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NEGOTIATION AS A MANAGEMENT PROCESS

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I. INTRODUCTION

NEGOTIATION is an enduring art form. Its essence is artifice, the creation of expedients through the application of human ingenuity. The synonyms of the word "art" are qualities we have long since come to admire in the ablest of negotiators: skill, cunning, and craft. We expect negotiators to be accomplished manipulators of other people, and we applaud this aspect of their art when we observe it in uncommon degree. Negotiation is considered to be the management of people through guile, and we recognize guile as the trademark of the profession.

Our appreciation of guile goes back a long way. In Greek mythology, the god Hermes was chosen by his colleagues for diplomatic missions, representing as he did the qualities of charm, trickery, and cunning. A more recent expression of the value of craftiness can be found in the writing of an ambassador from the court of Louis XIV. In a book that Sir Harold Nicolson has described as "the best manual of diplomatic method ever written," François de Callières in 1716 recorded the following observation about the diplomatic practices of a predecessor:

> Before his elevation to the cardinalate, Cardinal Mazarin was sent on an important mission to the Duke of Feria, Governor of Milan. He was charged to discover the true feelings of the Duke on a certain matter, and he had the cunning to inflame the Duke's anger and thus to discover what he would never have known if the Duke himself had maintained a wise hold over his feelings. The Cardinal indeed had made himself absolute master of all the outward effects which passion usually produces, so much so that neither in his speech nor by the least change in his countenance could one discover his real thought; and this quality which he possessed in so high a degree contributed largely to make him one of the greatest negotiators of his time.[1]

[1] François de Callières, *On the Manner of Negotiating with Princes*, trans. by A. F. Whyte (Notre Dame, Ind.: University of Notre Dame Press 1963). Nicolson's tribute is in *The Evolution of Diplomacy* (New York: Collier 1954), 85.

In contemporary times we continue to acknowledge cunning. In a recent article on the Vietnam cease-fire agreement, Tad Szulc recorded with obvious enthusiasm the performance of Henry Kissinger in achieving a negotiated settlement to the war.[2] As Szulc's account makes clear, Kissinger certainly demonstrated on this occasion that the hoary tactics of manipulation and concealment were important tools in the contemporary management of international relations. However, lest we overstress the importance of these tools, it is well to ask ourselves why brilliant performances in diplomacy seem so few and far between, and why there are apparently so few diplomats today who enjoy the equivalent of Kissinger's reputation. Perhaps it is because negotiation, like leadership, is a skill applied in a situation, and there are relatively few situations in international relations today that call forth the skills Kissinger so ably demonstrated. Times are changing, and the world is a less suitable stage for the diplomat's machinations in the 1970's than it was in the time of Monsieur de Callières.

The typical negotiation situation today bears little resemblance to those that obtained in the service of Louis XIV. Most diplomacy is conducted less discreetly and more under the surveillance of domestic interests than was the case previously. Negotiations are often more multilateral than bilateral; even when relationships are pursued on a bilateral basis, "reality is not bilateral," as Neustadt has observed. Both the operations of domestic groups and the incidence of multilateral negotiation enormously complicate the task of the diplomat. But more complicating yet are the changes in the subject matter of contemporary negotiations. The preoccupations of traditional diplomacy were war, sovereignty, territory, and the personal ambitions of rulers; although these could be painful subjects, they at least were comprehensible through the application of political acumen and common sense. Negotiators today spend more time discussing technology than did their predecessors, because technology—whether it takes the form of information systems, industrial processes, or nuclear weapons—has a proportionately greater impact on human existence now that it did in the past. And technology is in a state of rapid change, often at an exponential rate; it creates an enormous problem of comprehension and adaptation for contemporary society.

Unquestionably, modern negotiation continues to be a contest of will and wit, but the emphasis has shifted. The principal problem for most contemporary negotiators is not to outwit their adversaries, but

[2] Tad Szulc, "How Kissinger Did It: Behind the Vietnam Cease-Fire Agreement," *Foreign Policy*, No. 15 (Summer 1974), 21-69, esp. 23-24.

rather to create a structure out of a large mass of information wherein it is possible to apply human wit. The classical diplomat's technique of the management of people through guile has given way to the management of people through the creation of system and structure. The process is not as glamorous and individualized, but it requires no less the application of human intelligence than did the trickery of the classical diplomat.

Modern international negotiation represents a meshing of great systems. It is commonplace today to observe that the world is becoming more interdependent—and one symptom of this interdependence is the fact that complex political and economic problems are increasingly handled at the level of international negotiation rather than exclusively at the domestic level. Today, negotiators function as an extension of national policy-making processes rather than as a formal diplomatic representation between two sovereigns. The number of people involved in international negotiation has increased sharply, with consequent depersonalization of the process. It is unlikely that the "true feelings" of leaders or diplomats are as important as they once were, but it is erroneous to assume that personalities are irrelevant—particularly as they combine in various decision-making settings. In past eras it was fashionable to describe negotiation as art, and art it continues to be, but it is now more akin to the art of management as practiced in large bureaucracies than to the art of guile and concealment as practiced by Cardinal Mazarin.

The aim of this essay is to explore the nature of modern negotiation, especially multilateral negotiation, and to contrast it with previous styles of international negotiation. The contention is that rapid changes have been occurring in the negotiation process, and that these changes should be reflected more than they now are in our thinking about international relations. It will be argued that the changes affect the nature of negotiation, and that an understanding of this fact is important in evaluating the usefulness of conducting negotiations. The changes also affect certain theories about the practice of negotiation, and they affect especially the importance of concessions and convergence in the negotiation process. Most important, the changes reflect different tactics which are employed by negotiators and which should be understood in order to propose improvements in the process.[3]

[3] The material for this essay comes from a case study of the Kennedy Round of trade negotiations, and from the secondary literature on several recent negotiations. Information on the Kennedy Round has been drawn from interviews with participants, as well as repeated runs of a simulation of a multilateral trade negotiation. The simulation was originally designed for graduate students, and has been used in various negotiation

II. The Nature of Modern International Negotiation

POLITICIZATION

Since 1945, international negotiation has been under pressure from two sides. External pressure has occurred from significant changes in the international system—principally from the increased number of nation-states and the consequent trend toward multilateral diplomacy in the United Nations system. Internal pressure has occurred from the increasing impact of citizen input and bureaucratic politicking on the negotiating process. International negotiation is a more politicized affair than previously, and as a consequence the distinctions between foreign affairs and domestic affairs are blurring.

Some aspects of the external pressure on negotiations are well known. Some time ago, Sir Harold Nicolson called attention to the increasing trend toward conducting negotiation by public conference, and observed that the process violated the rule that sound negotiations must be confidential and continuous.[4] More recently, certain developments have occurred that Nicolson did not foresee. The increased number of nation-states since 1945 has ensured that national positions are more varied and more difficult to reconcile than ever before. New states tend to raise issues that more established ones consider as settled; as a consequence the negotiation process can rely less on precedent to create a common referent for bargaining. This problem was illuminated in a study of the Law of the Sea negotiation in 1958, where some of the newer states objected to the concepts of international law and the administrative-legalistic style of negotiation with which Western countries had long been familiar.[5] A similar example occurred at the U.N. Environmental Conference in Stockholm, where less developed countries were successful in forcing the issues of human poverty and underdevelopment into the definition of environment, and hence onto the agenda of the conference.[6]

Internal pressures have also affected the negotiation process. In de Callières's day, the process of representing a sovereign abroad was

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training courses at the Department of External Affairs, Ottawa, and at the Department of State, Washington, D.C. The simulation is briefly described in Winham, "Complexity in International Negotiation," in Daniel Druckman, ed., *Negotiations: A Social Psychological Perspective* (New York: Halsted Press 1977).

[4] Nicolson (fn. 1), chap. IV.

[5] Robert L. Friedheim, "The 'Satisfied' and 'Dissatisfied' States Negotiate International Law: A Case Study," *World Politics*, xviii (October 1965), 20-41.

[6] S. Kwasi Nyamekye, "Environmental Politics in the United Nations: An Analysis of the Role and Influence of the Less-Developed Countries," Ph.D. diss. (McMaster University 1975).

simpler than it is now. Monsieur de Callières viewed negotiation neither as troubled by bureaucratic constraints nor as a bureaucratic process in itself. The contrast between this image and that of modern negotiation could not be more striking. Most modern negotiations are carried on between teams that represent bureaucracies, and in large negotiations the teams themselves approach the status of small bureaucracies.[7] That this system would increase the scope of bureaucratic politics in negotiation is self-evident, and there are many examples. John Newhouse, writing on the Strategic Arms Limitation Talks, observed that the U.S. SALT delegation replicated the SALT bureaucracy in Washington, and that "most importantly, SALT [was] an internal negotiation."[8] A similar sentiment was expressed by an experienced U.S. negotiator: "I would say about nine-tenths of my time of negotiation was done with my own side."[9] In the Kennedy Round, the leaders of major delegations had to exercise considerable skill in managing internal problems, and one such leader described his role in terms of mobilizing effectively the resources of the team, of reconciling different interests, and of bringing in the right people at the right time to handle the tasks that confronted the delegation.[10]

The bureaucratic dissensus that negotiators must contend with is often a reflection of the demands of pressure groups at home. In any major negotiation the interests of large groups must be accounted for, and this creates a problem of organization, distillation, and representation for the negotiating team. The problem was accurately, if perhaps unjoyously, portrayed by a U.S. official in connection with the American position at the current trade negotiations in Geneva: "The U.S. negotiating team is particularly restrained by having to respond to 45 private-sector committees composed of 900 knowledgeable people who are well aware of their own interests. . . . The E.C. confronts the same problem."[11] Nor is this problem appreciably lessened in a smaller system. In connection with the same trade negotiation, the Canadian Government received a request from the Province of Manitoba to include representatives from the Province during the final stages of the

[7] For example, the U.S. delegation to the Kennedy Round numbered nearly 40 individuals. See Ernest Preeg, *Traders and Diplomats* (Washington: The Brookings Institution 1970), 92.

[8] John Newhouse, *Cold Dawn: The Story of SALT* (New York: Holt, Rinehart & Winston 1973), 43.

[9] Robert W. Barnett, in *Observations on International Negotiations* (Transcript of an Informal Conference, Greenwich, Conn., June 1971, Academy for Educational Development, Inc., 1971), 112.

[10] Personal interview.

[11] S. Bruce Wilson, Office of the Special Representative for Trade Negotiations, Washington, D.C. (personal communication, April 1, 1976).

negotiation. Since the positions of the Federal and Provincial Governments on trade and tariff matters are not congruent, the outcome of Manitoba's request will probably complicate the work of the Canadian delegation no matter how the issue is resolved.

TECHNOLOGICAL CHANGE

The increased complexity in negotiation due to human factors is matched by an equivalent impact from non-human factors. Technological change is occurring in all countries, and with increasing intensity. The rate of change poses two principal problems that frequently create difficulties at the negotiating table. One is the scale, or variety, of relationships. International relationships today encompass an enormous variety of interaction which gives rise to an equivalent variety of items in the negotiation process. Consider one example. In the Kennedy Round, the negotiators dealt with levels of protection on tens of thousands of products traded by 82 states, and in addition considered questions such as problems of dumping and assistance to less developed countries. Most states were therefore burdened by a portfolio of staggering complexity, which would be unknowable in any sense in which we might apply the term.[12] Nor was this problem a special product of economic relations, trade negotiations, or the Kennedy Round in particular. A similar situation obtained in the SALT talks and in the current Law of the Sea negotiation. Indeed, it seems that when one looks at the areas where major negotiations have been held, the complexity of the sort described in the Kennedy Round is the rule rather than the exception.

A further problem is uncertainty. If technological progress creates variety, it also creates uncertainty, for in many areas we are simply unaware of the implications of modern technology on human life. Moreover, we are uncertain about the means for managing such technologies. These observations apply to defense, to off-shore mineral exploitation, and to food distribution (all areas in which there have been international negotiations), but they pertain especially to problems of the international economy. Economists are simply uncertain about some of the most important questions regarding the international economy, and this uncertainty is reflected at the bargaining table when governments negotiate on various problems. In trade negotiations, for example, there are no satisfactory ways to measure the effect of tariff reductions on trade, and hence this creates the difficulty of not having

[12] As one interviewee put it, "so few people understood the Kennedy Round, including the top people."

any ultimate guidelines by which to evaluate the results of the negotiation. The same is true of weapons negotiations, where there are no clear and unambiguous ways to assess the relation between numbers of nuclear weapons and the national security. The conclusion, then, is that the environment within which states must conduct their relationships is becoming increasingly complex, both because of the operation of technological progress and because of certain changes that have occurred in the structure of domestic and international politics.[13]

RESPONSE TO COMPLEXITY

The political response to the increasing complexity in domestic societies has been to enlarge the scope of the governmental bureaucracy. Bureaucracy helps to structure the political process by providing rules and standardized procedures within which that process can operate. Furthermore, bureaucracy provides a means for coping with the variety and uncertainty inherent in an increasingly complex environment: it provides variety in governmental operations to match the variety in the environment,[14] and it provides guidelines for action in situations that are too uncertain for rational (or synoptic) analysis.[15] In short, the function of bureaucracy in domestic governments has been to increase human control over changes in the society, thereby reducing the uncertainty and increasing the stability of human life. In international politics, however, there is no organizational structure to accomplish the function that bureaucracy serves in domestic society. Certainly there has been an increase in international bureaucracy, but there is insufficient consensus in international politics to permit a "bureaucratic-rational" solution to many problems. Instead, governments turn to the negotiating process—a method that has gained acceptance in the history of nation-states—to achieve the same purpose that bureaucracy achieves in domestic society.

[13] The problem in international relations is similar to that which has also been addressed in the literature of organizational adaptation: "A main problem in the study of organizational change is that the environmental contexts in which organizations exist are themselves changing, at an increasing rate, and towards increasing complexity. This point, in itself, scarcely needs labouring." F. E. Emery and E. L. Trist, "The Causal Texture of Organizational Environments," *Human Relations*, XVIII (February 1965), 21-32; quote from p. 21.

[14] The establishment of bureaucracy reflects in human institutions the principle that variety in the regulator is needed to control variety in the environment (i.e., Law of Requisite Variety). See W. Ross Ashby, *An Introduction to Cybernetics* (New York: John Wiley and Sons 1956).

[15] For further discussion, see James G. March and Herbert A. Simon, *Organizations* (New York: John Wiley and Sons 1958), esp. 169-71, "Organization Structure and the Boundaries of Rationality."

The main thesis of this paper is that much international negotiation, especially multilateral negotiation, occurs as an attempt by the parties to manage some aspect of their environment. Negotiations often do not occur simply to resolve specific points of dispute between the parties, although disputes are certain to be embedded in the fabric of any negotiation. An important purpose of negotiation is to reduce complexity; the technique is to achieve, through negotiated agreement, a structure that will limit the free play of certain variables in the future.[16] This can be seen quite clearly in the case of the Kennedy Round. The immediate objective of the Kennedy Round negotiators was to reduce barriers to international trade, especially tariff barriers. However, an underlying and more important concern was to secure a regulated level of tariff support that would preclude the destabilizing forces of competitive protectionism. Once tariffs are regulated by international agreements, the nations participating in these agreements are locked into a pattern of mutual obligation. That is true even where tariffs are not reduced, as in the case where governments agree not to raise low tariffs (i.e., bind). Observance of these obligations effectively reduces unilateral control, and therefore reduces the uncertainty about tariff levels with which exporting countries must contend.[17]

A similar concern occurs in other negotiations as well; the SALT negotiation affords an excellent example. The impetus behind SALT, as Newhouse's excellent analysis has made clear, was not a desire to reduce arms, but rather a need to stabilize defense relations between the United States and the Soviet Union. The main threats to stability were a competitive arms race, uncertainty about future force levels, and the consequent need to assume the worst in projecting defense needs in the future. SALT did not reduce arms appreciably, but it did permit Soviet and American planners to exercise greater control over the environment in which they project defense needs. As in the case of the Kennedy Round, an underlying purpose of SALT was control of uncertainty, as was made clear by the U.S. chief delegate to SALT, Gerard C. Smith:

> A major driving force behind the strategic arms competition—at least from the American standpoint—has been uncertainty as to what future

[16] Clearly there are many negotiations in which control of complexity is a lesser problem, such as disputes over fishing quotas or beef imports. However, negotiations on specific issues (for instance, Canadian-Egyptian negotiations on cotton textile imports) often occur within the context of a more general negotiated framework. Thus, the Cotton Textile Agreement of 1964, established to regulate international textile trade, sought the purpose of reducing uncertainty as outlined here.

[17] Negotiations are employed to reduce not only uncertainty, but also variety in the international environment. An example is the attempt at the current multilateral trade negotiation to identify and codify various types of non-tariff restrictions to trade.

Soviet force levels would be. If the Vladivostok accords evolve into a formal limitation agreement, the U.S. will be assured of the maximum number of Soviet launchers during the next decade. Even though the number is high, it will be known. . . . Assurance about the future maximum size of the forces . . . should encourage stability in the American-Soviet strategic relationship.[18]

The attempt to reduce variety and uncertainty through negotiation, and consequently to increase international stability, is not a new feature of international diplomacy. Indeed, as Nicolson has noted, the chief aim of diplomacy is international stability, and governments have long tried to reduce their uncertainty about the intentions or capabilities of their adversaries through negotiated agreements. What is different is that the complexities of the present age are greater, due largely to technical change, and as a result environmental control is a more urgent task than before. National leaders are uncertain about the future, and, as Newhouse reminds us "it is the unknown, not the known, that fosters instability."[19] Many statesmen today feel under pressure to create values or structures in international politics that will replace the uncertainties of unilateral action with the certainty of negotiated agreements. Secretary of State Henry Kissinger expressed such a sentiment when he said of the U.N. Conference on the Law of the Sea (L.O.S.): "Unilateral legislation would be a last resort. . . . It [the Conference] must succeed. The United States is resolved to help conclude the Conference in 1976—before the pressure of events and contentions places international consensus irretrievably beyond our grasp."[20]

The use of negotiations by foreign policy makers to manage the international system has some interesting analogies to decision making in large business firms. In their study of organizational decision making, Cyert and March found that business managers tended to avoid uncertainty by establishing a "negotiated environment" for their activities.[21] The main purpose of such negotiation was not to fix prices, but rather to establish certain common business practices that would

[18] Smith, "SALT after Vladivostok," *Journal of International Affairs*, xxix (Spring 1975), 7-18; quote from p. 8.

[19] Newhouse (fn. 8), 77.

[20] Address by Secretary of State Kissinger, "International Law, World Order, and Human Progress," delivered before the American Bar Association at Montreal, Canada, on August 11, 1975. *Department of State Bulletin*, Vol. 73 (September 8, 1975), 335-62; quote from p. 359.

[21] "Our studies, however, lead us to the proposition that firms will devise and negotiate an environment so as to eliminate the uncertainty. Rather than treat the environment as exogenous and to be predicted, they seek ways to make it controllable." Richard M. Cyert and James G. March, *A Behavioral Theory of the Firm* (Englewood Cliffs, N.J.: Prentice-Hall 1963), 120.

help to stabilize expectations in a given industry, and hence to permit intelligent economic planning within the firm. A similar argument has been advanced by Emery and Trist. These writers argue that in highly uncertain environments, individual organizations cannot adapt successfully through their own actions but seek the emergence of values (or common assumptions) that have overriding significance for all members of the field. "Social values," the authors state, "are here regarded as coping mechanisms that make it possible to deal with persisting areas of relevant uncertainty."[22] This argument is clearly related to the "negotiated environment" of Cyert and March, for the values that business firms negotiate—such as the rate of markup, price lines, and standardized cost procedures—help to remove relevant uncertainties for the firms' managers. In international politics, negotiations serve the same function for the decision makers of countries. The values that are established in international negotiations—such as nuclear arms parity and nuclear force levels, or most-favored-nation treatment and percentage tariff reductions—provide coping mechanisms for reducing the uncertainty in international transactions.

IMPLICATIONS

To view international negotiations as a process for reducing uncertainty involves important implications for our understanding of the negotiation process. One implication is that negotiation is no longer viewed principally as a dispute-settlement or distributive procedure. This distinction was apparently appreciated by Dr. Kissinger when he described the L.O.S. negotiation in the following terms: "We are at one of those rare moments when mankind has come together to devise means of preventing future conflict and shaping its destiny, rather than to resolve a crisis that has occurred or to deal with the aftermath of a war."[23] Dispute settlement, or crisis resolution, is the common model we usually adopt for understanding most international negotiation. This model usually entails the tabling of an opening position, and the movement (or convergence) toward a compromise position through step-by-step concessions. The burden on the negotiator is to maintain as much of his position as possible while moving toward an outcome that will be mutually acceptable. This process emphasizes concealment, competitive strategies, and the ability to persuade.

The model of dispute settlement continues to be appropriate in international politics, and certain elements of it can operate in negotiations

[22] Emery and Trist (fn. 13), 28.
[23] Kissinger (fn. 20), 359.

where dispute settlement is not the main purpose of the negotiation. At the Kennedy Round negotiators certainly engaged in haggling and compromise; they exchanged concessions; and they vigorously tried to persuade other parties of the justice and merit of the positions they had staked out. However, the basic structure of the negotiation, viewed in its entirety, was quite different. A more appropriate model for negotiation in a complex situation is one that replaces strategy with search for information, and is concerned with process as opposed to outcome. Negotiators tend not to estimate acceptable outcomes, because outcomes are distant and unknowable. They focus instead on the process of negotiation and what they want the process to achieve, such as exchange of information about both parties' principal concerns, decision-making procedures, or the like. The process of negotiation involves a search for acceptable solutions, where strategy is more a matter of forestalling the consideration of certain unattractive solutions than a matter of extracting a change of position from an adversary. This process is akin to the tactics of integrative bargaining as described by Walton and McKersie, or the procedures of "debate" as described by Rapoport.[24] The process will be further explored in the next section of this paper.

The second implication of viewing negotiation as a process for reducing uncertainty is that the development of common perceptions becomes more important to the negotiating process than the exchange of concessions.[25] In complex situations, negotiators tend to negotiate over the "definition of the situation,"[26] and theories of how people develop common perceptions of complex information are more likely to be useful than theories of how people outwit others in bargaining contests. When negotiators deal with each other over complex subjects, they often represent societies that have evolved entirely different methods of accomplishing certain social tasks, and as a result the first problem is to establish a definitional basis from which to proceed. Newhouse has appreciated this aspect about the SALT negotiations; he concludes a

[24] Richard E. Walton and Robert B. McKersie, *A Behavioral Theory of Labor Negotiations* (New York: McGraw-Hill 1965); Anatol Rapoport, *Fights, Games and Debates* (Ann Arbor: University of Michigan Press 1960). See also Sawyer and Guetzkow: "The process of devising more favorable alternatives and outcomes may be characterized as one of 'creative problem-solving' since it involves innovation rather than mere selection among given possibilities. As with creative processes more generally, however, relatively little is understood of its operation." Jack Sawyer and Harold Guetzkow, "Bargaining and Negotiation in International Relations," in Herbert C. Kelman, *International Behavior* (New York: Holt, Rinehart & Winston 1966), 466-520; quote from p. 485.

[25] I acknowledge debt to the analysis of I. William Zartman, "Negotiations: Theory and Reality," *Journal of International Affairs*, xxix (Spring 1975), 69-77.

[26] One Kennedy Round negotiator summarized what was a common theme in many interviews: "Disputes are a matter of how they are defined."

description of the first negotiating session with the statement: "The two sides parted as they met, still speaking a different strategic vocabulary." He further quotes an interviewee: "We were so absorbed in our own definitional problems we made no serious effort to anticipate theirs."[27] In Zartman's words: "The whole process of the Strategic Arms Limitation negotiation is a search for referent principles and then for the implementing details."[28]

The process described above normally requires some agreement on the negotiating rules, or some similar formula for standardizing the approach of different parties. In the Kennedy Round, the problem of negotiating rules was dealt with explicitly, but it may be more common for negotiators to establish referents or formulas implicitly as part of the discussion of a problem. Also, establishing such formulas can be an ongoing procedure during a negotiation, and will be part of the process that occurs naturally when parties take up new issues. An analogous procedure to the use of negotiation formulas is the creation of a bargaining language to assist negotiators to exchange proposals. A bargaining language essentially consists of cognitive structures that facilitate communication between negotiators. These structures can be very general, such as the notions of "parity" in weapons negotiations, or "reciprocity" in trade negotiation,[29] or they can be common definitions or evaluation procedures that enable negotiators to evaluate their progress in the negotiation. In complex negotiations, a bargaining language can serve as a mechanism for simplifying the information that negotiators must handle in the course of moving toward an agreement. It is a means of developing common perceptions about the bargaining environment, and its use in itself constitutes some measure of agreement between the parties.

III. The Practice of Modern International Negotiation

If the purpose of international negotiation has changed since de Callières's time, so also has the practice. Negotiation today is an extension of the policy process from the domestic to the international arena, and negotiators behave in a manner more akin to that of national bureaucrats than of classical diplomats. The distinction between negotiation and management is blurring. The most useful concepts for

[27] Newhouse (fn. 8), 176.   [28] Zartman (fn. 25), 73.
[29] For example, Evans notes: "When a negotiator invokes his right to reciprocity, he is speaking a language that both he and his fellow bargainers understand." John W. Evans, *The Kennedy Round in American Trade Policy* (Cambridge: Harvard University Press 1971), 23.

understanding the practice of modern negotiation come from the literature of decision making, business management, and organization theory, and not necessarily from studies of negotiation or bargaining theory. Of special importance are the concepts for understanding decision making in complex situations—most notably the principles of cybernetic decision making.[30]

The practice of negotiation in complex situations is heavily influenced by a desire to maintain control over the situation and to avoid uncertainty. The principal activity is a process of creating one's own position while adapting to the demands and offers of others. This activity is a bureaucratized activity (e.g., negotiation by working groups), dealing with a subject matter that has been decomposed into compatible subgroups (e.g., product sectors in trade negotiations). Large-scale negotiations like the Kennedy Round evolve over considerable time. Negotiators proceed toward agreement by initially tabling a position that is exploratory at best. At this stage, negotiating teams rarely have a concept of what a final, acceptable agreement might look like, for two reasons. The first is lack of attention by governments; serious thinking about what is acceptable is often done only after serious negotiation has begun. The second reason is that what is acceptable is a function of what is available, and that is only demonstrated in the act of negotiation. The result is that negotiators proceed with more understanding of and attention to the process of negotiation than of where the process will lead.

The negotiating process is a programmed set of operations that has evolved from considerable experience. It consists of tabling a position, decomposing and aggregating the relevant information wherever possible, and then setting about point by point to reconcile the different positions of the parties. Negotiators incrementally explore the interface between the bargaining positions of states much as army ants explore the interface of their colony and the environment. Over time, the negotiation accumulates a settlement from the bottom up, a phenomenon which the participants refer to as "building a package." In this process, negotiators monitor certain feedback variables, such as domestic support for the negotiation, which indicate the willingness of their government and others to cooperate in a negotiated settlement. Inherent in the programmed nature of the negotiation is the risk that negotiating procedures will not be sufficiently flexible to take advantage of unusual or unorthodox opportunities. For example, in the Kennedy

[30] See John D. Steinbruner, *The Cybernetic Theory of Decision: New Dimensions of Political Analysis* (Princeton: Princeton University Press 1974).

Round agricultural products were not included in the general agreement. Agricultural restrictions are generally not amenable to the same negotiating procedures as industrial tariffs, and in the opinion of several interviewees, opportunities to liberalize agricultural trade were missed because this area was outside the "ground rules" of the negotiation.

The negotiation process described above contains several elements that deserve further attention. One such element is the concept of problem-solving search, and particularly search as a means for establishing communication and structure between the parties. A second element is programmed operations, which bring about most of the reconciliation of the conflicting positions of the parties. Finally, a third element is the conclusion of a negotiation and the codification of the process that has been occurring. Special problems arise at the conclusion of a negotiation that set it apart from the rest of the process.

PROBLEM-SOLVING SEARCH

A common way to portray international negotiation is a continuum. The positions of the parties are juxtaposed at opposite ends of the continuum, and if an agreement is to be reached, it is through a process of compromise and convergence. In this conception, negotiators think of their position in terms of what they desire and what they will settle for, and they try to generate realistic expectations about the "probable outcome" of the bargaining and the "minimum disposition" of their adversary.[31] Concessions are a crucial step in this process, and the strategy of concession making has been a major focus of studies of negotiation and bargaining.[32] The concern over concession making is understandable, for if one portrays negotiation as a process of convergence, one can almost define negotiation itself as a process of exchanging concessions.

However useful the concepts of continuum and convergence may be for describing certain aspects of modern negotiations, they do not serve as an adequate picture for the overall process, and consequently are not a good guide for negotiating behavior. The notion of continuum loses force in the complex situations that characterize many international negotiations. The imposition of a continuum on negotiation represents a considerable degree of structure. However, international negotiations

[31] For example, see Fred Charles Iklé and Nathan Leites, "Political Negotiation as a Process of Modifying Utilities," *Journal of Conflict Resolution*, vi (March 1962), 19-28.
[32] Concession making has been a focus of bargaining studies in economics and social psychology. See, for example, John G. Cross, *The Economics of Bargaining* (New York: Basic Books 1967); and Otomar J. Bartos, *Process and Outcome of Negotiations* (New York: Columbia University Press 1974).

are often characterized by structural uncertainty[33]—that is, where the nature of the possible outcomes and not just the probability associated with different outcomes is unknown. In many situations, negotiators negotiate precisely to find out what the issues are; hence, it is beyond the scope of their analytical abilities to project probable outcomes. Furthermore, in keeping with an unstructured situation, negotiators do not have a conscious strategy on concessions worked out in advance, nor do they appear to evolve one during the negotiation.[34] In sum, the concepts of continuum and convergence assume more structure than is usually present in large negotiations. A better way to conceptualize large negotiations is as trial-and-error search, which is a basic concept in cybernetic decision making.

Cybernetic decision making occurs in environments that are too complex to permit analysis; hence, decision makers define their environment through their actions, and not through analysis. Decision makers take actions, assess their outcomes, and then recalculate the actions that led to the outcomes obtained. Analysis is a matter of comparing a past action with an outcome, deciding whether it was a good outcome, and then choosing another action. Negotiators proceed very much in the same way. Negotiation in complex situations is largely a matter of trying out new combinations of ideas in an effort to "move the negotiation along." Where the ideas are accepted, they create a structure along which the negotiation will proceed; continued success will enable the negotiators to "build a package." Where ideas are not accepted, they are scrapped, and something else is tried. If too many ideas are scrapped, the negotiation runs the risk of becoming "bogged down" or running into a "dead end." In such cases the negotiation will continue, if at all, after the occurrence of a "breakthrough" at which major concessions may have been granted; more likely, there will have been a redefinition of the problem, moving the negotiation onto a different plane. The entire process is more akin to fitting the pieces into a puzzle than to convergence along a continuum.

There are two types of creative acts that often occur in the process just described. One is to establish structure through the use of a formula or referent principle (or "negotiating rules") to guide the negotiation. This practice is fairly well understood and is overtly pursued by negotiators. In the Kennedy Round, two formulas were instrumental in moving the negotiation along: one established the principle of linear

[33] The concept of structural uncertainty is elaborated in Steinbruner (fn. 30).

[34] This observation is supported by interviews and by observation of the trade negotiation simulations. For example, one interviewee stated: "Concessions cannot be explained in logical terms." For further elaboration of this argument, see Winham (fn. 3).

cuts, where states negotiated tariff reductions over large numbers of products rather than on an item-by-item basis; a second one ("decoupage") helped to break an impasse that developed late in the negotiation in the crucial chemical sector.[35] In the SALT negotiations, a more implicit referent principle served as a point of departure through the entire negotiation. This was the analysis, originally presented by Robert McNamara to the Soviets at the Glassboro meetings in 1967, that the development of an ABM system was an inherently destabilizing factor in the nuclear balance between the superpowers. Throughout the ensuing negotiation, this referent principle appeared to be a major motivating factor in the negotiating strategy of both sides.[36]

A second procedure by which negotiators establish structure in complex situations is to create hierarchies in the negotiating situation. This procedure is often used implicitly, although it is less well understood in an analytical sense. The principle behind the use of hierarchy to establish structure has been explored in a philosophical essay by Herbert A. Simon: "Hierarchy, I shall argue, is one of the central structural schemes that the architect of complexity uses."[37] For Simon, hierarchy has at least two meanings. One is the common notion of formal organization, which is a system composed of subordinate subsystems. This form is commonly encountered in society; business firms, governments (and negotiating teams) exhibit this kind of parts-within-parts structure. A second notion of hierarchy is perceptual, and amounts to an ordering that can be imposed on an environment. The second notion is dependent on the property of "decomposability," or the extent to which systems can be reduced to subsystems that are approximately independent of each other. The capacity of decision makers to perceive (or, presumably, to create) decomposability in a complex environment is related to the capacity to understand and take action in that environment. As Simon says, "The fact, then, that many complex systems have a nearly decomposable, hierarchic structure is a major facilitating factor enabling us to understand, to describe, and even to 'see' such systems and their parts."[38]

In complex situations like trade negotiations, negotiators use hierarchy and relational thinking to understand and to create structure in their environment. Some hierarchies are easily established and follow

[35] See Preeg (fn. 7), 172-77.

[36] Newhouse (fn. 8), 95, quotes former Secretary of State Dean Rusk as saying that SALT may have begun for the Soviets at Glassboro.

[37] Simon, "The Architecture of Complexity," in *The Sciences of the Artificial* (Cambridge: MIT Press 1969), 87.

[38] *Ibid.*, 108. A senior GATT official expressed a similar sentiment when he said one of the most important abilities of a negotiator was to "grasp relationships."

naturally from the data in the environment. For example, products can be grouped and negotiated in sectors, and sectors can be further categorized in turn. Formal organization (such as working groups) can be created to jibe with structure implicit in the subject of the negotiation. Also, less orthodox hierarchies can be established and the material dealt with, depending on what serves the purpose of the negotiation. For example, products or sectors can be ranged in terms of the percentage of world trade each accounts for, or by the nature of trade barriers applied; or a ranking might be established depending on the extent of disparity (and hence, presumably, the extent of negotiating difficulty) between the tariff structures of various negotiating partners.

The more creative hierarchies are less obvious. One important hierarchy that must be established is a ranking of priorities in relation to the negotiating process. In the course of the negotiation, negotiators must establish what they principally want; without this, the negotiation cannot generate the major trade-offs that are the structure around which agreements are built. Achieving a ranking of priorities is a difficult process; experience from the Kennedy Round and the simulations of the Kennedy Round suggest it can be done effectively only as part of the negotiating process, and not simply as an internal process prior to participating in the negotiation. A time schedule is another hierarchy. The time dimension is of crucial importance to a negotiation because of the sequential and compartmentalized nature of the process. A time schedule forces negotiators to think hierarchically over time—that is, to think of the completion of parts within parts of an overall agreement, and hence to build up the components of a general settlement. An obvious deadline is likely to be advantageous to the negotiation process. Without such a deadline, the time schedule imposes proportionately less structure on the negotiation, and thus less pressure for resolution of the issues.

PROGRAMMED OPERATIONS

The reality of negotiation is not a rapid exchange of creative ideas, even though creative ideas are part of the process. The reality of negotiation is tedium. There are good reasons why this is so. First, the barriers to agreement are political, not intellectual, and it takes time and patience for governments to persuade themselves to accept change.[39]

[39] This observation was made by Robert W. Barnett (fn. 9), 150, in the course of explaining the function of trivia in negotiations. Newhouse (fn. 8), 191, has made an analogous point ("tedium has its place in the negotiating process") in the course of criticizing the fast-paced strategy of the U.S. SALT delegation.

Second, the search for agreement is a combination of trial and error plus insight, and it takes time for the process to be played through. Negotiations reflect the cutting edge of change in the international system, and the process of accepting change is a discontinuous and drawn-out affair.

Most actual negotiation is a form of programmed operations that follows from general principles established by the parties. As one Kennedy Round interviewee put it, "The orchestration of negotiation is almost mechanical." Problem areas are broken down into their constituent parts, and are taken up by small working groups of negotiators. Working groups have agendas, and these agendas call for a sequential treatment of the topics scheduled for discussion. Topics are usually discussed rather than haggled over (admittedly, this is a fine distinction), particularly through the early and middle stages of the negotiation. Bargaining is exploratory and communication is relatively free.

There are several principles that govern the programmed operations in a large negotiation. One is the quasi-resolution of conflict.[40] Issues are brought up sequentially and the positions of the parties are explored. Where disagreement exists, various suggestions are pursued to resolve the disagreement. Trade-offs are discussed, and alternative compromises are attempted. In some cases, the conflict will be resolved through concession, compromise, and convergence. Where conflict is resolved, the issue is put aside and is usually not raised again. As the area of agreement widens, the parties develop a greater stake in the negotiation, and this creates a positive momentum toward a final, overall agreement. If in this process parties are unable to agree, they will drop the issue and hence postpone the conflict. The issue in question will be moved up for consideration at a higher level in the negotiating bureaucracy. The same procedure will be used; hence, the most difficult and conflictual issues will be put off until the end of the negotiation.

A second principle is that negotiators do not try to deal with all the material that comes under their cognizance in a complex negotiation. They solve the problem of too much variety in the situation by ignoring much of that variety, concentrating instead on simple operational feedback variables.[41] These variables tend to be internal, relating to the organizational work of the negotiating team or relations with the home government, rather than external. The reason is that negotiators are more concerned with presenting their own position than with relating to their adversary. That point has been made in both classical and

[40] Cf. Cyert and March (fn. 21).
[41] Cf. Steinbruner (fn. 30), esp. chap. 3.

modern literature, and has also been observed in the runs of the trade negotiation simulation.[42]

There are several feedback variables that negotiators focus on especially in complex negotiations. One is their organization and control over their own negotiating position. Problems of control over the negotiating position stem from bureaucratic politics on the negotiating team, from the constant need to obtain new information to defend the position and its changes, and from the inherent difficulties of maintaining consistency when a large body of data is in constant change. It is especially important that negotiators be able to project an image of being in control of their portfolio; failure to do this provides ammunition for whatever opposition may exist at home. Another key feedback variable is the extent to which negotiators can maintain domestic consensus for the negotiation. Objectively this variable is always important, but it has a profound subjective impact on negotiators because of the difficulty of communicating structural problems to the adversary. In the Kennedy Round, American negotiators worried about Congress, and their anxiety was increased by E.E.C. negotiators who apparently did not appreciate the need to maintain support for the negotiation in Congress. Conversely, E.E.C. negotiators worried about the uncertainties of decision making in the E.E.C. and the fragility of support for the Kennedy Round, and *their* anxiety was increased by apparent American insensitivity to Brussels.[43]

Another feedback variable that is monitored, and one that relates primarily to the adversary, is the "will to negotiate." Governments enter a negotiation to achieve certain principles, and they monitor the behavior of their adversaries to ensure that it does not represent a pulling back from the principles of the negotiation. Individual concessions are not a major concern—they are a fairly structured and hence unimportant phenomenon—but the failure to resolve certain problems, or the failure to "move in a certain direction" can become a major stumbling block in the negotiation. In such cases, disputes crop up, often on fairly trivial matters. A case in point was the bitter dispute in the Kennedy

[42] "Most men in handling public affairs pay more attention to what they themselves say than to what is said to them." De Callières (fn. 1), 121. "And yet, we found in our experiments that our subjects were overwhelmingly 'introverted,' that their demands were primarily determined by their own past demands, and that they paid little attention to one another's offers." Otomar J. Bartos, "Concession-Making in Experimental Negotiations," in Joseph Berger, Morris Zelditch, Jr., and Bo Anderson, *Sociological Theories in Progress* (Boston: Houghton Mifflin 1966) 3-28; quote from p. 21.

[43] These anxieties often are expressed as principles. For example, one E.E.C. negotiator stated: "It was difficult for our partners to understand our decision-making process . . . we faced a *simultaneous* negotiation . . . it was part of the *democratic* process."

Round between the Common Market and the United States over the matter of the American Selling Price (A.S.P.) in chemicals.[44] This issue, as the American negotiators correctly pointed out, was of little direct consequence to trade, but the form of the restriction gave the American Government the unilateral right to decide the issue, either in applying the restriction or in dropping it (which required congressional confirmation). The Common Market found the A.S.P. repugnant because, by maintaining a unilateral freedom of movement for the Americans, it created uncertainties for the Common Market countries and hence was contrary to one of the fundamental purposes of the Kennedy Round negotiation. From the perspective of the E.E.C., the A.S.P. was a matter of principle because it raised the question of the United States' "will to negotiate" reductions in trade restrictions.

A third principle inherent in the programmed operations of negotiation is organizational learning, a concept which has been analyzed in the literature of organization theory.[45] Negotiating teams are usually assembled from governmental bureaucracies on an *ad hoc* basis, and are disassembled at the conclusion of their task. These teams confront problems that are often novel in substance, and are certainly novel in terms of procedures and personalities. In the succession of encounters that constitute day-to-day negotiation, the teams achieve various kinds of organizational learning: they gather and store information, they develop procedures for communication, and they adapt organizational goals to fit the possibilities in the situation. Above all, negotiating teams learn how other countries perceive the problems that are up for negotiation, and what priorities these countries place on different issues.

Over time, negotiating teams learn to develop procedures that facilitate negotiation. Negotiators are required to develop concepts, or to create relationships in the bargaining situation that are not obvious to internal decision makers, but that may be necessary to facilitate bargained exchanges between states. Negotiators accomplish this partly through the creation of a bargaining language, which, like other bureaucratic languages, is a collection of task-oriented symbols or concepts that facilitate the work of the organization. There were several examples of bargaining language in the Kennedy Round; the concept

[44] The A.S.P. provides for assessment of duty on foreign products based on the value of a "like or similar" domestic product. It works as follows: an American customs official decides if an imported good is "similar," values it in comparison to the domestic good, and then applies the existing tariff rate. The system creates uncertainty for exporters (Preeg calls it "irregularity"), and in some cases very high tariffs (Preeg notes that one effective tariff was 172%, and it became known as "Mont Blanc" in the Kennedy Round). Preeg (fn. 7), 171.
[45] See March and Simon (fn. 15), and Cyert and March (fn. 21).

of "reciprocity" has already been mentioned in this context. The notion of reciprocity was itself refined into more specific concepts, such as measures (e.g., weighted average reductions) for making quantitative assessments of reciprocity. By common agreement, such measures were not accurate in an economic sense, but they did give negotiators a language for communicating and for exchanging tariff reductions.[46] These measures allowed negotiators to build an agreement, but they had inherent limitations from the standpoint of reaching a final settlement. In order to reach a final settlement, negotiators had to develop the flexibility to move beyond the structures and the bargaining language that had been successful throughout most of the negotiation.

FINAL AGREEMENT

Most negotiations have a deadline for the completion of the work. Occasionally such deadlines are beyond the immediate influence of negotiators. However, even when deadlines can be manipulated, they create a pressure to conclude the negotiation, since senior members of governments cannot be detained indefinitely in an exercise that appears to be going nowhere. The expectation that negotiation must soon be concluded not only increases the tempo of the exercise, it also changes the nature of the task. Concluding a negotiation puts more emphasis on decision making than occurs in the early phases, and proportionately less emphasis on bargaining and communication.

The situation as complex negotiations like the Kennedy Round or SALT negotiations conclude is that many outstanding issues must be woven together into a package deal. In different areas of the negotiation, issues which have proven troublesome have been postponed. Conflicts have only been partially resolved. The negotiators must bring the unresolved problems together in the concluding period of the negotiation in a way that the various governments can accept. Usually, difficult issues cannot be resolved by dropping them: they have become interlocked in a complex negotiation, and to drop any major issue late in the game leads to an unravelling of other agreements that are contingent on its solution. Negotiators are thus put in a position where they must find a formula to resolve the principal issues or acknowledge that the negotiation has failed to produce the agreements that had been envisioned.

The elements in the conclusion of a negotiation inescapably increase

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[46] One highly placed interviewee commented: "The advantage of tariff negotiations is that you can put phony numbers on things." For further discussion, see Winham (fn. 3).

the pressure on the negotiators. There will usually be considerable polit-
ical momentum behind a negotiation, especially where the negotiation
is publicized, visible to internal politics, and where it is obvious that
much effort has been put in. The negotiation normally will represent a
considerable sunk cost in terms of government decision-making time,
and there will be a major personal and professional investment for
the negotiators concerned. Furthermore, there will be an increasing
awareness of the political values that will be lost if the negotiation fails,
especially the value of extending greater control over the international
environment through international agreement. All these factors will
militate toward compromise and settlement of the outstanding issues.
On the other hand, as the conclusion nears, negotiators will be under
increasing pressure not to give way on issues of concern to home gov-
ernments and domestic interests. Those issues are outstanding precisely
because they are areas where change is least easily accepted. The con-
clusion of a negotiation tends to expose these areas, and the government
and domestic interests involved counter by bringing pressure not to
reach settlement in the negotiation. One Kennedy Round negotiator
summed it up simply: "The pressure comes from everywhere."

The conclusion of a negotiation increases the complexity and uncer-
tainty that have faced the negotiators throughout the exercise. The
sequential handling of issues gives way to a situation that demands that
many issues be handled at once. Negotiators find it more difficult to
resolve problems within established categories (e.g., the category of
industrial products in trade negotiations); they are required instead to
seek relationships between dissimilar categories (e.g., agricultural versus
industrial sectors). This means that the programmed operations that
have evolved for achieving balances thus far in the negotiation are less
helpful as a guide to negotiators in the last stages of the negotiation.
Striking a final overall balance is less a bargaining process with the
other side than a political process of convincing capitals to accept what
negotiators are prepared to deliver. New methods must be evolved to
deal with what have become old problems in the negotiation.

The task of concluding a negotiation necessarily falls to senior nego-
tiators, and Kennedy Round interviewees agree that it is more political
than administrative in nature. The bureaucratized procedures, pro-
grammed operations, and technical notions of balance that delegations
may have relied on previously have become less relevant. There is a
need for negotiating teams to change "set"; that is, to shift from pro-
cedures that facilitate interdelegation bargaining (e.g., procedures for

calculating reciprocity in trade negotiations) to procedures that permit general overarching restatements of the problem. A clear example of this need was observed in the trade negotiation simulations. As in the real negotiation, simulation subjects used various quantitative measures to calculate reciprocity. However, subjects were unable to use these methods profitably at the end of the negotiation because there was insufficient time to make the needed calculations and because the methods produced results that were too precise for the needs of the moment. In fact, subjects who persisted in such calculations lost their grip on the overall developments in the negotiation, usually to their own disadvantage. The simulations support the contention that the conclusion of a negotiation requires the same kind of general, formula-oriented solutions as does the start of a negotiation. It is primarily an exercise in creative problem solving, where educated political guesswork is more important than shrewd calculation of advantages.[47]

There is ample evidence that the last-minute decisions in a large-scale negotiation are taken amid great confusion. Interviewees from the Kennedy Round admitted as much, and in an interesting way. Senior political members of negotiating teams asserted that much of the competence to understand the accords rested with the technical people, while the technical people maintained that much of the Kennedy Round was "political" and hence outside the scope of their competence. In short, each group professed a lack of competence to understand the overall process, albeit for different reasons. Others as well have remarked on the confusion and uncertainty that obtains at the conclusion of a large negotiation. One of the most perceptive journalists covering the Kennedy Round started his story about the completion of the negotiation with the following paragraphs:

> Deep and very widely shared satisfaction over settling the major Kennedy Round controversies is alternating here with genuine ignorance as to what the settlements may mean in detail. At this stage even senior officials in the various delegations have not yet broached the task of analyzing the precise contents of the agreements reached.

> It is not just a matter of detailed information remaining unpublished until the accord has been formally signed a few weeks hence. The hasty deals reached by top negotiators in the frantic final hours often have not yet been translated into actual texts, nor sometimes even communicated to those on the next steps of the hierarchy.[48]

[47] An interviewee summed it up in the following terms: "Negotiation is a subjective affair: at the end you just take the best guess."

[48] H. Peter Dreyer, "Tariff Talks Package Gets Mixed Reaction," *New York Journal of Commerce* (May 1967), 1.

Lest this observation be thought confined to trade negotiations, one can cite a similar observation by Newhouse about the conclusion of the SALT negotiation in Vladivostok: "As confusing as all this may seem, it was only slightly less so to the experts themselves. After the White House party returned to Washington, several meetings of the verification panel were spent largely in trying to establish exactly what had been agreed to on SBLM's and what precisely it all meant."[49]

The fact that the negotiation becomes increasingly difficult to comprehend does not mean that negotiators are incapacitated by complexity, or without a strategy for concluding the process. For one thing, negotiators tend to focus on aspects that are relatively certain, such as the positions that governments take on the issues, and pay less attention to those that are less understandable, such as the significance or value of those positions. Thus, the conflict that is inherent in any negotiation helps to clarify and structure that situation, and it is taken advantage of by negotiators. Second, negotiators try to structure the way they handle conflict. For example, a Kennedy Round interviewee indicated that on conflictual issues, negotiators at different levels tended to argue their position "to a point of incompetence," after which (as we have seen) the issue would be taken up in the next higher level in the negotiating bureaucracy. This procedure brings new faces and new ideas to difficult problems. Also implied in this procedure is a stratagem that was followed by some delegations in the Kennedy Round, namely that of keeping senior people at home and away from the negotiation until late in the game. This stratagem helps to avoid delegations from becoming psychologically committed to single interpretations of difficult problems, and it creates the flexibility and freedom to make decisions on the solution of issues.

IV. Conclusion

In this essay it has been argued that the nature and practice of international negotiation have changed; namely, the kinds of issues that are raised on the agenda of international relations have changed, which changed the diplomatic processes whereby governments handle those issues. In brief, these diplomatic processes have become more bureaucratic and more characteristic of decision making as it is practised in big government and big business.[50] Given this development,

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[49] Newhouse (fn. 8), 254.

[50] It is interesting to consider the reverse of this proposition: just as there is more bureaucracy in negotiation, there is also more negotiation in bureaucracy. See the literature on "bureaucratic politics"; see also Anselm Strauss and others, "The Hospital and

one can reflect on the nature of the negotiation process itself. Why do states negotiate international issues? Are they likely to continue to use negotiation (and bargaining) as principal methods of conducting diplomacy? And, are they likely to turn to formal international bureaucracy instead of international negotiation, to accomplish in form what —as has been argued in this paper—already exists in practice?

The reasons why states (or any organization) negotiate an issue is because they share a mixture of agreement and disagreement with other states on that issue. Negotiation is a mixed-mode relationship—a mixture of cooperation and conflict; if either mode is absent, the relationship between the parties will change. Pure conflict brings hostilities, or if governments pursue conflict passively, it brings boycotts or other measures whereby states studiously ignore one another. Pure cooperation brings rules, normally in the form of administration or bureaucracy, whereby governments agree in advance how to handle the issues and leave the process to formal mechanisms. A mixture of conflict and cooperation brings negotiation, where there are few rules, but where cooperation is sought because states seek ends they cannot achieve unilaterally. The area in international relations where mixed-mode relationships are appropriate is growing. Today, governments need more control over forces in the international environment than they can manage independently; conflictual acts like military hostilities, imperial relationships, or alliance building cannot establish the control they once might have. On the other hand, there is not sufficient consensus in world politics to turn over the most pressing of the world's problems to international organizations. We are entering an era in which international negotiation appears to be the predominant mode of relations between states, and conditions in the international system are likely to maintain this mode for some time to come.

There is much bureaucracy in negotiation, but it does not seem desirable that any attempt be made to substitute bureaucratic organization for negotiation, even in areas where this might seem feasible. Negotiation is a very good normative model for handling large-scale problems in international relations, and for several reasons. For one thing, negotiation fosters, and even forces, a large flow of communication between the participants. Negotiation avoids an ossifying structuring of communications that can occur in bureaucracy. Any topic can be raised in a negotiation, and often is; at a time when the international system is going through major fundamental changes, that is probably

Its Negotiated Order," in I. William Zartman, ed., *The 50% Solution* (Garden City: Anchor Books 1976), 98-117.

desirable. In theory at least, the negotiation model encourages national leaders to think through fundamental positions from the standpoint of what they want to get out of the negotiation; if elements of bureaucracy, incrementalism, and muddling through creep in, it is only as a normal concession to the complexity of modern international transactions. A second reason for the usefulness of international negotiation is that it is a historical model with which foreign policy establishments are familiar. Most diplomats instinctively think of relations between states in terms of bargained relationships; in cases where they do not, bargained exchanges are at least an accepted relationship.[51] Finally, negotiation is a useful model because the conflict inherent in negotiation helps to structure the situation within which governments must deal with one another. Conflict creates a comprehensible situation out of one that might otherwise be incomprehensible, and hence difficult to take action in.[52] In negotiation, governments are encouraged to take a position, and positions, whether they mean anything or not, can usually be stated with some clarity. The participants are called upon to "resolve conflict," and this may prove a more doable task than other things that could be expected of international decision makers. In the negotiation model, the business of the international community is ostensibly framed in terms of conflicts; these conflicts are resolved by diplomats who are schooled in conflict resolution. This is probably not a bad way to manage the world's business.

A final point is one that clearly occupied much of de Callières's thought: What sort of personal qualities are needed in a good diplomat? The list of such qualities drawn up by de Callières must strike most modern readers as rather quaint; it was exhaustive, and one wonders where such extraordinary people could possibly have been found.[53] While de Callières's requirements may have been overly exhaustive, the exercise itself was not quaint or even unmodern. Personal qualities flow from the way the process is conceived, and thus de Callières's concerns of getting the right person for the job ought to be as important to modern negotiation as they were in renaissance diplomacy.

[51] An analogous observation was made by a State Department official about the adversary process in international relations, and particularly "the structuring effect this procedure has on disputes at the international level." Herbert J. Spiro, in *Observations on International Negotiations* (fn. 9).

[52] See Lewis A. Coser, *The Functions of Social Conflict* (New York: Free Press 1956), esp. chap. VII, "Conflict—The Unifier."

[53] Nicolson has sensibly reduced the list to seven virtues: truthfulness, precision, calm, good temper, patience, modesty, and loyalty. However, he "takes for granted": intelligence, knowledge, discernment, prudence, hospitality, charm, industry, courage, and even tact. Nicolson, *Diplomacy* (Oxford: Oxford University Press 1963), 67.

There is an argument today that personalities and personal qualities are unimportant in negotiation; that the job is done by "professionals," and that professionalism requires attention to the facts and not the personalities of the situation. Certainly most negotiators interviewed at the Kennedy Round agreed with this position in the abstract. However, they were unwilling to say that personalities were unimportant, and on one interesting point they revealed just how important they thought personalities were. It was occasionally observed at the Kennedy Round that the chief negotiators (but not the Heads of Delegation) of the United States and the E.E.C. did not have an amicable working relationship. When interviewees were asked the general question whether personalities could affect the progress of a negotiation, most said no; but when they were asked whether the chief negotiators of the United States and the E.E.C. could have concluded the negotiation in the absence of their respective Heads of Delegation, many disagreed or else declined to answer the question. This appeared to be a startling recognition of the fact that personal qualities can be an important factor in negotiation, particularly as they occur in combinations from different nations.[54] It should not be surprising. There is a lot of decision-making work that negotiators from different nations must do together, and it is only reasonable to assume that their personalities and working styles should mesh, much as we would expect this to be true of any team in any decision-making organization.

What, then, are desirable personal traits for negotiators in a modern context, particularly qualities that were not mentioned by de Callières? They are not immediately obvious, because negotiation is an enduring form in human history, and de Callières wrote what is indeed an enduring book. For new personal qualities to be added to the list, it would be necessary for the nature of diplomacy itself to change. This of course has happened in the past. Nicolson notes that de Callières is unconcerned about the quality of oratory, a quality that the ancient Greeks found indispensable in their diplomacy: in ancient Greece, diplomats were expected to plead their city's case before the assembled throngs of other city states, a practice which had disappeared by de Callières's time.

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[54] The same theme wase eloquently stated about the Law of the Sea Conference by Ambassador Christopher Pinto of Sri Lanka: "The potential of the individual personality at the Conference to construct or destroy, cannot be overstated." "The Oceans: National Interest and Global Perspective," speech delivered before the Colloquium sponsored by the Canadian Group of the Trilateral Commission, Halifax, January 21, 1976.

Today what has changed most about international diplomacy is (1) the need to manage information, and (2) the fact that important societal decision making occurs at the level of international negotiation, at the expense of the processes of national government. For the first, the skills needed are those of a systems analyst, which fortunately are not wholly native, but can be imparted through training. Computer programming might well be a valuable ability, not because computers are necessarily useful in international negotiation (for instance, they were not useful in the Kennedy Round), but because the process of thought that is involved in computer programming is one that leads to the handling of information in a systematic fashion, and to the development of a hierarchical, recursive style of search and decision making.

For the second change in diplomacy, the quality needed is political courage. This did not occur to Monsieur de Callières because in his day diplomats represented sovereigns; the actions of these diplomats were not visible to many, and consequently the pressures on them were less burdensome. Today the situation is different. Modern international negotiation is more like representing a labor union than a king, and union negotiators confront problems dealing with their constituents that classical diplomats never had to face. Moreover, negotiation today generates new issues and new problems that negotiators themselves are better aware of than anyone else. Negotiators have to take final responsibility for making some decisions (or at least for making recommendations that effectively become decisions) because no one else is in a position to do the job better. This fact itself raises questions about the public accountability of the negotiation process, and it is an issue that will increasingly confront democratic societies in the future. From the negotiator's standpoint, however, it cannot be gainsaid that the job has become more difficult. Negotiators must often make decisions in highly uncertain yet bureaucratically visible situations, with the full knowledge that they may be seriously criticized at home for whatever they do. They need to have political courage to do their job properly.