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Analysis of Contemporary International Law Development—A Social Psychological Perspective

Introductory Comments

> The study of international law by social scientists is in decline. There are many reasons for this loss of interest, among the main ones being: (1) A sense of the irrelevance of international law as a factor in world politics which stems from the spectacle of nations revolting against the rules of law, disregarding them altogether, or choosing to apply only those laws which conform to their interests. Where there is a discrepancy between the way groups actually behave and the norms that prescribe how they ought to behave, social scientists whose primary concern is the former, tend to disregard the latter; (2) A sense of the futility of traditional methods of teaching international law. Social scientists are impatient with a discipline that seems to focus exclusively either on a close universe of norms—their logical consequences, their hierarchy, their interconnections—divorced from the political and social universe in which they appear and which they try to regulate, or on doctrinal interpretations and desiderata which, while they take political and social purposes into account, represent only the idiosyncratic views of irrelevant if respectable writers.

With these words, a few years ago Stanley Hoffman[1] warned us of a growing distance between international law and political science—a distance which is all too frequently fostered by many scholars who, it is feared, continue to take refuge in the comforting seclusion from realities of international politics, which the pure theory of law has always provided.

If this trend is to be reversed at all, and the study of international law made more meaningful both to the social scientist and the student in the classroom, fresh efforts must now be made to recognize and assess the underlying realities of international politics as exhibited in state behavior and reflected in the development of contemporary international law itself.

The study of international law must be carried out in the context of contemporary international politics: for it is the essence and logic of the politics which in reality are magnified and often starkly reflected in in-

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[1]*The State of War: Essays in Theory and Practice of International Politics* (New York: F. A. Praeger, Inc., 1965), pp. 123-124.

ternational law. If international law seems condemned today as Hoffman implies, to all the weaknesses and perversions that it is so easy to deride, the nature of international politics is responsible for its state.

In a decentralized and fragmented world of some hundred and forty odd independent states with different value systems and foreign policy goals, it would be difficult to develop a single global perspective from which each state's efforts to make international law either serve its national interests or disregard it completely in other situations, could be viewed; but the task is not an impossible one if new conceptualizations are used.

Since the logic of international politics is best expressed in the language of political conflict, competition, and only at times cooperation, among states which are neither linked by strong consensus nor by a central common authority, it is suggested that our analysis of contemporary international law-making may do well to use this "fact of life" as a starting point, and thus to avoid the pitfalls of the past in which it was often assumed that conceptions such as "laws of civilized nations" or "common law of mankind" etc., are valid.[2]

The task of analyzing law through politics is obviously much easier and perhaps less necessary in domestic legal systems where the political relationship is usually well known; but the situation is not comparable in the international system. Thus, in the process of analyzing international law, we must not hesitate to ask even the most fundamental *political* questions that may not seem crucial in a domestic context—questions such as: how does the consensus for the rules of international law develop today? Within the "community" of nations whose will and interests does this consensus really reflect? Apart from noisy proclamations and solemn statements by large and small nations alike to uphold the law, which geographical and other jurisdictions do these legal rules actually cover, and under what circumstances? Do these rules really constitute a restraint on state behavior, or do they simply consecrate, or even enhance a state's freedom to do what it pleases?

Only through systematic studies of states' attitudes and beliefs, their ideological preferences and their disparate value systems which they invariably introduce into the international bargaining process as prior to consensus formation, can we, as a *first step*, learn how mutual consensus on legal norms are reached, and agreement is reached on treaties which subsequently lead to law development on the contemporary international scene. Such studies, *secondly*, in the long run, can also help us to ascertain what states are most likely to violate or uphold what kinds of international laws and under what political circumstances.

[2]H. L. A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 1965 ed.).

What is being suggested here is that our purpose of analysis should not be limited to the mere attainment of some new insights into the study of progressive and pragmatic development of new laws *per se*, but we should also make some assessment, tentative as it may be, with regard to their future effectiveness as impartial arbiters of international disputes.

In our task of analyzing law through politics we should be concerned particularly with the specific forms of state behavior with unique features which can be identified as impinging upon the process of international law-making. These unique features are to be found in those international actions which Raymond Aron once aptly called a state's "diplomatic-strategic" behavior.[3] It is a kind of behavior which is highly competitive, often conflictive, and almost always takes place under an implicit or explicit threat of violence.

Since the competitive-conflicting nature of this diplomatic-strategic state behavior obliges the actors to calculate their motives and moves in terms of not always well-defined and well-articulated national interests, it can best be understood only if we study it both in terms of *actions oriented toward values and goals* and in terms of *instrumental state actions*.[4]

In short, there is a great need for new conceptualizations, approaches and models which can help us identify and analyze a number of crucial, and so far neglected, sets of variables responsible for the dynamic relationship between international politics and international law, particularly the variables which play a significant part in the process of law-making. Only in this manner, can we heed the above-quoted warning of Stanley Hoffmann, and make the study of international law more relevant, both to the social scientist and the student in the classroom.

The Approach

It is believed that the relevant variables can best be identified, and their relationships analyzed, through a *social-psychological approach* to states' behavior in various international bargaining situations, leading eventually to the formulation of accepted international conventions and the subsequent development of international law. Such an approach can effectively assist us in integrating, for instance, a number of important factors prevalent in a state's diplomatic-strategic behavior; e.g., (1) the background social and cultural factors of a state, and the limitations which these factors pose in the international arena; (2) the military, technical and industrial

[3]*Peace and War: A Theory of International Relations* (New York: F. A. Praeger, 1968 ed.), pp. 580-585, 591-600.

[4]See E. M. Schur, *Law and Society: A Sociological View* (New York: Random House, 1968).

position of a state vis-à-vis other states; (3) national goals and "other" motives which a state brings to the bargaining table; (4) the process of negotiations which itself involves moves, counter-moves and various types of communications; (5) the nature of the international climate under which negotiations are conducted; and (6) the outcomes, and the degree of satisfaction and dissatisfaction with them, etc.

Acceptance of an international legal norm by states, binding them to certain prescribed patterns of behavior, is *contingent upon a consensus on a set of broader value systems underlying that norm.* The broader value system held by a state in a given period of history is essentially the product of a number of these crucial sets of social-psychological, political-cultural and military-industrial variables which should be identified, and their impact assessed, both on the formation of a state's national objectives and on the process of international bargaining and consensus development, prior to law-making. Only in this manner can we be in a position to identify the crucial relationship between international law and international politics, and reach some tentative conclusion with regard to future state behavior vis-à-vis specific international laws.

The significance of these variables on the development of consensus on the broader value system (which must underlie legal norms if laws are to be effective), can partially be ascertained by an analysis of present trends toward "lawlessness" and breakdown of traditional patterns of "law and order" in some communities in the United States today. For instance, one can argue that the new social and political awareness on the part of the black American community, coupled with its increasing demands for more physical and psychological gratifications, has brought home at least one important fact—the traditional consensus which we once took for granted on the broader value system underlying some of our laws, can no longer be said to exist.[5]

On the international scene also, a comparable situation is developing; with the emergence, during the past two decades, of dozens of new sovereign states with different value systems and foreign policy objectives, many of the so-called cherished principles of international law of the past (based on Western character and representing primarily Western values) are under heavy attack. These "laws" are frequently violated by the countries of the Third World which took no part in their development.

Without attempting to diverge into philosophical arguments on the nature of various societal orders, it will suffice simply to suggest at this point, that "law" ideally functions as a restraining force on uninhibited state

[5]Fortas, *Concerning Dissent and Civil Disobedience* (New York: The World Publishing Co., 1968).

behavior only when it is considered to be an impartial arbiter of disputes by *all* parties. To the extent that today's international law, and the institutions created to provide a structural framework for its formulation, fail to impart this image, they cannot hope to function effectively as a restraining force on uninhibited state behavior. To achieve this impartial, and therefore effective, framework it seems necessary to obtain the required consensus for future laws by creating a community of interests among states. Perhaps only in this manner may we still have a chance of reaching the end goal of a world of law.

First of all, it seems desirable to re-define or perhaps re-assess the true nature and role of contemporary international law for the purpose of our approach. In the broadest sense, the function of law, both municipal and international, is to serve the interests of its citizens by normalizing, i.e., standardizing, their relationships with one another. In a social sense, law aims to foster a community of interests and values by providing the maximum satisfaction of desired ends for a vast majority with a minimum of inconvenience, sufferings or deprivations for the minority. In an economic sense, law attempts to limit the choice of alternatives available, along with the scope and intensity of conflicting interests of nations in the competitive pursuits of their national goals.

Most importantly, international law, in a political sense, performs a number of crucial functions: as suggested earlier, it enhances cooperation among states through standardizing techniques and patters aimed at limiting interstate conflict; i.e., it attempts to serve as an impartial framework for the process of international decisions. In a decentralized and heterogeneous world of multiple states, it serves as an instrument of communication by providing a common language and a joint frame of reference. In the process of foreign policy-making, it frequently serves as a tool in the sense that states do indeed use legal arguments to protect or enhance a particular position.

All of this is essentially done by using law as a means of putting pressure on the adversary through mobilization of international support, and thus internationalizing a national interest. But, at the same time, the inherent ambiguities of international law in other situations enable policy-makers to dismiss international law altogether as irrelevant, as if it were neither a guide nor a restraint.

In the international arena attention inevitably focuses on the impact of non-satisfaction of state demands on international law-making; for states are under no obligations voluntarily to accept deprivation or frustration of their national objectives. Thus, in the actual process of law-making they *must* entertain various notions of bargaining as a part of their diplomat-

ic-strategic behavior and their incentive to compete and even conflict, Within this wider framework we must also take into account characteristics peculiar to states' behavior as a result of their disparate broader value systems which they interject in the process of negotiations.

One cannot afford to ignore the international environmental factors either, within which the process of law development must take place, and which, in fact, subsequent laws must reflect. For instance, factors such as the impact of the most recent weapons of mass destruction in international politics; a general desire mutually to disarm as the initial Soviet-American talks in Finland have indicated; a strong willingness to keep these weapons out of such areas as outer space, the ocean floor, etc.; the significant role of the emergent states in world politics; Sino-Soviet differences; and perhaps most importantly, the role of supra-national and international organizations which have introduced in the international environment new dimensions which future international law-making and laws cannot ignore.

With growing membership and with an ever increasing *functional* complexity, some of these international organizations have become a revolutionary force in world affairs.[6] Their proliferation represents an effort on the part of nation-states to reach out for new organizational forms of cooperation in order to improve their economic health. These organizations have meant the creation of new and important problem-solving capabilities in the international system.

While the notion of "state sovereignty" remains intact, nonetheless, the so-called impermeable nation-state is now frequently penetrated by the activities of either these organizations or other states belonging to such organizations. This statement is true of all nation-states which belong to various functional international organizations regardless of their size or relative powers. Relations among them are no longer confined, for all practical purposes, to those involving formal government-to-government contact.

This process of international integration through functional organizations, however extremely modest it may seem at the present, has great significance for future international law-making. It tends to foster both a broader value system among states, and a general consensus on the "rules of the game" at the bargaining table.

Along with the above considerations in law-making, we must also not neglect certain other characteristics peculiar to the international arena which hinder this process. First of all, world authority is decentralized.

[6]Jack C. Plano and R. E. Rigs, *Forging World Order: The Politics of International Organization* (New York: The Macmillan Co., 1967); and D. W. Bowett, *The Law of International Institutions* (New York: F. A. Praeger, 1963).

There exists no supranational institution with absolute authority that could use its centralized vantage point to mitigate and inhibit trends toward international conflict.

Secondly, the nation-state remains the supreme actor. Given this fact, the trend exists, without any possibility of substantial change in the near future, that states will continue to define their supreme interests in national rather than international terms. Generally speaking, states still find security within their own societal orders and perceived and project images. The inherent mistrust of elements external to their own order is rather strongly and widely held.

Thirdly, at an international level "law" does not have an impartial character. Not only is there a lack of effective institutions which can serve as impartial arbiters of interstate disputes, but law itself has become tainted with value-laden overtones. Many scholars such as McDougal, Burke, Goldie, Lauterpacht, et al., conceive of law in terms of "reasonableness." Yet reasonableness to one nation generally does not mean reasonableness to others.

Thus, law is cloaked in the values of the historically stronger nations, values which a majority of the weaker, newer nations of today simply do not share. Consequently, if a state is not satisfied with a legal interpretation of its rights and obligations under a particular law, it proceeds to choose definitions which suit its needs and which it considers "morally" justified in professing. Consider for instance current states' actions with regard to the doctrine of the continental shelf: Chile, Ecuador, Peru, Panama and Costa Rica claim a continental shelf area up to 200 miles from their national borders; the United States and all North Sea state contestants also find justification for expansion of their national jurisdictions. Thus, in this situation, as indeed in many other new areas, one is faced with a lack of consensus on both the procedure and substance of law.

Fourthly, one must accept the fact that states' interests are naturally going to overlap, and even conflict. This is so because the complexities of the modern world and the growing interdependence of nations mean more state activities, both in scope and intensity, beyond the confines of national borders.

In attempting to construct an approach aimed at understanding the development of international law through politics, one must consider more than the prevailing conditions of the international environment. What must somehow be done is to investigate whether there is a possibility for states to build into the international system, conditions by which meaningful alternatives to conflict can be identified by these states to give them greater flexibility in pursuing their foreign policy objectives.

To achieve this condition, aside from building into the framework calculations on perceptions of strength of state-interest in an issue, one must consider alternative means by which to achieve areas of consensus on values; for, a consensus on values is a prime factor in reducing misjudgments and in creating voluntary obedience to law. A number of writers have suggested, in this regard, that some standardization of values can be achieved by relying on the language (and values) of a technological elite—values such as "efficiency", "competition", "stability", etc. These "values" are said to be impartial because of their relationship to the laws of science.

Yet, as recent events in Vietnam, the Middle East, and Czechoslovakia have demonstrated, one must create, as a preliminary step, the necessary cross-national contacts in order for such "standardized" values to have enough impact on foreign policy considerations, the latter of which may be said to blend functional rationality with social, psychological and cultural, as well as political variables. Conceivably, to a certain extent, this desired impact (a standardization of values) might already have been achieved because the values of technocrats and expertise are already standard; i.e., stability, efficiency, order, etc., and since anything which is perceived as a threat to these values is frequently met with a common reaction from all quarters.

In this case, what we need to do is to extend the commonality of these values to the realm of international law to the extent to which that is now possible. However, the perception of specific values to be promoted in international law in terms of priorities, may vary from nation to nation to such an extent that the desired impact may be minimized. For example, the value of "competition" might be promoted actively by nation X, which then translates this value objective into a policy of expansion of its foreign trade market which the international law may be required to reflect. Nation Y, on the other hand, may perceive "stability", i.e., a lack of competition, as its first priority. Its policy objective may be to strengthen its own position by having international law reflect norms prohibiting entry of others into the foreign market which it controls.

Despite the above kind of difficulties, substantive cross-systemic contacts, cross-national trade ties, mutual regional development pacts, and memberships in various functional organizations as a whole can best lead to common perceptions of value and similar interpretation and analysis of "issues," for purposes of law development. While not precluding an area of *exclusive* interest, one should admit that the above also does not preclude an area of *common* interest—or the feeling that an "issue" has some modicum of mutual interest in several countries, that there are parameters

to these interests, and that somewhere in between these parameters there are areas of mutually perceived accommodations which may result in the development of new international laws.

What has not been mentioned in the above references to cross-systemic contacts is common, or lack of common, *ideology*. The types of cross-systemic contacts described up to this point—especially those which can provide the depth of contact necessary to have an impact on policy considerations—may generally exist among states with similar ideologies. They may not exist, at least in any large measure, among states which possess conflicting ideologies. However, because of a variety of reasons this may now be changing.

It can be argued that in most nation-states today there is a predictable and measureable gap between the public espousal of whatever widely-held ideology a nation may have and its *actual* translation into public policies including foreign policy. As a matter of fact, in recent years it has become quite fasionable for many international and national actors, particularly in the emergent states, to espouse consummatory ideologies purely for the psychic gratifications, their own and those of their masses. This *seemingly* makes international compromises on "issues" (i.e., future international laws) more difficult to achieve.

But in *reality*, these states find no conflict whatsoever in developing foreign-policy goals, significantly free of professed ideological constraints, and more attuned to the pragmatic needs of their nations. To the extent that this new pragmatism has become a significant force in the international arena today, it may well continue to widen the gap between ideology and policy, thus making compromises necessary for consensus formulation and subsequent law development, among nations holding conflicting ideologies, much easier to attain.[7]

The above process has already begun. In recent years, both super-powers have shown a predisposition to close an era of "confrontation," and enter into a decade of "negotiation," regardless of their ideological differences. A number of important international treaties recently signed by these two nations and subsequently ratified by many other countries are an indication of this predisposition. Present talks on strategic arms limitation and on keeping the sea-bed free of weapons of mass destruction, can also be cited as indications of more pragmatic forms of cooperation.

In terms of changing public attitudes, too, one can discern the emergence of faint signs which may be replacing notions such as "better dead than Red," "right or wrong my country," "President knows best," etc.,

[7]Fred C. Ikle, *How Nations Negotiate* (New York: F. A. Praeger, 1967 ed.).

with that of "friendly communist nations," "you can do business with the other side," "mutual survival," etc. The emergence of more bureaucratic, business-like, and technologically-oriented elites in the Soviet Union, and the modernizing military elites in the developing countries, are also helpful signs in this evolution.

The emphasis on "state" as a proper unit of analysis for our approach seems logical simply because, despite persistent attempts of various functional and other world organizations to introduce some measure of international integration, the nation-state remains the most significant operating unit in the international scene up to the present time. All attempts to extend the realm of international jurisdiction have been greeted, more often than not, with traditional arguments in support of "state sovereignty," supremacy of "national interests," etc. Thus, it is the complex inter-relationship of these states across their national frontiers that give the fields of international politics and international law both their form and substance.

In a very broad sense, while the discipline of international politics is the study of those patterns of behavior which accompany state activities across state boundaries, international law may be regarded, among other things, as an attempt to organize and structure these patterns of behavior in an orderly framework designed to enhance cooperation among states, through standardizing techniques and patterns aimed at limiting interstate conflict to certain generally accepted forms and levels of overt and covert international violence. In a strict legal sense, international law may be considered an attempt to serve as an impartial framework of reference for the process of international claims and decisions.

The Model

Our model is concerned primarily with conceptualizing the intricate process of international negotiations and bargaining, leading up to consensus formulation prior to development of new international laws. It assumes that most international laws of the future will be consensual norms developed as a result of international treaties agreed through the process of negotiation and bargaining. The participants in these negotiations clearly act as representatives of their respective governments rather than as individuals.

Their freedom of action is restricted to varying degrees depending, among other factors, on the significance of their status within the decision-making hierarchy of their own countries. But those negotiators who come with practically no instructions at all, and consequently possess a significant degree of freedom to explore new opportunities presented at the

the bargaining table itself, still operate under a number of powerful constraints and stresses which are both internal and external.[8]

The presence of these constraints and stresses in international negotiations is certainly one of the more significant characteristics in contrast to other situations, in which the participants may be free to interact and react spontaneously. It is also one of the most neglected factors in our analyses of international negotiations. Given this situation, the model attempts to raise such questions as: What forms and directions does the interaction take? How are the processes and outcomes of the negotiations influenced by the conditions under which these negotiations take place? How are they altered, for instance, if negotiations are conducted under limited information or under conditions of stress? What effects do the pre-existing mutual images of the negotiating countries, the personal characteristics of the negotiators and their domestic systemic inputs, have on the negotiating process and its outcomes? What latitude exists for accommodation purposes even when all the constraints and stresses have been taken into consideration? What role do interpersonal factors of the negotiators play in determining the course of interaction? etc.

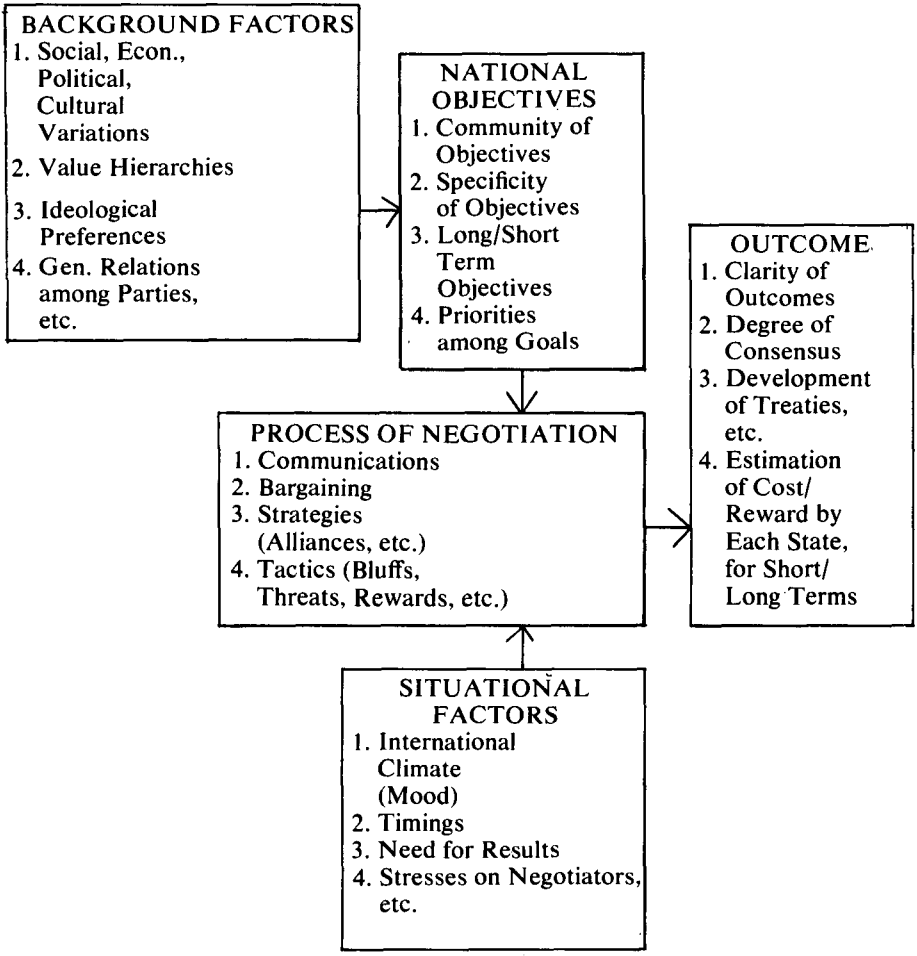
The model conceives negotiations on international law-making, a process through which two or more sovereign states interact developing potential agreements to provide legal guidance and regulation of their future international behavior. Within the context of this interaction, the focus of the model is upon social psychological variables. This is certainly not to suggest that lack of consensus among states results only because of misperception and misunderstanding. On the contrary, a lack of consensus may well result from objective incompatibility of national objectives. However, the model assumes that even such obvious conflict of interests may be sharpened or perpetuated indefinitely by various social psychological factors and that these may influence its eventual outcome.[9]

In its initial formulation our model is composed of five interdependent components: (1) *Preexisting background variables* of national-cultural traditions, value-hierarchies, ideological preferences, and politico-military relations between negotiating parties. (2) *National objectives* which a state brings to the bargaining table. These objectives, of course, play an important role in the formulation of a state's position vis-à-vis other states,

[8]See J. David Singer (ed.), *Human Behavior and International Politics: Contributions from the Social Psychological Services* (Chicago: Rand McNally & Co., 1965), particularly Part 2.

[9]In support of this position, see R. C. Snyder, "Some Recent Trends in the International Relations Theory and Research" in A. Ranney (ed.), *Essays on the Behavioral Study of Politics* (Urbana: University of Illinois Press, 1962), pp. 103-171; F. C. Ikle, *op. cit.*; and J. Bernard, "Some Current Conceptualizations in the Field of Conflict," *American Journal of Sociology*, 70, 1965, pp. 442-452.

because they require that the outcome of negotiations to result in the satisfaction of these objectives; in the present case, development of a complimentary and supportive set of laws. These objectives are generally responsible for motivating a state to enter into negotiations in the first place and then to keep them going. (3) *Specific situational and current international environmental conditions* under which negotiations are conducted. (4) *The process of negotiation* itself, which involves communications, bargaining for direct and side effects, formulation of various strategies and tactics for negotiations, various moves, bluffs, threats of negative sanctions and promises of rewards, etc. (5) *The outcomes*, which are translated into formal treaties prior to law-development, and their assessment in terms of cost and reward. The five components and their relationship with each other are further explained in the first part of the model in Figure 1 below:



At the beginning of any international negotiation, it is useful to conceptualize the setting in terms of four major elements: (a) the parties to negotiations; (b) the alternative actions which might be taken by each party; (c) the various outcomes (decisions, treaties, laws, etc.) expected to result from their combined action, and (d) the utility which each state ascribes to each of the various outcomes. Such a formulation, originally derived from game theory, can prove useful for both theory-building and empirical research dealing international bargaining. Four elements are placed in a decision matrix of outcomes and utilities which constitutes the second part of our model. See Figure 2 below:

Exemplary matrix of outcomes and utilities when each of the nations may alternatively give up its freedom of action by "compromising" and agreeing to a particular set of laws of the sea *OR* "hold out" for status quo, that is, "no laws".

Alternatives for U.S.S.R. / Alternatives for U.S.	Hold out for no international restrictions on the state exploitation of the sea-bed for national military and economic purposes.	Laws of the sea developed as a result of compromise between the two states
Hold out for no international restrictions on the state exploitation of the ocean floor for national military and economic purposes.	OUTCOME (A) No laws of the sea (no restrictions on state activities in the area) UTILITIES 0 for U.S. 0 for U.S.S.R.	OUTCOME (C) Discriminatory laws developed restricting only U.S.S.R.'s freedom of action in the area. UTILITIES + 10 for U.S. − 5 for U.S.S.R.
Laws of the sea developed as a result of compromise between the two states.	OUTCOME (B) Discriminatory laws developed restricting only U.S. freedom of action in the area. UTILITIES + 10 for U.S.S.R. − 5 for U.S.	OUTCOME (D) Development of laws restricting both countries' activities in the area. UTILITIES + 5 for U.S. + 5 for U.S.S.R.

In the above figure, each of the two nations (U.S. and U.S.S.R. for instance) can alternatively decide to restrict their freedom of action in the international arena to a compromise level, by developing new international laws, or "hold out" at the present no restriction level. The illustration of current international negotiations on the question of the exploitation of the ocean floor for economic and military purposes, and hopefully the subsequent development of new laws of the sea through a treaty, may be an appropriate example in this context.

In this illustration involving restrictions on the use of area for military and economic purposes, each of the two states can take certain actions independently of the other or jointly. However, there are four possible outcomes as indicated in the four cells of the matrix: (a) both nations may retain the present situation of no restrictions at all, and consequently no laws of the sea; (b) only United States' freedom of action may be restricted; (c) only Soviet Union's freedom of action may be restricted; or (d) both super powers may agree to restrict their freedom of action by agreeing to a treaty halting the spread of military hardware on the sea-bed and/or economic exploitation of the area for national self-interest.

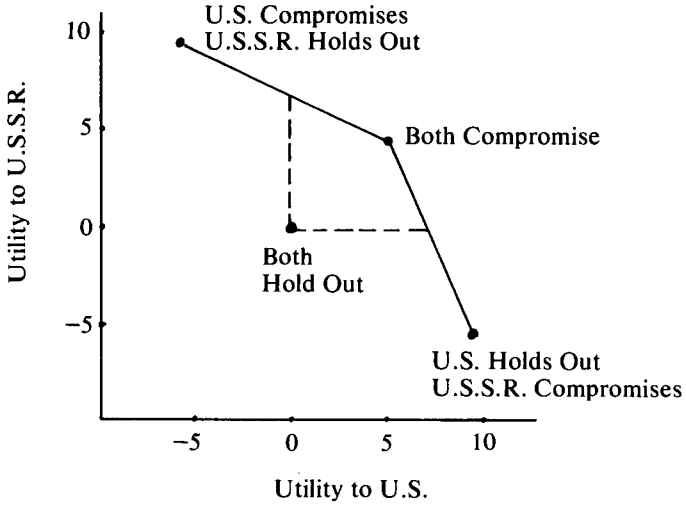
Let each of the four outcomes have a certain utility for each country as shown in this figure. The status quo of "no laws" in this instance may be taken as a reference point, so that its continuing existence has a zero utility for each party. The utilities of other outcomes are shown as incremental amounts over the utility of status quo; the negative utility for a state, when it *alone* decides to restrict its activity, represents a worsening of situation over status quo for that nation. It must be remembered that the sum of the utilities to the two countries involved is higher for some outcomes than for others. That is, the matrix represents a non-constant-sum or non-zero-sum situation, as is usually the case in most international bargaining.

In such international bargaining situations as the example under discussion, the utility of various outcomes can be assessed by judgmental evaluation of policy-makers in each country as to whether the eventually agreed laws of the sea will facilitate or frustrate the achievement of its national interest both in the short and the long run. In the present negotiation matrix, the best outcome for either nation occurs when it retains its freedom to use the area as it pleases while the other nation's freedom of action is restricted.

In this matrix, it is also assumed that the international situation has reached the point at which status quo, which allows each nation to choose its own course of action independently, is not desired by either party. When choices are made jointly rather than independently, it is useful to regard them as being made among outcomes, four in the present situation, rather than between (two) alternative actions.

Thus, a decision matrix of independently chosen alternatives may be constructed with a negotiation graph of jointly selected outcomes. The four outcomes under discussion are plotted in a negotiation graph in Figure 3 hereunder, according to utilities which each outcome poses for the United States and for the Soviet Union:

Graph of utilities for four possible outcomes when each of two negotiating parties has the alternative of "compromising" and of "holding out":



Some Tentative Conclusions

Perhaps with more optimism than is really warranted, it is hoped by the present author, that accumulation of empirical findings resulting from the employment of such social psychological models of observation in the analysis of the actual process of contemporary international law-making, will enable us to make the study of law more relevant to the social scientist and the student in the classroom. Such an approach may also provide a basis for the development of an integrative theory of international negotiation which will eventually no doubt be helpful in specifying all of the critical elements of negotiations and their causal relationships. The model also suggests that some coherence may be provided to specific findings that we have now reached in dealing with particular failures of various international negotiations.

For the present, however, a model of this type, even in its rudimentary and simplistic form, does accomplish three things: (1) it provides a useful mode of identifying and organizing a number of social-psychological and other variables associated with international negotiations and bargaining prior to law-making; (2) it suggests certain significant relations among

them; and (3) it helps us develop a framework which tends to accommodate various types and levels of negotiations and bargaining. Identification of these variables, as enumerated in the first part of the model, is by no means an exhaustive list; but it is a start.

By using systematic nations the model emphasizes that analysis of international negotiations on future international law development must take into consideration, not only the process of bargaining *on* the table but also *around* it, *before* it and *after* it. Distinctions among these various aspects of negotiation permit their essential differentiations. For instance, background factors and national objectives can be regarded as systemic *inputs*, situational and environmental factors, along with the process of negotiation itself, as *decision-making* or the conversion process, and the outcomes and their estimation of cost and rewards in terms of the negotiating party's preferences as *outputs*.

This type of systemic sequence, now fairly widely used in the analysis of other political processes, at least does suggest some general direction of influences which future international law-making and subsequent laws will reflect. From this general direction of influence, we someday may be able to identify more specific causal inferences.