularly and result in reports by the Secretary General to ESCOR. See, e.g., Program of Work of Committee on Transport of Dangerous Goods. U.N. Doc. E/L.1664/Add.5 (1975).

⁴¹ For an extended discussion on this subject, see W. ROSTOW, *THE DIFFUSION OF POWER* (1972).

more complex world characterized by "all-at-onceness" in time and place. For a state to rely totally on the homeostasis of world diplomacy would be foolhardy. If the international system is to maintain its stability, it will not be due to some miraculous self-adjusting property. Rather, the procedures that facilitate interactions among states will require strict and universal adherence. For the OECD countries, a condition precedent is overcoming a peculiar paradox. In the past, they praised international institutions and tended not to use them. Today, they use them and tend not to praise them.⁴²

On the village level, development do-gooders have learned that in introducing a common privy, one villager is not going to avail himself of this facility if his neighbor disregards it.⁴³ The collective good of a more sanitary village does not come about with minority compliance. The effectiveness of the U.N. at the level of the global village is analogous to the village privy. It has been observed:

A moderate international system will be one in which global international organization plays a major role in the muting of conflict and the spread of cooperation only if, in the first place, there exists a broad procedural consensus among states which makes of multinational institutions the legitimate channels for the management of conflict and cooperation . . . and if in the second place, there exists a preference for universal channels over regional ones.⁴⁴

Disillusionment with procedural pitfalls could lead to irreparable damage to the relevance of the U.N. system. Already, there are signs of willingness to work outside the U.N. A World Food Council, the product of the 1974 Food Conference called by the U.N. General Assembly, is operating outside the U.N. Similarly, the Law of the Sea Conference is discussing establishment of an international seabed authority independent of the United Nations.

For some time, effective parliamentary diplomacy will be viewed by many as quixotic. Joseph Nye and Robert Keohane posit:

The idea that the United Nations should develop a capacity to monitor, mediate, and establish norms for transnational economic activities is an excellent one. The idea of employing the tired old institution of conference diplomacy is a mistake.

⁴² The author is indebted to Charles Maynes, former Assistant Secretary of State for International Organization, for this point.

⁴³ Lecture by John D. Montgomery, Kennedy School of Government, Harvard University (Oct. 10, 1979).

⁴⁴ Hoffman, *International Organization and the International System*, 24 INT'L ORGANIZATION 389, 390 (1970).

Given the political schisms of today's world, the classic model of the diplomatic conference with a closely associated secretariat is bound to drive the developed countries to create 'shadow' institutions where 'business' can be done.⁴⁵

Nonetheless, there is a present need for effective multilateral structures and for what has been called a "third try at world order."⁴⁶ This global process, a combination of bargains, systems, and arrangements, must be approached in the interactive model. In the absence of a consensus to entrust any state or group of states with responsibility for world governance, the temptation to go the dirigiste route must be resisted, despite problems which apparently will yield only to world-scale solutions.

An environment for constructive bargaining cannot avoid multilateralism. Harlan Cleveland presents the analogy that "a diplomacy built on bilateral relations would be like mathematics without the zero."⁴⁷ The centrality of multilateralism is partly a function of the sheer number of actors in international relations; as the number of countries increases one by one, the relationships grow by logarithmic leaps. It is often a matter of simple efficiency to deal with a group of states on whatever affects all members of the group.⁴⁸

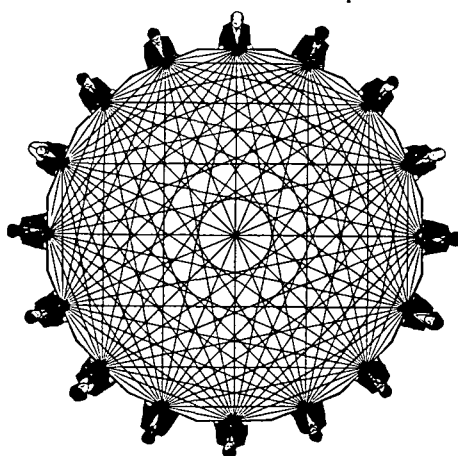
⁴⁵ Keohane & Nye, *Transnational Relations and World Politics: A Conclusion*, in *TRANSNATIONAL RELATIONS AND WORLD POLITICS* 397 (R. Keohane & J. Nye eds. 1972).

⁴⁶ H. CLEVELAND, *THE PLANETARY BARGAIN: PROPOSALS FOR A NEW INTERNATIONAL ECONOMIC ORDER TO MEET HUMAN NEEDS* 1-16 (1975).

⁴⁷ Cleveland, *The Management of Multilateralism*, MURPHY COMMISSION REPORT 209 (1975).

⁴⁸ The figure below shows that it would take 120 bilateral talks among 16 countries to duplicate the accomplishments of one multilateral negotiation.

120 Bilateral Relationships



The problem, in part, is that multilateralism traditionally has occupied a low position in the hierarchy of leadership stances. The command posture implicit in hegemony and the go-first attitude of unilateralism take precedence over the process of informed consent that leadership connotes in multilateralism. It is difficult to dismiss the notion that multilateralism means immobilization.⁴⁹ In the literature, parliamentary diplomacy often is treated as a closed universe. Yet, this technique of authoritative decision follows the same curve as the study of international law or the law of war. Therefore, it is essential to discern the patterns of cooperation and of muted conflict whose nature, evolution, and outcomes cannot be separated from the global constitutive process.⁵⁰ The conference may be viewed as a "surmising forum," to borrow Jouvenel's term,⁵¹ through which to appraise the viability of each proposed policy nexus and to discover and define the viability of new orders of relations.

B. *Parliamentary Diplomacy and the United States*

The NIEO class action led President Carter, shortly after he took office, to commission Presidential Review Memorandum (PRM) 8 on North-South issues, among fourteen other PRMs that addressed foreign policy concerns. The American public was reminded that "ultimately only America has the power to shape a hostile world for itself."⁵² Does accentuation or neglect of as central a forum of populist participation as parliamentary diplomacy contribute to shaping a hostile world? How does parliamentary diplomacy affect the shaping of United States foreign policy at home and abroad?⁵³

In the full flush of American power and opportunity following the Second World War, American diplomacy could absorb, when it chose, the cost of multilateral neglect. With the rest of the globe

⁴⁹ Quadeer, *The Futility of World Conferences*, 19 INT'L DEV. REV. 13 (1977).

⁵⁰ Oran Young remarks: "Throughout the history of the United Nations the impact of the systemic environment on the Organization has far surpassed the impact of the Organization on the system." Quoted in Young, *The United Nations and the International System*, 22 INT'L ORGANIZATION 902 (1968). Yet, underlying the establishment of the U.N. was the perceived need for a mechanism to maintain a minimal level of moderation. Consider the concept of "minimum world public order" developed by McDougal and Lasswell. See e.g., M. MCDUGAL, *STUDIES IN WORLD PUBLIC ORDER* (1960).

⁵¹ B. JOUVENEL, *THE ART OF CONJECTURE* 277 (1967).

⁵² Brzezinski, *U.S. Foreign Policy: the Search for Focus*, 51 FOREIGN AFFAIRS 708, 726 (July 1973).

⁵³ See Plischke, *A More Open Diplomacy vs. Greater Secrecy*, 34 FOREIGN SERVICE J. 31 (April 1957).

in ruins, the United States accounted for sixty percent of the world's industrial production, fifty percent of its military spending, and a commanding share of its monetary reserves. In this context, the task of American foreign policy lay primarily in deciding, in *American* fora, what policies would be pursued rather than how to persuade others to adopt these policies. With the passing of this golden age, Dean Acheson's metaphor "present at the creation" can be resurrected.⁵⁴ The United States finds itself in a new diplomatic epoch, the inauguration of which has been cumulative rather than sudden, oblique rather than frontal. A creeping interdependence has transformed the diplomatic topography. Due to a "redistributed bargaining power on a number of key issues . . . the United States today has to negotiate for what it gets on many issues."⁵⁵ Thus, for the first time, the United States must contend seriously with the costs and benefits of parliamentary diplomacy.

1. *A Systematic Approach*

State Department officers are being forced to consider whether the international conference, for policy planning purposes, fully exploits its policy space. To determine the effectiveness and potential of the international conference various questions should be addressed. In an organizational context these include:

- (a) What kinds of leadership (*e.g.*, secretariat, presiding officers, delegations, geopolitical groups) are central to the conference diplomacy process in achieving the preferred outcome?
- (b) How does the composition of individual delegations impact on conference output and how should delegation members be selected?
- (c) How do Nongovernmental Organizations (NGOs) and their "anti-conference" affect the preferred outcome?
- (d) What tactics can be deployed to skirt contentious, often extraneous issues?
- (e) How important are negotiated and documentary preparations to the preferred outcome?

In the context of domestic inputs and the substance of conference diplomacy, questions include:

- (a) How much Congressional input is desirable?

⁵⁴ D. ACHESON, *PRESENT AT THE CREATION: MY YEARS AT THE STATE DEPARTMENT* XVII (1969).

⁵⁵ Manning, *The Congress, the Executive and Intermestic Affairs*, 55 *FOREIGN AFFAIRS* 306, 308 (1977).

- (b) Are inter-agency committees for conference preparation up to the task of policy integration?
- (c) Must issues be framed in national security terms, usually imputed to a crisis-politics paradigm, before bureaucratic consensus-building warms up to the challenge?
- (d) Is the present screening process for the U.S. initiatives put forth at U.N. conferences adequate?
- (e) Is it possible to arrive at a creative balance between domestic and foreign policies in the face of strong domestic NGO opposition to a conference?

Among the questions that should be asked in evaluating conference diplomacy outputs are:

- (a) What criteria should be used to evaluate conference outcomes?
- (b) Have recent U.N. mega-conferences measurably influenced U.S. policy?
- (c) What is the U.S. track record on follow-up of conference outputs?
- (d) How does U.S. performance in preparing and otherwise responding to the conference diplomacy agenda compare with other countries? How can U.S. performance be improved?⁵⁶

This kind of self-questioning is a necessary prelude to administrative reform. It reflects an uneasiness with the outcomes of both substantive and procedural policies. On July 9, 1975, for example, Barbara M. White, while representing the United States at the U.N. International Women's Year Conference in Mexico City, cabled enthusiastically: "The U.S. achieved its principal objective: passage of a world plan of action."⁵⁷ The cable concerned a conference in which the U.S. had to vote against the final declaration because the very weak language about women's rights in its text was buried in an avalanche of accusations on extraneous subjects. Similarly, a cable from the U.N. Population Conference in Bucharest, which had ended in precisely the same manner, reported that the United States realized its principal objectives.⁵⁸ Shortly after being charged with responsibility for U.S. representation at the U.N. Law of the Sea Conference, Elliot Richardson observed that the State Department had not developed consistent

⁵⁶ Agenda questions prepared by the author for a Round Table on Conference Diplomacy in the Seventies at the Dept. of State, Nov. 27, 1978.

⁵⁷ Dep't of State Unclassified Cable No. 6716, ¶ 3 (1975).

⁵⁸ For a strident critique of United States parliamentary diplomacy, see Luttwak, *Masochism at the UN*, THE NEW REPUBLIC (Dec. 16, 1978).

or comprehensive instructions for U.S. delegations to multipartite fora.⁵⁹ The need for uniformity extends beyond preparations for multilateral negotiations.

Traditionally, the romance with inputs in conference diplomacy has overshadowed the more central consideration of conference outputs. This observation is supported by the absence of any kind of evaluative process for assessing conference outcomes. Although each conference has its own life, such a taxonomy could be devised, notwithstanding the varying substantive topics.

A key component of conference planning and evaluation in the future should be a framework for conference preparations which:

- (a) defines conference inputs, outputs, purposes, and preferred outcomes in objectively verifiable terms;
- (b) hypothesizes the causal linkage between inputs, outputs, purpose, and preferred outcome;
- (c) articulates the assumptions, *i.e.*, external influences and factors that will affect the causal linkages; and
- (d) defines the indicators that will permit subsequent measurement or verification of achievement of the defined outputs, purpose, and preferred outcomes.

A Conference Performance Tracking System (CPTS) could be developed for tracking the actual versus the preferred outcomes of conferences. The CPTS would entail (a) the preparation of a network chart that relates performance indicators to each other and to time and (b) the use of the chart as a basis for conference monitoring and reporting. Such a system would contribute to the effectiveness of the preparatory stage of conferences by entering detailed conference histories into the pool of resources from which planners might draw.

2. *Conference Preparation*

At present, a scope paper is prepared by every U.S. delegation to major international conferences. This document usually emphasizes the proscriptive rather than the normative; what should not happen at the plenary rather than what should. Cables from U.S. delegations reporting the outcomes of several recent mega-conferences reflect this vagueness of purpose when they begin: "The U.S. achieved all its principal objectives." It would be more helpful if objectives are identified positively at an early stage and

⁵⁹ Sanger, *Richardson on the Art of Negotiation*, Harvard Crimson, Dec. 1, 1978, at 1, col. 4.

stated in explicit and precise terms that are objectively verifiable, regardless of whether these terms are quantitative or qualitative.

To be effective, the essential elements of evaluation must be incorporated into conference preparations at the earliest stages, thereby assuring that the strategy will permit and facilitate measurement of progress toward preferred outcomes and determination as to why the conference is or is not achieving its preferred outcome. Conferences need a definable set of objectives that can be distinguished from indices.

For greater emphasis on the key issues, it would be useful to design a code that indicates the purpose of individual conferences. The primary reason(s) for convening a conference is not always evident from its agenda. The use of purpose codes is intended to (a) encourage greater focus by conference coordinators on purposes and preferred outcomes, (b) facilitate information retrieval within bureaucracy, and (c) permit government hierarchies to assign shadow costs to conference-related initiatives. Purpose codes could improve screening of initiatives and budgetary provisioning because conference purpose rather than conference composition would be the basis for determining the appropriation from which activities would be funded. Only on rare occasions have U.S. delegations attended conference plenaries with approved budgetary allocations for the proposals in their pockets.

A carefully elaborated purpose code would help synchronize expectations. In the field of Science and Technology for Development one could envisage the following purpose code summary titles:

- (a) Science and Technology Policy
- (b) Science and Technology Education
- (c) Science and Technology Institutional Development
- (d) Technical Information and Transfer
- (e) Appropriate Technology
- (f) Natural Resources Assessment and Management
- (g) Environmental Affairs
- (h) Energy
- (i) Applied Research

In turn, each of these rubrics can be disaggregated. Applied Research, for example, consists of the following:

- (1) diffusion of applied research performed by governments;
- (2) diffusion of applied research performed by universities;
- (3) diffusion of applied research performed by industry;
- (4) diffusion of applied research performed by international research institutions; and

(5) diffusion of applied research performed by institutions other than the above.

Of course, the issue of analytic determinacy does not by itself resolve the question in the appraising function of whether the postulated objectives are normatively desirable.

C. *Crisis and Mood Politics*

The purpose of a conference, no matter how central, intersects its political and historical context. We are constantly reminded that bureaucratic inertia can be shaken off when issues are framed in a national security calculus, *i.e.*, where a crisis politics paradigm prevails. The language of this model appeared in an article by Joao Frank da Costa, Secretary-General of the U.N. Conference on Science and Technology for Development (UNCSTD):

Developed countries so far have expressed little enthusiasm for the concepts of a New International Economic Order. I believe, however, that this may well be the last realistic attempt to achieve amicable and acceptable international relations. The only alternative I see is a new wave of distrust and disruption between developed and developing countries, in which everyone is bound to lose and obviously the 'haves' even more than the 'have nots.' Attempts to retain the monopoly of science and technology in the developed nations must result in a politically explosive situation and a threat to world peace.⁶⁰

Crises increase the benefits and lower the risk of governmental action. Predictably, conferences are most successful in achieving targets at the output level when a crisis politics model holds. This was the case at the U.N. World Food Conference, where the crisis proportions of the world food situation improved the prospects that collective benefits would be internalized by all parties. Perceptions of crisis have contributed to the formation of coalitions of nongovernmental organizations (NGOs), which have made their presence felt at several United Nations conferences, notably the Stockholm Environment Conference. Coalitions promise to have an even greater impact in the future as their networks and worldviews are internalized by governments. NGOs also are responsible for recruitment of participants on the periphery and provide an organizational center of gravity. They play a critical role in generating a new mood, especially when media-related NGOs become involved.

⁶⁰ Da Costa, *Instruments for Development*, BULL. ATOM. SCIENTISTS 56 (Oct. 1978).

The distinctive feature of the mood politics model, besides its strong norm-creating influence, is its characteristic capacity for exerting clarifying movement. In accordance with a U.N. General Assembly resolution, the Committee on Science and Technology for Development set up an intergovernmental group that gave priority in its preparations for UNCSTD to the objective of "providing a common definitional basis for understanding and comparing the scientific and technological activities related to development of the developing countries, conducted in the developed and developing countries."⁶¹ The importance of generally agreed upon definitions is obvious if delegates to conferences are not to talk past one another. John W. McDonald, Jr. relates that when he chaired the U.S. intra-governmental group that prepared for Stockholm, his first order of business was to arrive at a definition of "environment" acceptable to all. Initially, he received twenty disparate definitions from the same number of mission-agencies represented.⁶²

Although the global plan of action that may surface in the flood of ideological verbiage at an international forum is often not likely to be implemented, parliamentary gatherings, such as the major U.N. conferences in the 1970s, did generate a global awareness of certain dangers that threaten all states. Beyond brute empirical facts and naked statistics, these conferences conjured a mood with their clarion calls for international cooperation. By the same token, conferences may perpetuate and diffuse global mythology or, less euphemistically, globaloney.⁶³

The conjuring of a mood on a global scale defies crisp analysis. We know that it occasionally draws heavily on an international law sensibility and vice versa. Indeed, the mood created must infiltrate international law, defined as "a kind of long-range consensus on the limits, rights, duties and possibilities of joint action by states."⁶⁴ Moreover, this mood can affect the discrepancy between

⁶¹ E.S.C. Res. 1949, U.N. ESCOR, Supp. (No. 1) 10, U.N. Doc. E/5683 (1975).

⁶² Interview with John W. McDonald, Jr., U.S. Ambassador to TCDC (Dec. 12, 1978).

⁶³ The implication of much of what was said at the World Population Conference in Bucharest in 1974 was that a sufficient rate of development will solve any population problem in time. But what precisely is a "sufficient rate of development"? It clearly is not overall average economic growth, which so frequently benefits the few and bypasses the many. Most countries in Latin America, for example, have considerably higher per capita income than countries in Asia and Africa. Yet fertility rates are not proportionately lower. That, in part, is a function of the serious inequalities in income distribution in the Latin American region.

⁶⁴ Hoffman, *International Law and the Control of Force*, in *THE RELEVANCE OF INTERNATIONAL LAW*, *supra* note 15, at 36.

how states actually behave and how the rules prescribe that they ought to behave.⁶⁵ By influencing the general consensus about reality, parliamentary diplomacy facilitates the external environment's adjustment to international law.⁶⁶ However, when parliamentary diplomacy and other devices of the United Nations mood creation apparatus read into political reality transparent fictions, the external environment's synapses of transmission become overtaxed and law development is retarded.⁶⁷ Mood creation with this denouement is dysfunctional. The United Nations is weakened because its attempts at policy conditioning are unrealistic;⁶⁸ the perception that the state is above the law is reinforced.

It may be helpful to devise a typology that both student and practitioner of conference diplomacy can use when looking at individual conferences. A crude set of models might include characterizations of mega-conferences as legislative forum (legal model), as all-inclusive summit (political model), as corporate board meeting (commercial model), or as scientific gathering (technical model). These models entail trade offs that affect expectations and outcomes, as was illustrated in Buenos Aires by the U.N. Conference on Technical Cooperation among Developing Countries (TCDC). On several occasions, items more properly addressed by such fora as UNCTAD V and UNCSTD surfaced only to be skirted. Because TCDC was clearly lodged in the scientific gathering model, consensus was reached to sidestep these contentious items. This kind of agreement is an important element in isolating the key issues a conference will address. Just as political summits usually are technically sanitized, it is desirable that technical gatherings be depoliticized. Granted, the political-technical tension is not so easily dismissed with a model.

The conference as a particular kind of model does affect the composition of delegations. In the technical model, experts and not generalists will prevail. In the commercial model, greater transparency of the government/private sector relationship could

⁶⁵ Richard Falk reminds us: "[P]erfect compliance suggests the triviality of a rule. . . . If there is no pressure on the rule, there would be no social function for it." Falk, *Janus Tormented: The International Law of Internal War*, in *INTERNATIONAL ASPECTS OF CIVIL STRIFE* 230 (J. Rosenau ed. 1964).

⁶⁶ At any given point, reality equals status quo plus attempts at, or ideas about, changing it.

⁶⁷ G-77 attempts to impose undue restrictions on transnational corporations and other attempts to facilitate technology transfers come to mind.

⁶⁸ The Zionism equals racism analogy is illustrative.

result in a more coherent policy outcome. In the political and legal models, national parliamentarians could be expected to play a greater role, bringing to bear their parliamentary skills. Indeed, it is this last model, with its crosscutting implications and attempts by militant G-77 spokesmen to "legislate" their maximum aims, that merits greatest attention.

The challenge of parliamentary diplomacy, therefore, is not the inevitable tension with political reality, but the *nature* and *scope* of this tension. The G-77, in seeking to inculcate international consciousness of its class interest in international institutions cannot, for instance, extrapolate from dirigiste economic policies in Third World domestic orders. To presuppose that governments in countries with free-market economies can contravene the legal protection accorded to proprietary information in order to facilitate technology transfer to the developing world is an inference of transformation, *i.e.*, wishful thinking. Yet, from the dirigiste perspective of the G-77, the requirements of order at times appear secondary in a milieu that needs maximum normative correction. Reform to gain equality of opportunity takes priority over stability, particularly when the structural institutionalization of dependence is perceived as encompassing all areas of interaction between North and South.

III. TRENDS AND FUTURE PROSPECTS

A. *Parliamentary Diplomacy in the Nondecisionmaking Paradigm*

It can be argued that any inquiry into parliamentary diplomacy deals as much with how United Nations decisions are *not* made as with how they are made. Because multipartite fora are discerners of majorities and not consistencies, the problem, in part, is structural. Every majority is temporary. Yesterday's old majority becomes today's new minority and usually retains enough clout to block the wishes of the new majority. However, the analogy to domestic legislative deadlock is limited.

The concept of majority rule is problematic in world politics, particularly when it draws on the fiction of a world community able and willing to make of the U.N. a sanction-wielding force. The G-77 should be able to see through this Sorelian myth, having banded together in part as a reaction to superpower attempts to rally a majority against its rival and to enlist the U.N. behind its own policies. Illusions have their virtue when they inspire action. The fiction of a world community has made it possible for the

organs of the U.N. to concern themselves with most of the important political and economic issues that agitate the international system and to promote that equalization of concern which is a rudimentary, first factor of homogenization in a highly diverse and uneven world. Yet, as a result, a gap between attempts and achievements, resolutions and resolution, motions and motion, has appeared—a gap no less frustrating than the original Charter's gap between legal possibilities and political aspirations. The majoritarian illusion has been short lived. An obvious discrepancy between votes and compliance developed almost as soon as the Uniting for Peace Resolution was adopted. Thus, the resolution was never fully put into effect insofar as collective security was concerned.

Symptomatic of a paralyzing majoritarianism is the growing tendency to arrive at decisions in the U.N. with little or no regard to previous U.N. decisions or to established conventions.⁶⁹ When not stonewalling, the New Minority⁷⁰ is engaged in damage-limitation exercises at international fora. A classic illustration of this defensive posture is reflected in the following wrap-up report filed by the U.S. delegation to the U.N. Conference on Technical Cooperation among Developing Countries (TCDC):

The U.S. achieved its major objectives which were to present a positive, helpful, and forthcoming position towards TCDC; prevent the conference from addressing broad economic cooperation issues; prevent the intergovernmental overview committee for TCDC from changing the character and composition of the U.N. Development Program's Governing Council, and avoid the creation of a TCDC Fund.⁷¹

Even a cursory review of the dynamics of conference nondecisionmaking shows the extent to which (distinguishing between key and routine political decisions in decisionmaking of concrete

⁶⁹ Lauterpacht wrote of U.N. resolutions:

Whatever may be the content of recommendation, and whatever may be the nature and circumstances of the majority by which it has been reached, it is nevertheless, a legal act by the principal organ of the United Nations which members of the United Nations are under a duty to treat with a degree of respect appropriate to a resolution of the General Assembly.

South-West Africa Voting Procedure Case, [1955] I.C.J. 120. This respect, according to Lauterpacht, includes the consideration of the resolution in good faith and the offering of detailed reasons for any decision to reject it. *Id.*

⁷⁰ The New Minority is comprised of the Western powers, who are perceived by the G-77 as status quo actors with a retentionist bias.

⁷¹ Dep't of State Unclassified Cable No. 7208, *supra* note 32, at 1.

issues) the New Minority still influences those community values and those international institutions that tend to limit the scope of actual decisionmaking to "safe" issues.⁷² Nonetheless, alarmists in the OECD countries have reacted sharply to majoritarian bullying at the U.N.⁷³ Power, after all, has been defined as "participation in decision-making,"⁷⁴ and the G-77 cannot be accused of maintaining a low profile at international fora. Therefore, at least a *prima facie* argument can be made that the South has accrued some power relative to the North. What nonhistorical alarmists have failed to take into account in their concern over the greatly increased voting strength of the G-77 is that this putative power has been extant for some twenty years without any drastic alterations in the international system. In other words, from a parliamentary perspective, the challenge is new neither in origin nor in appraisal. This was evident as early as 1961:

It is simply not practical politics to suggest that the majority in the United Nations can impose its will on any minority. The Assembly is not the parliament of man; it does not pass legislation which becomes the law of nations. Essentially, it is a form of diplomatic activity which seeks to mobilize the widest possible support for recommendations as to how international affairs should be conducted. The best resolutions are those which result from close consultation involving all the main groups in the Assembly. The least effective are those which are pressed to the vote in the face of known and determined opposition. The United Nations acts more effectively when it serves to bring about an accommodation of the various national interests through negotiation and agreement. It is not effective and may not survive if any majority seeks to ride roughshod over minority opinion.⁷⁵

In contrast, Professor Rostow dignifies the U.N. with the parliamentary analogy but introduces a critical qualification:

The main function Parliament served in the past, and that of the United Nations today, is to develop and express a public opinion, the ultimate source of governmental policy in a free society, and the indispensable condition of public action. The crystallization

⁷² See, e.g., C. PAYER, *THE DEBT TRAP: THE INTERNATIONAL MONETARY FUND AND THE THIRD WORLD* (1974).

⁷³ Much of this literature parodies Moynihan, *The United State in Opposition*, *COMMENTARY* (March, 1974).

⁷⁴ H. LASSWELL & A. KAPLAN, *POWER AND SOCIETY* 76 (1950).

⁷⁵ Address by G.S. Murray, Carleton University, Ottawa (Jan. 7, 1961).

of opinion—the expression of a collective will—remains among the vital responsibilities of all parliaments, including those which possess legislative power and other powers of government. It is not a negligible public responsibility. But it should not be confused with the power to govern.⁷⁶

Indeed, if, as Woodrow Wilson reminded us, a parliament is etymologically and unavoidably a “grand parley,”⁷⁷ then the U.N. certainly fits the bill. However, Professor Rostow’s caveat must be underscored: the power to govern continues to devolve upon the sovereign state, an entity mentioned in the U.N. Charter no fewer than thirty-one times.

B. *Aligning Expectations*

A central task for diplomatists is to coordinate state expectations and to make U.N. conferences more predictable. Parliamentary diplomacy must be shielded from excessive expectations. It is not only idealistic but counter-productive to expect from it, and from the institutions built under it, results which it cannot bring about. International parliaments cannot abolish famine and conflict, inequity and revolution—just as municipal parliaments have not succeeded in eliminating such domestic imperfections as crime and social injustice. As noted earlier, parliamentary diplomacy creates a framework for patient and constructive endeavors.

Perhaps one of the most taxing concerns of the international community involves the transfer of resources from rich states to poor states. Increasingly, the U.N. is developing into a global welfare agency.⁷⁸ Harlan Cleveland states:

The United Nations has staked out a clear jurisdiction in a few important fields. The U.S. foreign aid program used to be the biggest external contributor to the economic growth of less developed lands; the U.N. system, including the World Bank, is now far and away the largest contributor of grants and loans for development. . . . The United Nations has also sponsored a series of conferences which in the perspective of history may be seen as historic. These great sensitivity training sessions, despite the rhetoric of ‘action programs,’ are not really called to ‘do’

⁷⁶ E. ROSTOW, *LAW, POWER AND THE PURSUIT OF PEACE* 6 (1968).

⁷⁷ *Id.*

⁷⁸ For a discussion of the political nature of U.N. economic and social activities, see Gordenker, *The United Nations and Economic and Social Change*, in *THE UNITED NATIONS IN INTERNATIONAL POLITICS* (L. Gordenker ed. 1971).

anything. They are designed to gather a large crowd from all over, and raise the world's attention level for an important part of the interdependent whole. . . .⁷⁹

It is often difficult to specify *a priori* whether the costs of these gatherings exceed the benefits. There may be overall net benefits but dominant actors may receive a disproportionate share. However, due to an idealistic conception of international conferences, expectations often have been more sanguine than actual performance seems to merit. Valuable human resources (especially in the case of developing countries) can become tied up as a result of the conference circuit. A display of verbal pyrotechnics can produce diplomatic results but at an opportunity cost. Tangible political and economic measures may be foregone once the symbolic show of recognition is over. By the same token, in a survey of compliance with and cooperation in making effective U.N. General Assembly resolutions, Gabriella Rosner Lande concluded:

Contrary to the opinion of many, collective judgment does seem to be a suitable mechanism for international problem-solving. Since Member States in the United Nations system represent both subject and organ, the cooperative process between the Organization and its Members is mutually dependent and mutually reinforcing—that is, the character and action of the U.N. surely bear a direct relation to cooperation among its Members, but the Organization itself heightens their cooperation in various ways and affects their behavior.

The attitudes and expectations of the majority of Members seem to be an important dimension of this process. Significant, too, appears to be the enumeration by the collective membership of specific terms for resolving or moderating a controversy.⁸⁰

Although the policy implications of the commodity negotiations in UNCTAD are extensive, few fora afford, for illustrative purposes, a better aperçu into the pitfalls of unaligned expectations.

The commitment to group unity and the group bargaining process at UNCTAD⁸¹ tends to compel an emphasis within the G-77

⁷⁹ H. CLEVELAND, *supra* note 46, at 75-76.

⁸⁰ Lande, *An Inquiry into the Successes and Failures of the United Nations General Assembly*, in *THE UNITED NATIONS IN INTERNATIONAL POLITICS* 109 (L. Gordenker ed. 1971).

⁸¹ For compelling prescriptive recommendations put forth to the second session of UNCTAD in New Delhi, see Rostow, *From Aid to Cooperation: Development Strategy for the Next Decade*, 58 DEPT STATE BULL. 359 (March 1968). For a history of UNCTAD, see R. MEAGHER, *AN INTERNATIONAL REDISTRIBUTION OF WEALTH AND POWER* (1979). For recent UNCTAD developments, see the 27th Report of the Commission to Study the Organization

on grand principles in the dirigiste model, inflated expectations of likely gains, a deliberate de-emphasis on exactly who gains what, and a rigid negotiating stance. Individual demands simply are added together; potential losers are pacified by tacit promises of compensation. Only the emphasis on principles permits the creation of a package that delays (not avoids) internal splits. Devising the package is time consuming and tends to preoccupy the leadership so that concern for proposals reflecting mutual interests across the G-77 is secondary. Even so, internal tension is always present. However, the tension is moderated or finessed by peer pressure within an increasingly institutionalized political process and by de-emphasizing a concern with impact and details. Additionally, the offers by the OECD countries have not been generous and have tended to promise most benefits over the mid or long term. Thus, the promise of significant short-range benefits in the UNCTAD package is very attractive and, in any case, the limited nature of OECD proposals is insufficient to overcome the strong commitment to unity. Losing face and standing within the G-77 outweighs the promise of potential long-run gain.

Two aspects of the intellectual environment should be reassessed. First, stable solutions to North-South problems are unlikely as long as the choice is between one side's efficient solutions, which promise primarily long-term benefits to the developing countries, and the other side's equitable solutions, which require extensive, immediate, and persistent change. Is some kind of agreement to bypass this conflict feasible and, if not, how should one bargain in the existing circumstances? Second, conceptual and doctrinal uncertainty about what can or ought to be done, and by what means, may generate a bias for very narrow and technical solutions and against experimentation or innovation in a context where the latter may be justified. At any rate, increased consciousness of these issues may be useful in and of itself.

C. Moving from Confrontation to Consensus Politics

A fundamental misconception that has caused some observers to refuse to face the complexities that inhere in the formation of constitutive prescription is the conviction that the "passive virtues"⁸² obtain in attempts to revamp U.N. procedures. However,

of Peace (L. Sohn, chairman): Restructuring the United Nations System for Economic and Social Cooperation and Development (July, 1980).

⁸² A. BICKEL, *THE LEAST DANGEROUS BRANCH* 113-98 (1962).

as Professor Rostow has observed, formal voting is not the only modality by which people express their views in municipal orders.⁸³ Similarly, the vote in international fora is not an end but one of several means. In deep appreciation of the pervasive importance of customary law in any community, Ulpian long ago remarked: "After all, what is the difference whether the people makes known its will by a vote, or by things themselves and by acts."⁸⁴

It may be that irreconcilable differences have developed between states within and without the U.N., that the institution has begun to lose its function as "a center for harmonizing the actions of nations in the attainment of (these) common ends."⁸⁵ Yet, the extent to which a government will propose or support action at a U.N. conference turns on the confidence it has in the mechanics of parliamentary diplomacy; more confidence results in a greater willingness to participate.⁸⁶ By the same token, many states have little alternative to the U.N. system.⁸⁷ Even when parliamentary

⁸³ E. ROSTOW, *THE SOVEREIGN PREROGATIVE: THE SUPREME COURT AND THE QUEST FOR LAW* XIX (1962).

⁸⁴ Ulpian, Digest I, 3.32, *quoted in* C. McILWAIN, *CONSTITUTIONALISM: ANCIENT AND MODERN* 64 (rev. ed. 1947).

⁸⁵ U.N. CHARTER art. 1, ¶4.

⁸⁶ The 18th century writer Francois de Callieres, in his *De la maniere de negocier avec les Souverains* (1716) observed that open dealing is the basis of confidence and that sound diplomacy was to be based on the creation of confidence. The following categories of confidence are likely to affect the conduct of conference diplomacy:

(a) Confidence of delegations in each other. The degree to which such confidence exists is influenced by the state of relations between the governments of these delegations and by the personal contact between heads (and members) of delegations. For example, two governments may be on bad terms, may perhaps have broken off diplomatic relations; yet if the heads of their delegations to a conference happen to have known each other for years, a certain amount of confidence and trust may come to exist at that particular conference between the two delegations.

(b) Confidence in the presiding officer. If the chairman is trusted, his decisions will be respected more easily than if he is distrusted.

(c) Confidence in the secretariat. If certain delegations do not have confidence in the secretariat, believing, for example, that it systematically tries to favor certain other delegations, latent or open disagreement between delegations will be fostered. Reports or other documents emanating from a secretariat, which is not wholly trusted by certain delegations, are scrutinized much more critically and at greater length. On the other hand, a secretariat that has the full confidence of all delegations can have considerable influence toward cooperative action of the conference.

⁸⁷ Although the United Nations is only one of a number of international political systems, it enjoys the distinction of being the only system able to claim near-universal membership. States, in their peculiarly self-regarding calculuses, have, almost without exception, thought that the benefits of participating in the U.N. system outweigh the disadvantages.

diplomacy seems bogged in its own inertia, it functions as a device for finding time so that reason can prevail.⁸⁸ In this context parliamentary diplomacy becomes "preventive diplomacy," alleviating the intensity of revisionist pressure by acting as a safety valve for change.⁸⁹ Hence, even those most conscious of its defects are prepared to regard the U.N. as a necessity, *faute de mieux*.

If a transition is to be effectuated from confrontation politics to consensus politics, parliamentary procedures must be overhauled. The aim should not be procedural hypertechnicality. Rather *modi operandi* should be devised to permit more constructive treatment of pressing substantive issues. Confrontation politics can be an effective way of dealing with a decentralized system, where the desired outcomes cannot be obtained without the establishment of complex new relationships. As the midwife of change, confrontation can force these complex relations to emerge by delivering action-forcing events. However, crises precipitated by confrontation do not guarantee relief. The attention they arouse can be amortized only by setting in place the necessary channels for constructive and sustained action.⁹⁰

1. *Concentrating Parliamentary Diplomacy*

Students of sectoral problems requiring international cooperation conclude, for instance, that coordination and management of trade, monetary, and investment practices require a "core group working in very close cooperation among the major industrial countries."⁹¹ Such a grouping already exists in the International

Indeed, there is no evidence of a state attempting to establish an alternative and competitive system. In thirty-five years, only Indonesia voluntarily withdrew, to announce its resumed participation in less than a year. See Comment, *Legal Aspects of Indonesia's "Withdrawal" from the United Nations*, 6 HARV. INT'L L. J. 172 (1965).

⁸⁸ In the words of Dag Hammarskjöld, "[c]onflicts, not only in human life, but also in the life of nations, are often never resolved, but simply outgrown." "The New Santa Maria," address to the American Association for the United Nations, Sept. 14, 1953.

⁸⁹ Daniel P. Moynihan has observed that the U.N. system is a system which strives for stability. If few or any nations look to the provisions of the Charter to prevent war or aggression, nonetheless most do look to the present United Nations arrangements to mitigate, mollify and muffle these tendencies as they appear among all but the greatest powers, for which an exception is made.

Moynihan, *Abiотrophy in Turtle Bay: the United Nations in 1975*, 17 HARV. INT'L L. J. 465, 471 (1976).

⁹⁰ See generally D. MOYNIHAN, A DANGEROUS PLACE 106-07 (1978).

⁹¹ Finger, quoting several other experts, in *United States Policy Toward International Institutions*, 48 INT'L ORGANIZATION 352 (1976).

Monetary Fund, the Bank for International Settlement, and working parties of the OECD.

Some issues, such as resource scarcity, can be negotiated effectively only between the contending interests. But there is not always a need for "committees of the whole." One model of a limited membership forum is the Paris-based Conference on International Economic Cooperation (CIEC). CIEC, which originated for pragmatic reasons during the early period of the oil price crisis but expanded to cover related economic and resource topics, decided to operate on the principle of what might loosely be called "representative" rather than "direct" democracy, with twenty-seven nations, reflecting all major worldwide interests other than those of the Warsaw Pact, negotiating on behalf of approximately 100 nations.

Where the primary aim is to air grievances and exchange views, or to design and launch needed initiatives and programs, the General Assembly and U.N. mega-conferences provide the appropriate fora. But where action on economic, financial, or technical policy is required, smaller groups usually will be more effective. The aim is to overcome the linear obstacle of 144 states trying to address themselves to everything in one forum, with the demonstrably undesirable combination of inter-issue bargaining and the temptation to engage in harmful propaganda.

2. *Watering Down the Vote*

Because voting is so conspicuous, conference diplomacy is sometimes condemned as an inferior technique of decisionmaking whereby rampant majorities, using the "voting machine," push through the resolutions they insist upon seeing adopted. This view neglects the fact that in practice a great many decisions are arrived at without any voting, through a process of consensus. A.J.P. Tammes has observed:

Unanimity is reached by making the retreat for dissenting delegations easier. They are permitted to have their objections fully recorded in the minutes. They are exempted from the rigid alternative of either subscribing to what is hardly acceptable to them, or defeating what may present itself as the hope of Mankind. It will not be considered irregular, therefore, if they abstain from the vote. Abstentions not being counted in ascertaining whether there is common acquiescence, the principle of unanimity is outwardly saved, but under that veil, as was the case in medieval communities, majority decision is virtually in-

troduced. . . . When something substantial has emerged from the early discussions, when amendments have been added and compromises inserted in order to meet the opposition, the final product is the work of the whole, rather than of the majority, and minorities may find it more and more difficult completely to deny or reject that product when, in the course of the successive legislative stages, it gains in weight and approval. The argument will be used that you cannot permit the result of long preparations, of laborious discussions and of happily reached compromises to be entirely lost in sight of the harbour.⁹²

Although numerical majorities in organs without weighted voting may breed as many disadvantages as the paralyzing vetoes of the Security Council, it should be acknowledged that the concept of one state-one vote is a principle firmly enshrined in the United Nations. No scheme for formal weighting of votes in the General Assembly or at U.N. conferences has any chance of success.⁹³ Even if a majority favored it—which it does not—it would require a Charter change and thus be subject to the veto. But a larger issue is at stake than voting. The very notion of “voting by the numbers” is conceptually dubious in organs such as the General Assembly, in which contending factions and forces come together to exchange positions and try, in other words of the Charter, to harmonize the actions of states in seeking to achieve their common ends. Thus, it is desirable to de-emphasize the voting process as an invariable way of making decisions. The consensus process can handily and constructively supplant formal votes for recording the sentiments of states.⁹⁴ This approach has

⁹² A. Tammes, *Decisions of International Organs as a Source of International Law*, 94 RECUEIL DES COURS (Hague Academy of International Law 261, 287) (II-1958).

⁹³ In effect, weighted voting applies today in the United Nations Security Council. Its existence in the World Bank and International Monetary Fund is a powerful stimulus toward consensus and effective action. It exists also in a sense in the International Energy Agency, various commodity organizations, and in the new International Fund for Agricultural Development. The kinds of programs in which some form of weighted decisionmaking will be highly desirable are, to give several examples, those involving allocation of food or use of commodity buffer stocks, appropriation of capital funds, and decisions in any new international seabed authority that involve access to mining sites or allocation of resources.

The process could take various forms. One proposed by several scholars is dual vote: first a vote by country, then by a weighting formula. Or it could take place on a bicameral basis, as in the U.S. Congress, where the two houses vote separately (the equivalents of the two houses would perhaps be the plenary body—the assembly—and a “council” of more limited and representational membership).

⁹⁴ Adoption of a resolution by consensus does not imply that all members present in the U.N. body fully or unanimously support the entire contents, but rather that no one opposes the contents strongly enough to insist upon the right to vote against the text.

proven partially successful in several organizations, such as the U.N. Outer Space Committee, UNCTAD, and the International Energy Agency, where formal voting is kept to a minimum. Consensus, of course, implies a meaningful compromise and not a mere papering-over of differences; an easier task when postures do not have to be struck and positions polarized and then frozen in formal votes.

IV. CONCLUSION

In the interactive theory, the U.N. and its fora are designed to *create* and then to *cope* with conflict. Conflict is employed positively rather than suppressed as in the dirigiste model. "A clash of doctrines is not a disaster—it is an opportunity."⁹⁵ Public decisions are made in a process of conflict resolution in which states attempt to influence each others' behavior through bargaining, negotiation, adaptive adjustments, coalition building, and conflict displacement. Conflict is harnessed to bring scrutiny to bear on possibly mistaken institutions and policies.⁹⁶ It is also exploited to stimulate an always inadequate supply and quality of analysis. Where conflict leads not to mere compromise but to a reconsideration of differences and a new "integration," it is especially valued. In contrast, the G-77, acting in the dirigiste model, has come to view interaction and protected procedures as peripheral. This attitude threatens to condemn the U.N. to the periphery of international life.

Whether the U.N. becomes an inclusive framework capable of sustaining a revisionist bias depends on the way its member governments make decisions together. The parliamentary diplomacy system is, perhaps, the dominant process of multilateral contract formation. Because of its essentially political character, the system suffers from a dichotomy. On the one hand, the relationship between law and politics is perceived by the politician as a compound in which the law loses its properties to

⁹⁵ A. WHITEHEAD, *SCIENCE AND THE MODERN WORLD* 186 (1928).

⁹⁶ Judge Learned Hand observed that "right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be, folly; but we have staked upon it our all." *United States v. Associated Press*, 52 F. Supp. 362, 372 (S.D.N.Y., 1943), *aff'd*, 326 U.S. 1 (1945). Courts, which might be designed as research institutions for disposing of cases before them, are not so designed. Instead, conflict is stimulated through an adversary system. The assumption is that the conflict will bring out the facts more fully. On larger questions of public policy, public hearings are sometimes designed to stimulate, for the same reason, partisan advocacy.

political expediency. The jurist, on the other hand, perceives a mixture and concerns himself primarily with distilling the legal element. Consequently, the politician frequently sloughs over Philip Jessup's proposition that "international law is involved in a diplomatic dialectical usage in the everyday conduct of international affairs."⁹⁷ By the same token, the jurist is more likely than not to ignore Dag Hammarskjöld's admonishment that international law should be viewed "not merely as a technical set of rules and procedures, but as the authoritative expression of principles that determine the goals and direction of collective action."⁹⁸ The evidence suggests that international law and geopolitics are not necessarily inimical. It can be argued that a more creative integration of adjective law with constitutive law is a prerequisite for international harmony.⁹⁹

There remains the question of whether the parliamentary diplomacy system is viable in a world increasingly pressed by the scarcity salient. From one side it is argued that the system does not ensure sufficient stability—that it accentuates divisiveness, provides a cover for violence, and leads to the collapse of law, order, and authority. In the alternative, it is charged that the system does not permit a significant change—that it never really allows radical expression, that it is loaded in favor of the status quo, and that it merely diverts public attention from the need for action. Others have urged that the system is based on outdated theories of pluralism and can never provide the moral or organizing force necessary to give meaning to world order values.

No one can deny the force of these various objections. The orbit on which the U.N. was launched after the Second World War is decaying. At the rate that the U.N. is presently losing the characteristics of a stable political system, it may soon lapse into

⁹⁷ Quoted in Oliver, *Relation of International Law to International Relations*, 48 AM. SOC'Y INT'L L. PROC. 108 (1954).

⁹⁸ Schachter, *Dag Hammarskjöld on Law and Politics*, 56 AM. SOC'Y INT'L L. PROC. 6 (1962).

⁹⁹ Professor Rostow eloquently expresses this relationship:

By definition, the idea of peace is linked to the idea of law. Arbitrary power may maintain order in society for a time without the regularities of law, but peace is beyond its reach. While the concept of law pervades the social process too completely to be held for long by a single definition, in its simplest sense law is a system of peace—a peaceful way to resolve social conflicts and make social policy through known procedures and in accordance with known and accepted principles—an alternative both to tyranny and to anarchy. Thus every system of law is a reticulated body of custom and of ideas—a pattern of social behavior on the one hand, and of rules to guide and direct behavior on the other.

E. ROSTOW, *PEACE IN THE BALANCE* 283 (1972).

irrelevance. Still, the question remains an open one.¹⁰⁰ Certainly, the parliamentary diplomacy system cannot by itself provide stability in a world of change.¹⁰¹ Only if the economic, social, and political arrangements of the global community provide a sufficient degree of consensus can one expect the system to survive. Nor can it be said that the system by itself will lead to rapid change or to change in the right direction. Not only has the reality never conformed to the model, but also the system itself is merely an instrument for effecting change, not a guarantee of success.

¹⁰⁰ United Nations fora can "legitimize" peace and arms control treaties, and initiate programs on practical matters. They have played a highly constructive role in launching important programs in fields where interdependence requires cooperation. Recent examples are the establishment of the U.N. Fund for Drug Abuse Control; the adoption of a world plan of action leading to the U.N. Fund for Population; creation of the U.N. Environment Program; the convening of the successful World Food Conference; and guidance and support of the U.N. Disaster Relief Office.

¹⁰¹ Hammar skjold's paradox comes to mind:

One of the many contradictions of life is the frequency with which we refer to ourselves as living in a period of change and rapid development, while, on the other hand, we are so often reluctant to acknowledge the need for adjustment in our ways to the changes which actually take place.

Address by Dag Hammar skjold to the Foreign Policy Association (New York, Oct. 21, 1953), reprinted in DAG HAMMARSKJOLD: SERVANT OF PEACE 49 (W. Foote ed. 1962).