

## THE MODERN INTERNATIONAL CONFERENCE AS A LEGISLATIVE FORUM

As early as 1926 R. L. Buell had expressed the opinion:

The making of new law — the determination of new policies — is ordinarily a task for an institution known as legislature. In international relations, such a body is called a Conference; being composed of representatives of presumably equal and independent States, it proceeds by a set of rules which differ radically from the rules which bind a domestic legislature. Nevertheless, the function of both bodies is the same — remedying old wrongs by new laws, or creating new legal fences about fields in which men or nations hitherto have roamed without restraint.<sup>1</sup>

His statement that an international conference ‘proceeds by a set of rules which differ radically from the rules which bind a domestic legislature’ perhaps points only to the majority rule and as will be shown in this study the procedural rules governing the modern international conference are not ‘radically’ different from those of a legislative assembly.

The very fact that in congresses or conferences<sup>2</sup> States through their representatives have debated matters of common interest and have agreed to adopt substantive laws as well as general principles to govern their mutual relations on a community-wide basis, attributes to them a characteristically legislative role: it is here in these international conferences that new principles of international law have been laid down or some of its existing rules amended or abrogated.<sup>3</sup>

### 1. DIPLOMATIC CONGRESSES AND CONFERENCES OF THE SEVENTEENTH AND EIGHTEENTH CENTURIES

The practice and procedures of early diplomatic congresses provide a highly useful contrast for the practice and procedures of modern international conferences. The points that deserve to be emphasized

1. *International Relations* (1926), p. 628. Also see Woolf, L.S., *International Government* (1916), p. 25; Scott, J.B., *The Hague Peace Conferences of 1899 and 1907* (1909), p. 6; Hyde, C.C., *International Law* (1945), vol. 1, p. 9.
2. The practice is to use both the words interchangeably, see Hill N.L., *The Public International Conference* (1929), p. 2. For a discussion of the meaning of the term ‘international conferences’, especially in the context of the ‘United Nations Law’, see Liang, Yuen-li, ‘What is an international conference?’ *A.J.I.L.* (1950), vol. 44, pp. 333-349.
3. It is this conscious enactment of ‘legislation’ at international conferences and assemblies, as distinct from the creation of the rules of international law through custom or judicial interpretation, which distinguishes the conference as a legislative forum.

in this connection are, firstly, that the early international congresses or conferences did not assemble at any particular date and time or at regular intervals; their convocation always depended upon the initiative of one or more States, but then sometimes even when the holding of a particular conference had been fully agreed upon among certain States the opening of that conference by any particular date or time could not be guaranteed or ensured.<sup>4</sup> Secondly there was an utter lack of parliamentary procedures at these conferences; they were constantly hampered in their work by problems relating to precedence among the plenipotentiaries<sup>5</sup> or the order of seating within the conference hall.

## 2. THE CONFERENCES OF THE NINETEENTH AND EARLY TWENTIETH CENTURIES

Some of the diplomatic conferences, even during the nineteenth century, were more or less organized like the old diplomatic congresses. Thus, we find that although the 'bases' for general discussions at the Congress of Vienna had been already laid down in Article XXXII of the Treaty of Paris, signed on 30 May 1814, there was no proper agenda for the Conference nor did the Congress meet in regular daily sessions. Again, there was no agenda whatsoever before the Conferences of London of 1830-33 and 1850-52. There was no definite programme even before the Conference of London in 1871. Moreover these Conferences did not follow any 'rules of procedure', so that the debates in such conferences could easily veer round from one subject to another and could not be properly regulated.<sup>6</sup> It is no wonder that the records of these conferences present a series of disjointed discussions and negotiations rather than a uniform pattern of parliamentary debate and discussion.<sup>7</sup>

4. The Congress of Münster and Osnabrück ought to have opened on 25 March 1642, but the French plenipotentiaries 'did not make their appearance until March and April 1644, and more than eighteen months elapsed before it was found possible to set to work' — see Satow, E., *A Guide to Diplomatic Practice* (1917), vol. 2, p. 5.
5. The Peace of Westphalia was negotiated 'simultaneously at two separate places' mainly for avoiding 'disputes respecting precedence between France and Sweden — it was arranged that the plenipotentiaries of France were to have precedence at Münster and to yield it to those of Sweden at Osnabrück' — see *ibid.* At the Congress of Carlowitz (1699) several doors had to be provided for enabling the delegates of equal rank to enter the conference hall simultaneously — see *ibid.*, p. 30.
6. It is only the 'legislative conferences', starting with the Geneva Conference of 1864, that limited themselves to the discussions of their objectives without mingling extraneous political questions and at the Berlin Conference of 1884-85 a proper agenda was also placed on the conference table.
7. Although we do read about the formation of committees at the Congress of Vienna (1815) and the Conference of Paris (1856) but these committees had been established for the purpose of facilitating personal interviews among a few diplomatic negotiators rather than for setting up representative bodies of the plenary organ.

(a) *The trend from purely diplomatic methods to increased reliance on parliamentary procedures*

(i) *The non-diplomatic conferences*

The first international conference to have been organized and run as a 'parliamentary assembly' happens to be the Geneva Conference of 1864. Thus, we read that at the first meeting of the Conference General Dufour was elected as its president, full powers of the delegates were verified, a 'diplomatic committee' was appointed, the president delivered an opening address setting forth the purpose of the Conference and the draft treaty was read. At the second meeting some of the articles of the draft convention after having been discussed were referred to the diplomatic committee for redrafting. At the third meeting the *procès-verbaux* of the first and second meetings were read over and adopted with certain modifications, and the discussions were continued until the fifth sitting of the Conference when the convention was finally approved.

But apart from the similarity between the procedure generally followed by municipal legislative assemblies in enacting legislation and the procedure followed at this Conference there are also a few other features of this Conference which deserve a brief mention.<sup>8</sup> First of all the delegates to this Conference were not diplomats.<sup>9</sup> Secondly this Conference, unlike the 'peace conferences', had not been convened for considering political questions or questions concerning the delimitation of national frontiers. Thirdly there was no atmosphere of secrecy at this Conference.<sup>10</sup>

An attempt was also made to introduce a system of voting<sup>11</sup> but it failed when the first French delegate pointed out that any voting procedure was meaningless because a majority could not bind a minority at an international conference.

The Conference of Paris which created the Telegraphic Union in 1865 is another important legislative conference.<sup>12</sup> From the point of view of its organization and procedure, this conference is even more important than the Geneva Conference of 1864. Much of the work

8. The idea of holding such a conference was indeed novel and States were slow in recognizing its importance. Only two representatives, the French and the Swiss, could produce full powers at the beginning of the Conference, whereas at the first meeting of the Paris Conference of 1856 all the plenipotentiaries had presented their full powers 'in good and due form' — see Satow, E., *A Guide to Diplomatic Practice* (1917), vol. 2, p. 119; *ibid.* (1922), 2nd ed., vol. 2, pp. 92 and 132.

9. The delegates were mostly professional men. See Satow, E., *A Guide to Diplomatic Practice* (1917), vol. 2, pp. 118-119.

10. Even the members of the International Committee of Geneva, a private organization, were allowed to attend the meetings of the Conference although they had no right to speak or vote. See *ibid.* (1922), vol. 2, p. 133.

11. See *ibid.*

12. See generally, Reinsch, P., *Public International Unions* (1911), p. 16.

was accomplished at the committee stage — its drafting committee had to hold sixteen laborious sessions but there were only three plenary sessions of the Conference.<sup>13</sup>

The Geneva Conference of 1868, summoned for adopting an international treaty to extend the principles of the Geneva Convention of 1864 to naval warfare, also deserves a brief mention. It was at this Conference that a procedure of voting was successfully introduced and applied. Each State was accorded one vote and a majority was held 'to be sufficient to discuss a particular subject'.<sup>14</sup> However, the principle of unanimity was retained for all final action and decisions. Further, it was through this Conference that the institution of 'rapporteur', a typical French parliamentary institution, was made familiar to international institutions and assemblies.<sup>15</sup>

The Conference held at Berne in 1874 to adopt a definite scheme for the creation of a postal union deserves detailed examination. The delegates to this Conference were mostly 'officials' and not professional diplomats.<sup>16</sup>

The Director of Swiss Posts, M. Eugene Borel was elected president of the Conference.

This is perhaps the first international conference which, before proceeding with its regular work, adopted a detailed and definite set of rules of procedure. The adoption of these rules did not occasion any debate.<sup>17</sup> They were precise and yet quite comprehensive. Under Article 1 even 'postal administrations' were allowed to participate in the work of the Conference which was indeed, as pointed out by Dunn, 'contrary to the classical theory that only sovereign States had international personality and could enter into international negotiations'.<sup>18</sup> Under Article 5, each State and Administration was declared to have 'the right to one vote and one alone' and it is significant to note that the Conference transacted all its business by following the rule of majority voting.<sup>19</sup>

13. See *Etudes de droit international conventionnelle* (1894), p. 286 *et seq.*

14. Satow, *op.cit.*, p. 139.

15. *Ibid.*, p. 140.

16. Twenty of these delegates were Directors-General of the postal services in their countries; ten were under-secretaries, inspectors and heads of departments; one finance minister; one consul; one secretary of a legation; a Swiss Landamann of the Canton of Glaris and so on. See Sly, J.F., 'The genesis of the Universal Postal Union', *International Conciliation* (1927, October), No. 233, p. 403.

17. *Ibid.*, p. 405.

18. Dunn, F.S., *The Practice and Procedure of International Conferences* (1929), p. 150.

19. *Ibid.* Dunn says: 'As a matter of fact, all the voting at the conference up to the final acceptance of the draft convention was done by majority rule, and it does not seem to have occurred to the delegates that it should have been otherwise. Nor was there any need for the unanimity rule since Article 10 of the rules of procedure provided that the adoption of the convention embodying the results of the deliberations of the conferences was "dependent upon the approbation of the contracting Governments, indicated through the ordinary channels" '.

At its first meeting the Conference had, apart from adopting the 'rules of procedure', also taken a few other important decisions, e.g., it had fixed eleven o'clock as the regular hour for its meetings and had further decided to issue *communiqué* for the press regarding its proceedings.<sup>20</sup>

The draft scheme prepared under the guidance of Dr. von Stephan, head of the Prussian Postal Service, had provided the 'basis for deliberation'.<sup>21</sup> It had been communicated to the States well in advance so that the scheme could be fully scrutinized and the delegates could come prepared to the Conference.

At the first meeting of the Conference a General Committee (also called General Commission) was formed for the purpose of examining specific questions referred to it and also to act as a drafting committee. It was, in fact, a 'committee of reference', and only those questions on which the members of the Conference had exhibited a marked difference of opinion during the debates at the plenary meetings were referred to it for consideration or final redrafting.

At the Conference each one of the articles of the draft project was first read over and then its substance was discussed. The first article to be debated at length was Article 9 concerning a uniform postage rate and gratuity of transit. The article, after a long and animated discussion, was referred to the General Committee for examination and report. When Article 11 of the draft scheme came up for discussion, Dr. von Stephan proposed an alternative draft article. The discussion was then postponed 'until printed copies of the new arrangement' had been made 'available for the use of each delegate'.<sup>22</sup> Articles 12, 13 and 14 also occasioned detailed and long debates; the second paragraph of Article 12 of the draft project was not received well and was rejected by a vote of 16 to 3.<sup>23</sup> At the fifth session of the Conference the Belgian delegate Mr. Vinchent emphasized the need of an international bureau by submitting a motion seeking the amendment of Article 13 in that respect. There were several other proposals and counter-proposals on the subject which were discussed by the Conference and ultimately the amendment moved by Baron Kolbensteiner, the Austrian delegate, was adopted by a vote of thirteen to seven.<sup>24</sup> Article 14, as finally adopted by the Conference, was in effect based on a motion of the Rumanian delegate, Mr. Lahovari which did not receive any opposition whatsoever.<sup>25</sup> Articles 16, 17 and 18, recommended by the

20. The representatives of the press were not allowed to attend the meetings because of the small size of the conference hall. See Keith Clark, *International Communications* (1931), p. 23.

21. *Ibid.*, p. 25. For the text of the draft scheme, see *Documents du Congrès Postal International, réuni à Berne du 15 Septembre au 9 Octobre 1874*, pp. 3-7. The scheme consisted of 14 articles in all, see Sly, *op.cit.*, pp. 406-407; Clark, Keith, *op.cit.*, p. 25.

22. Sly, *op.cit.*, p. 407.

23. *Ibid.*, p. 408.

24. *Ibid.*, p. 410.

25. *Ibid.*, p. 411.

General Committee, were adopted with nominal modifications. At the end of the fifth session nearly all the basic questions had been discussed. The sixth session was largely devoted to the consideration of Article 10 and a formal title was given to the convention: 'Treaty concerning the formation of a General Postal Union concluded between... States and Administrations'.<sup>26</sup> At the ninth session the treaty was again taken up.<sup>27</sup> Most of its articles were adopted without any discussion or comment. Only the last article, i.e. Article 19, was slightly amended. Finally, at the twelfth session the treaty as a whole was put to the vote and was adopted unanimously.

The process was described in some detail so as to indicate how very little the legislative techniques of this Conference differ from those of a national legislative assembly. The Conference had a fixed procedure to guide it throughout the course of its twelve useful sessions. It had a well drafted project to start with. Then, though sometimes there were lengthy and animated discussions, these were orderly and businesslike.<sup>28</sup> Unlike a gathering of negotiators, the meetings of the Conference exhibit the employment of parliamentary techniques, e.g., the successful use of motions, proposals and counter-proposals, references of controversial questions to a general committee, and the adoption or rejection of proposals on the basis of a majority vote.

#### (ii) *The Berlin Conference of 1884-85*

The Conference of Berlin (1884-85) had a dual character. It was a political conference and yet it occupies an important place in the history of legislative conferences. Most of its acts were characteristically legislative. The agenda of the conference was contained in the invitations issued by Prince Bismarck, which clearly specified that three main items were to be discussed at the conference, thus constituting an 'agenda' :

1. Freedom of commerce in the basin and mouths of the Congo;
2. Application to the Congo and Niger of the principles adopted by the Congress of Vienna with a view to consecrating freedom of navigation on several international rivers, principles which were later applied to the Danube; and
3. Definition of the formalities to be observed so that new occupations on the coast of Africa may be regarded as effective.

26. *Ibid.*, p. 416.

27. In the meantime the conference had taken up the consideration of the 'règlement d'exécution'.

28. Clark, Keith, writes: 'It is a pleasant thing to read in the *procès-verbaux* with what single-mindedness [the] delegates set about their task. Only Yanco Effendi Maeridi, Turkish representative, seems to have been absent at any time, and this after he had called the attention of the conference to the postal servitude to the Great Powers under which Turkey suffered ("*certaines anomalies mal-heureusement aussi nombreuses que regrettables*") and was advised by these technical experts that they were not there to discuss and would not discuss political questions', *op.cit.*, p. 23.

The invitation also stipulated that the

Government of Germany in agreement with the Government of the French Republic proposes to this effect that representatives of the different Powers interested in the commerce of Africa may meet in conference at Berlin... for the purpose of arriving at an understanding of the principles indicated above.<sup>29</sup>

Following the established practice, Prince Bismarck was elected president of the Conference and he in turn proposed M. Raindre, French 'conseiller d'ambassade', Count William Bismarck, 'councillor at the Ministry of State', and Dr. Schmidt, vice-consul attached to the German Ministry for Foreign Affairs, as secretaries.<sup>30</sup> The proposal was approved as a matter of course. Drafts were presented on all the three points of the agenda for initiating formal discussion at the plenary sessions of the Conference. On the subject of 'Freedom of commerce in the basin and mouths of the Congo', a 'commission' was set up consisting of the representatives of eight Powers<sup>31</sup> 'to report on the meaning of the expression "territories consisting the basin of the Congo and its affluents"' in the draft presented by the German Government'.<sup>32</sup> At the third sitting of the conference, the Commission was authorized to nominate the drafting committee. At the fourth plenary session of the conference it was decided to publish the protocols of its sittings.<sup>33</sup> At the fifth sitting of the Conference a 'motion respecting the suppression of the slave trade was submitted by the British plenipotentiary'<sup>34</sup> which was discussed at the sixth sitting and referred to the Commission. At the seventh sitting the draft Declaration regarding the suppression of the slave trade, transmitted by the Commission, was discussed and adopted.<sup>35</sup> The conference was also successful in adopting several other 'declarations' and 'acts': Declaration respecting freedom of commerce in the basin of the Congo, its mouth and neighbouring territories; Declaration respecting the navigation of the Congo; an 'act' respecting the Niger; Declaration respecting formalities to be observed in the case of new occupations on the coast of Africa; and the Final Act.<sup>36</sup> These were all approved and adopted (sometimes with amendments) by the Conference only after they had been examined and reported on by the Commission.

29. *British and Foreign State Papers*, (1883-84), vol. LXXX, p. 1018 (French text).

30. Satow, *op.cit.*, p. 153.

31. *Ibid.*, p. 155: Germany, Belgium, Spain, the United States, France, Great Britain, Holland and Portugal. At the third sitting of the conference 'it was agreed that every member of the Conference should be entitled to sit on the commission or be represented on it'.

32. *Ibid.*, p. 154.

33. *Ibid.*, p. 155.

34. *Ibid.*, p. 156.

35. *Ibid.*

36. It was at the ninth meeting of the conference that the term 'Final Act' was replaced by the term *Acte General* or General Act. See Satow, E., *International Congresses* (1920), pp. 92-93.

(iii) *The Hague Conferences of 1899 and, 1907*

At the First Hague Conference of 1899 which had to cope with a heavy agenda, instead of the usual 'general committee', three committees were appointed.<sup>37</sup> Each committee was free to appoint its officers and to set up sub-committees. Of the three, only the first two committees set up two sub-committees each. Each committee had its own rapporteur<sup>38</sup> and could further regulate its own procedure. Thus, it was at the First Hague Conference that the committee system was properly and effectively utilized in helping the Conference to execute its work successfully and no doubt much of the work of this Conference was actually accomplished through these committees. Another important feature of this Conference was the participation of experts and professors of international law in the plenary and committee sessions.<sup>39</sup>

The president of the Conference had played his part admirably and had managed to keep the proceedings at the Conference within strictly defined limits. Taking his cue from Count Mouravieff's circular letter of 11 January 1899/30 December 1898, the President, M. de Staal, had stated at the second session of the conference:

One of our preliminary duties in order to insure the progress of our work is to divide our labours, and I therefore beg to submit for your approval the following proposal. Three Committees shall be appointed. The First Committee shall have charge of the Articles 1, 2, 3, and 4 of the Circular of December 30, 1898. The Second Committee of Articles 5, 6 and 7. The Third Committee shall have charge of Article 8 of the said Circular, and each Committee shall have power to subdivide itself into sub-committees.

It is understood that outside of the aforementioned points the Conference does not consider itself competent to consider any other question. In case of doubt the Conference shall decide whether any proposition originating in the Committee is germane or not to the points outlined.

The statement of the President that the conference had no competence 'to consider any other question' was followed to the letter. The attempt of the American delegation to introduce a proposal (regarding the exemption of private property from capture in maritime warfare) was frustrated simply because it did not fall within the scope of the agenda.<sup>40</sup>

37. See Higgins, A.P., *The Hague Peace Conferences* (1909), at p. 41 where he states that at this conference, 'The delegates and their staffs numbered upwards of 100. The representatives were divided into three committees: the first two being divided into two sub-committees. Articles 1-4 of Count Mouravieff's circular of the 11th January, 1899; to the Second those comprised in Articles 5, 6 and 7 and to the Third those comprised in Article 8. The Sub-Committees and Committees held numerous meetings and reported to plenary meetings of the Conference of which there were 10 in all, the last being held on 31st July'.

For the text of Count Mouravieff's circular letter dated 11 January 1899/30 December 1898, see Holls, F.W., *The Peace Conference at the Hague* (1900), pp. 24-27; Scott, J.B., *The Hague Peace Conferences of 1899 and 1907* (1909), vol. 1, pp. 44-46.

38. See Satow, E., *A Guide to Diplomatic Practice* (1922), 2nd rev. ed., vol. 2, p. 160.

39. *Ibid.*, pp. 154-157. Also Scott, *op.cit.*, pp. 145-154.

40. See Higgins, *op.cit.*, p. 40; Garner, J.W., *Recent Developments in International Law* (1925), pp. 56-57.



At the Second Hague Conference in 1907 four committees were set up of which the first three had two sub-committees each.<sup>41</sup> A drafting committee consisting of twenty-nine members was also formed with Nelidow as president; but much of its work was performed by a sub-committee consisting of seven members.<sup>42</sup> The agenda of the Conference was contained in the Note addressed to each Government by the Russian diplomatic representative accredited to it<sup>43</sup> but, unlike the practice followed at the First Hague Conference, subjects other than those on the agenda were also admitted for consideration. Votes were counted by following the alphabetical order of the names of the States in French<sup>44</sup> since it was the official language of the Conference. The Chairman and rapporteurs of the committees, like their counterparts in the municipal assemblies, commanded positions of great influence and authority.

The 'rules of procedure' adopted at the Second Hague Conference in 1907<sup>45</sup> consisted of 12 Articles<sup>46</sup> and, like the rules of procedure adopted by the Conference at Berne in 1874, emphasize the 'deliberative' character of the Conference. Thus, at the Conference every resolution or proposal, as a general rule, had to be delivered 'in writing to the President, and printed and distributed' before being taken up for discussion. Under Article 11 the minutes of the plenary sessions of the Conference had to 'give a succinct résumé of the deliberations' and each delegate had 'a right to request the insertion in full of his official declarations according to the text delivered by him to the Secretary'. Further, the reports of the committees and sub-committees had to be printed and distributed before being taken up for discussion.

(b) *The early parliamentary law of international conferences*

Thus we find that even before the League of Nations was actually brought into existence the international conferences had already quite successfully developed a large body of parliamentary procedures and practices of their own.

The Berne Conference of 1874, the Hague Conferences and the London Naval Conference of 1908-9 had followed well defined programmes, which were generally well adhered to for the purpose of initiating discussions and for regulating debates at the plenary sessions of the conferences. We notice that after the great success of the Berne Conference of 1874 it had become customary for international conferences to adopt 'rules of procedure'. We also notice that Presidents and Vice-Presidents were usually elected; the foreign minister or the first delegate of the country which called the Conference (or of the country where the con-

41. Satow, E., *International Congresses* (1920), p. 76.

42. *Ibid.*, p. 77.

43. See Scott, *op.cit.*, p. 102.

44. Satow, E., *A Guide to Diplomatic Practice* (1922), 2nd ed., vol. 2, p. 172.

45. See Satow, E., *International Congresses* (1920), pp. 128-131.

46. For the text see Scott, *op.cit.*, pp. 773-775.

ference held its meetings) was as a rule elected as the President. The appointment of special committees or committees of reference, juridical committees<sup>47</sup> for defining legal phrases and expressions, sub-committees and the participation of technical and legal experts were becoming more and more common. By 1920 the committees could usually appoint their own chairmen, adopt their own 'rules of procedure', elect their rapporteurs or appoint a secretary or secretaries for drawing up committee reports.<sup>48</sup>

Within a period of four years from the Geneva Conference of 1864, where the unanimity principle was held to be of universal application in all international conferences (regardless of their purpose or character) as a supposedly 'natural' corollary to the equality of States, a voting system was successfully adopted at the Second Geneva Conference of 1868. The Berne Conference of 1874 even acted on the principle of majority rule throughout its twelve useful sessions. Again, even at the Hague Conferences in 1899 and 1907 the trend from unanimity to near-unanimity or quasi-unanimity is noticeable. As a general rule proposals which could not secure unanimous support at the Hague Conferences were dropped<sup>49</sup> but there were some exceptions to this general rule. The Declaration forbidding the use of dum-dum bullets at the First Hague Conference in 1899 was included in the Final Act even though Great Britain and the United States had voted against it.<sup>50</sup> At the Second Hague Conference it was agreed that a majority vote would entitle a proposal to be recorded as part of the proceedings,<sup>51</sup> and the Prize Court Convention was adopted even though Brazil had voted against it. Further the committees of the Hague Conferences had in fact made recommendations upon the basis of majority voting.

Professor Walther Schücking, writing about the principle of 'quasi-unanimity' as developed at the Hague Conferences remarked:

The wheel of development runs forward and not back; and it would seem to be wholly impossible that the Third Hague Conference should again return to the principle of unanimity. The principle of quasi-unanimity is evidently a slightly veiled transition to the principle of majority rule, and it is by no means evident how the recognition of majority rule is to endanger the sovereignty of States.<sup>52</sup>

47. At the London Naval Conference (1908-1909) an examination committee and a special juridical committee of ten members each were formed for special purposes: the 'juridical committee' was asked to study and define those factors which constituted the 'enemy character' of ships and cargoes. See Satow, E., *International Congresses* (1920), p. 77.
48. *Ibid.*, p. 18.
49. See Hill, N.L., 'Unanimous consent in international organizations', *A.J.I.L.* (1928), vol. 22, at p. 321: 'At the First Hague Gathering in 1899 the Roumanian vote alone defeated the original draft of the Convention for a Commission of Inquiry'.
50. Portugal had abstained from voting, see Holls, F.W., *The Peace Conference at the Hague* (1900), p. 103.
51. Satow, E., *A Guide to Diplomatic Practice* (2nd ed.), vol. 2, p. 172.
52. *The International Union of the Hague Conferences* (1918), translation from the German by Charles G. Fenwick, p. 215.

He further stated on the authority of a legal expert who attended the Hague Conference in 1907 that

it was the prevailing impression at the Conference that in the future the majority rule must also be protected from the minority, and that with this object in view the Third Conference would begin by regulating the voting so as to make majority resolutions valid.<sup>53</sup>

In noting this abandonment of the unanimity rule it must equally be noted that, to the extent that a majority vote became sufficient, it was sufficient only for purposes of adopting a text. There was no question of a State in the minority being bound against its will to accept the draft treaty or convention thus adopted. However, the reluctance of States to see the unanimity rule abandoned, even for the purpose of adopting a text, was perhaps based on a foresight of the developments which were still to take place. These developments lay in the direction of transposing the treaty rules thus adopted into the body of customary international law, so that by 1945 the Nürenberg Tribunal had little hesitation in treating the Hague Regulations on Land Warfare, adopted in 1907, as binding on *all* States. Thus the position in law was that, at the time of the conclusion of the draft treaty or convention, no State in the minority was in any way obligated; but the passing of time and the pressure of events and of world opinion tended to make the position of the States in the minority less and less tenable, forcing them to conform with the majority.

### 3. THE EMERGENCE OF 'PERMANENT' INTERNATIONAL ASSEMBLIES

Although several international conferences of the nineteenth century had adopted 'parliamentary' procedures and in some cases had also employed typical parliamentary institutions, it was not until the establishment of the conference system as an integral part of the machinery of general international organizations that the international conferences could be properly and effectively organized on the lines of municipal legislative assemblies.<sup>54</sup> Convocation and re-assembling of international conferences had always posed difficult problems. It is true that the periodic conferences of the public international unions, compared with the *ad hoc* conferences of the nineteenth century could be more easily organized and that a continuity in their work was also maintained by each succeeding conference but even so these periodic conferences fall short of the requirements for a favourable comparison with national legislative bodies. First of all, they did not meet in regular annual sessions or at any fixed headquarters. Secondly, except the U.P.U., in all the other public international unions, these periodic conferences

53. *Ibid.*, p. 216. Sir Edward Fry, the Chief British delegate to the Second Hague Conference gave expression to this feeling by commenting very unfavourably on the practice of following the principle of unanimity for reaching decisions in the legislative conferences and pointed out that among other things 'the rights of the majority over a minority' would have to be established before another meeting of the conference could prove satisfactory — see Accounts and Papers 63, *State Papers*, vol. CXXIV, 1908, Miscellaneous No. 1 (1908), Correspondence respecting the Second Peace Conference held at the Hague in 1907, pp. 20-21.

54. See Knudson, J.I., *A History of the League of Nations* (1938), p. 196.

followed the rule of unanimity. Finally, unlike national assemblies, they lacked elaborate rules of procedure concerning the right of members to speak, points of order, motions for adjournment and closure of debates, etc. But the modern international conferences certainly present a different picture.

In marked contrast to the early diplomatic congresses or the *ad hoc* conferences of the nineteenth and early twentieth centuries or even the periodic conferences of the public international unions, the permanent international assemblies, such as the General Assembly of the United Nations, the consultative Assembly of the Council of Europe, some of the plenary assemblies of the specialized agencies<sup>55</sup> and the European Parliament of the 'Six', normally meet in annual sessions and nearly always at an appointed date and time.<sup>56</sup>

Moreover, the modern international conference (whether it is of the institutional or *ad hoc* type) is no longer, like the conferences in the past, an arena for secret diplomacy. The representatives taking part at the Conference of Paris in 1856 were under an obligation to observe strict secrecy with regard to matters discussed and decisions reached at the Conference. In modern times, by comparison, the work of all the important international conferences and the decisions taken by them receive tremendous publicity. In addition to all the important documents, datum and decisions concerning the agenda items of the international assemblies even the notes, opinions and memoranda prepared by the secretariats for the use of the international assemblies are nearly always published and available to anyone who may be interested in them. In this light secret diplomacy has been completely replaced by 'open diplomacy' or more appropriately by 'parliamentary diplomacy'<sup>57</sup> phrases which have been, in fact, commonly used to describe the changed character of international conferences more particularly of international assemblies.<sup>58</sup>

Even though some of the international assemblies have rules allowing them to hold 'private meetings', it is difficult to imagine these plenary bodies taking secret decisions. Rule 62 of the General Assembly's Rules of Procedure<sup>59</sup> stipulates,

The meetings of the General Assembly and its Main Committees shall be held in public unless the body concerned decides that exceptional circumstances require that the meeting be held in private.

55. The Assemblies of IMCO, ICAO and the Conference of FAO do not meet in regular annual sessions, however their organization, procedures and techniques are very much similar to those of the I.L.O. Conference or the World Health Assembly.
56. With the exception of the World Health Assembly all the other assemblies meet at fixed headquarters.
57. That 'parliamentary diplomacy' is becoming 'more and more parliamentary and less and less diplomatic', see Bailey, S.D., *The Secretariat of the U.N.* (1964), p. 42; Thompson, Kenneth W., 'The new diplomacy and the quest for peace', *I.O.* (1965), vol. 19, p. 407.
58. See Friedmann, W., *The Changing Structure of International Law* (1964), p. 87. For a contrast between earlier conference procedures and modern parliamentary procedures of international assemblies see Thompson, *op.cit.*, p. 394 *et seq.*
59. For the text see United Nations Doc. A/3660 and Corr. 1, September 1957.

What these *exceptional circumstances* are the Rules of Procedure do not say. However, under Rule 63, all decisions taken by the General Assembly at a private meeting *must* be announced at an early public meeting of that body. So far there have been no such private meetings and one can reasonably presume that there will be none. The whole trend is against such private meetings; even elections to the I.C.J. are not carried out in private meetings. The general practice of conducting confidential negotiations informally, and outside the meetings, coupled with the provision for secret ballot, would appear to give sufficient protection of secrecy without going into secret session. Under Article 35 of the Statute of the Council of Europe the Consultative Assembly has also been given a right to hold private sessions but so far its sessions have always been held in public.

Generally speaking the terms 'parliamentary procedure' and 'parliamentary law', do not indicate, as the prefix 'parliamentary' may seem to suggest, the rules and practices followed by any particular type of legislative body; these terms have come to acquire a wide meaning implying the rules and practices followed by legislative bodies generally, whether they constitute a part of the parliamentary form of government or not. The term 'parliamentary' is thus merely an adjective denoting the characteristics of or anything pertaining to legislative assemblies in general. Justifying its use in connection with the work of international assemblies, Jessup says:

Because the discussions are carried on under the fixed rules of procedure which in many respects are analogous to the rules of parliamentary law which govern the debates of most national legislative or parliamentary bodies, the adjective 'parliamentary' is descriptive and appropriate.<sup>60</sup>

It is clearly the similarity between the procedures adopted by the modern international conferences, more particularly the institutional type, and those of the national legislative bodies in general which is responsible for giving currency to such terms as 'international parliamentary law', 'parliamentary law of international organizations', 'law of international assemblies' or for that matter 'parliamentary diplomacy' in the modern literature on international law.<sup>61</sup>

Jessup, who prefers the use of the term 'international parliamentary law', calls it 'the equivalent in international organizations of the familiar parliamentary law in national legislative assemblies'.<sup>62</sup> According to Dr. C. W. Jenks,

60. See 'Parliamentary diplomacy', *Reueil des Cours* (1956), vol. 89, p. 186.

61. See generally, Jessup, *op.cit.*, pp. 186-316; Jenks, C.W., *The Common Law of Mankind* (1958), p. 24; Quincy Wright, 'The strengthening of international law' *Recueil des Cours* (1959), vol. 98, p. 137; Prelót, M., 'Le droit des assembles internationales', *ibid.*, (1961), vol. 104, pp. 475-524; Dag Hammarskjöld, 'Two differing concepts of United Nations assayed: Introduction to the Annual Report of the Secretary-General on the Work of the Organization', *I.O.* (1961), vol. 15, p. 554; Friedmann, W., *The Changing Structure of International Law* (1964), p. 153; Gross, F.B., 'The United States national interest and the United Nations', in *The United States and the United Nations* (1964), edited by F.B. Gross, p. 24; Thompson, K.W., 'The new diplomacy and the quest for peace,' *I.O.* (1965), vol. 19, p. 407.

62. 'International parliamentary law', *A.J.I.L.* (1957), vol. 51, p. 397.

The parliamentary law of international organizations defines, limits and protects the rights of the representatives of States, together with those of other participants in international bodies.<sup>63</sup>

Both Jessup and Jenks also point out that this international parliamentary law is also a part of public international law.<sup>64</sup>

(a) *The organization and functions of international assemblies*

The structure and functions of international assemblies are generally determined by the 'constitutions' of international organizations. For instance, Article 9 of the U.N. Charter states that the General Assembly shall consist of all the members of the United Nations. Articles 10 to 22 deal specifically with its powers and functions (in addition to other provisions which authorize it to act in certain well defined cases). Article 20 lays down that the General Assembly shall meet in regular annual sessions and such other special sessions as the circumstances may require, and Article 21 empowers it to adopt its own 'rules of procedure'. Similarly, the rules concerning the composition and functions of the World Health Assembly are laid down in Articles 9 to 23 of W.H.O.'s constitution; that of the General Conference of U.N.E.S.C.O. are detailed in Article 4 of that Organization's Constitution; and those of the General Conference of the I.L.O. are enumerated in Articles 2, 3, 4, 6 and 17-19 of its Constitution; and those of the Consultative Assembly of Europe are outlined in Articles 22-35 of the Statute of the Council of Europe. The composition and functions of the European Parliament of the Communities of the 'Six' are governed by articles which are laid down in three distinct instruments, e.g. the Treaty constituting the European Coal and Steel Community (18 April 1951), the Treaty establishing the European Atomic Energy Community (25 March 1957) and the Treaty establishing the European Economic Community (25 March 1957); Articles 137-144 of the E.E.C. Treaty; Articles 20-25 of the E.C.S.C. Treaty; and Articles 107-114 of the Euratom Treaty.

(i) *The international assembly as a 'deliberative' and 'supervisory' organ of organized international communities*

Under Article 10 of the U.N. Charter the General Assembly has not only been empowered to discuss *any* question or matter falling within the scope of its functions under the Charter but can also discuss matters and questions 'relating to the powers and functions' of any other organ as well. Under Article 15, the General Assembly has been further specifically authorized to receive and to consider annual and special reports from the Security Council and other organs of the United Nations. Commenting on the importance of this provision in the Charter, Hill has pointed out

63. *Op.cit.*, p. 25.

64. See Jessup in *A.J.I.L.* (1957), vol. 51, p. 402; —, in *Recueil des Cours* (1956), vol. 89, pp. 230-232. Marcel Prelôt's analysis of the subject also leads him to the same conclusion — see *Recueil des Cours* (1961), vol. 104. Clearly when the entire law of international institutions is in effect a part of public international law it is difficult to see how a section of that branch can fall outside the province of international law proper.

Another function of the General Assembly is to review and criticize the work of other United Nations organs. In this role it serves as a general overseer to keep the organization work at top efficiency. It resembles in this respect the legislative bodies of most national governments, which spend much of their time examining and criticizing the work of the executive departments; in Great Britain the "question hour", when the ministers are required to answer questions submitted by members of the House of Commons, and in the United States the investigating committees of Congress, which pry into the doings of the departments — the investigation of commission in the Department of State, for instance — are examples of this function.<sup>65</sup>

Similarly, a perusal of the constitutional provisions governing the functions of other international assemblies reveals their predominantly deliberative character. For example, Article 22 of the Council of Europe says:

The Consultative Assembly is the deliberative organ of the Council of Europe. It shall debate matters within its competence under the Statute....

The European Parliament has been authorized to exercise the 'powers of deliberation and of control' conferred by the E.E.C. Treaty (Article 137). Under para. 2 of Article 4 of the U.N.E.S.C.O. Constitution, the General Conference has been authorized to 'determine the policies and the main lines of work of the Organization'. Similarly, under Article 18(a) of the W.H.O. Constitution it is the World Health Assembly which has been authorized to determine the 'policies' of the Organization. Such provisions clearly highlight the deliberative and supervisory character of the international assemblies. Compared with the techniques and procedures of the early international congresses and conferences, the emphasis has now been clearly shifted from *negotiation* to *debate and deliberation*. The modern tendency is for the negotiations between member States to take place informally, outside the conference room, and for the discussions and debates within the conference room to become either a general discussion in the light of which negotiations for a solution can take place or a discussion about a solution brought forward in the form of a draft resolution subsequent to the informal negotiating process. This is perhaps symptomatic of a general change from the nineteenth century practice of using the conference as a forum in which States would categorically state their national positions. The whole emphasis is now on compromise and reconciliation of divergent views, which occur mostly in committees or in private, informal meetings taking place in the background of the public or formal sessions.

It is also natural that the most representative organ of an international organization (and thus of an organized community) should exercise supervisory and deliberative powers because it is only through this organ that all the members can participate in the work of the organization as a whole.

#### 4. CONFERENCE STRUCTURE

The parliamentary character of international assemblies is perhaps nowhere better revealed than in their organisation and structure.

65. *International Organization* (1952), p. 133.

(a) *Frequency of meetings*

One of the features which provides a striking resemblance between the national legislative assemblies and the international assemblies is the frequency and regularity of their meetings and the ease with which these meetings can be called. Prior to the institutionalization of the conference system as a part of the League and I.L.O. machinery it was always difficult to summon an *ad hoc* conference.<sup>66</sup> It was never certain that an international conference would be held at any time or place unless it was actually held. In contrast to this uncertain arrangement, the international assemblies, like the national parliaments, are now automatically summoned regularly and annually on the appointed date and time by the secretariats which serve them.

(b) *Ordinary and extraordinary sessions*

The international assemblies provide both for ordinary and extraordinary sessions.

The Assembly of the League of Nations according to Article 1 of the Rules of Procedure used to meet in ordinary sessions, annually, on the first Monday in September, but later on the Eleventh Assembly changed the date to the second Wednesday of September. The General Assembly of the United Nations, according to rule 1 of its Rules of Procedure 'meets every year in regular session commencing on the third Tuesday in September'. The Consultative Assembly of the Council of Europe has no fixed date<sup>67</sup> for the commencement of its annual ordinary sessions (which must not last for more than a month unless both the Assembly and the Committee of Ministers decide otherwise). There is no fixed date because the Consultative Assembly seeks to avoid 'overlapping with parliamentary sessions of Members and with sessions of the General Assembly of the United Nations'. It also holds its one-month session in two or three parts, but generally the first part of its

66. Although the Hague Conferences and the conferences of the public international unions revealed a steady tendency to become periodic affairs, they can hardly be said to have constituted a permanent legislative forum on the lines of national parliaments.

Also see Scelle, G., 'The evolution of international conference', *International Social Science Bulletin* (1953), vol. 5, at p. 243: 'A congress or congress-conference clearly has neither periodicity nor continuity. At the other end of the scale, the assemblies of international organizations are convened automatically by the secretariats, at intervals which are often specified in the charter of the organization concerned'.

67. See Article 32 of the Statute. There is also no fixed date for the annual sessions of the Health Assembly; see Articles 14 and 15 of the W.H.O. Constitution. This has been done in order to retain a certain flexibility. Article 15 is significant as it lays down that the Executive Board should determine the date of each annual and special session 'after consultation with the Secretary-General of the United Nations'.



annual session is held in the month of April or May. The European Parliament meets in annual sessions on the third Tuesday in October.<sup>68</sup>

The General Assembly begins its annual session on the third Tuesday in September—the very date on which the Dutch parliamentary session is opened by the Queen of the Netherlands. Like the Dutch parliament, the General Assembly also exercises the right to fix a closing date for its sessions;<sup>69</sup> unlike the Statute of the Council of Europe which limits the annual sessions of the Consultative Assembly to a period of one month, there is nothing in the U.N. Charter or the General Assembly's Rules of Procedure to prevent it from holding its session till the Monday preceding the third Tuesday in September of the following year. This independence of the General Assembly in determining the duration of its session is in essence a parliamentary prerogative which is enjoyed by several national parliaments such as the Federal German Bundestag, the Folketing of Denmark, the Norwegian Parliament and so on.<sup>70</sup> This is what is known as the 'permanent assembly system' in municipal parliamentary law. This power to continue its annual session has been used by the General Assembly to keep the Assembly in session when the United Nations is faced with serious political problems which the Assembly feels warrant its continued attention; it has become almost a regular practice of the Assembly that it adjourns over Christmas and reconvenes for the second half of its session in January, thus, also off-setting to a certain extent the political disadvantage it faces in comparison with the Security Council which is able to function throughout the year.

Like the national parliaments, the international assemblies can be convened to meet in special or extraordinary sessions.<sup>71</sup> Rule 8(a) of the General Assembly's Rules of Procedure, provides that

Special sessions of the General Assembly shall be held within fifteen days of the receipt by the Secretary-General of a request for such a session from

68. Similarly, the opening date of parliamentary sessions as well as the period of their duration are prescribed in several national constitutions, e.g. those of the United States, Belgium, Brazil, Egypt, France, the Philippines and Sweden. Their legislative bodies meet on a fixed date specified in the constitutions. In Finland, according to the Diet Act the Parliament must meet in the first weekday of February and end its sessions 120 days later. The U.S. Congress must be prorogued by 31 July.
69. See rule 2 of the Rules of Procedure. Also see General Assembly resolution 1898 (XVIII) of 11 November 1963 which stresses that if there are no exceptional circumstances the duration of regular sessions should not exceed thirteen weeks; and the Report of the Special Committee on the Rationalization of the Procedures and Organization of the General Assembly, *G.A.O.R.* (XXVI), Supp. No. 26 (A/8426), para. 22.
70. See *Parliaments: A Comparative Study on the Structure and Functioning of Representative Institutions in Forty-one Countries* (1962), p. 107. Hereafter to be referred to by its short name *Parliaments*.
71. Emergency or special sessions of national parliaments are provided by national constitutions such as those of Egypt, Finland, France, Laos, Norway, Poland, Sweden and the Republic of Vietnam on the request of at least half the members. In some other countries such sessions can be convened at a request by a lesser number of the members of parliament. In Turkey the legislative body can be convened in a special session at the request of a fifth of the members of parliament and in Israel only on the request of twenty-five members.

the Security Council, or of a request from a majority of the Members of the United Nations, or of the concurrence of a majority of Members as provided in rule 9.

Under rule 8(b) 'emergency special sessions' of the General Assembly can also be convened within twenty-four hours.<sup>72</sup> Under Article 34 of the Statute of the Council of Europe the Consultative Assembly may hold extraordinary sessions with the agreement of the Committee of Ministers. Article 14 of the Convention establishing the Inter-governmental Maritime Consultative Organization provides for the method of convening extraordinary sessions of the I.M.C.O. Assembly.<sup>73</sup> Similarly, according to Article 139 of the E.E.C. Treaty an extraordinary session of the European Parliament can be held 'at the request of a majority of its members or at the request of the Council or of the Commission'. The General Conference of U.N.E.S.C.O. can also 'meet in "extraordinary session" on the call of the Executive Board' (Article 4(9) of the Constitution). Under Article 13 of the W.H.O. Constitution 'special sessions' of the Health Assembly can be convened at the request of the Executive Board or of a majority of the members. The Director-General of the W.H.O. is under a duty to convene the Health Assembly to meet in special session, *within ninety days of the receipt of any request* for the holding of a special session by a majority of the members or the Board and the notices have to be sent not less than thirty days before the date fixed for the opening of the session.

### (c) *Meeting place*

The fixity of the meeting place of international assemblies is another characteristic which enables us again to compare them favourably with the national parliaments. Compared with the *ad hoc* international conferences and the conferences of the early public international unions which did not have any fixed meeting place or places but met in different capitals, the international assemblies nearly always meet at a fixed meeting place which is generally the seat or the headquarters of the Organization.

Rule 3 of the General Assembly's Rules of Procedure clearly says:

Sessions shall be held at the Headquarters of the United Nations unless convened elsewhere in pursuance of a decision of the General Assembly at a previous session or at the request of a majority of the Members of the United Nations.

In fact, the General Assembly of the United Nations usually meets at New York, with the exception of its sixth session which was held at Paris in 1951. The Assembly of the League of Nations used to meet at Geneva, the headquarters of the Organization. The Consultative Assembly of the Council of Europe generally meets at Strasbourg, though the Council and the Committee of Ministers can decide in favour of some other place for holding an Assembly session.<sup>74</sup> Article 5 of the Statute

72. It is these 'emergency special sessions' which the Resolution on Uniting for Peace of 3 November 1950 envisages may be convened within 24 hours if requested by any seven members of the Security Council or a majority of the members of the Assembly: Resolution 377(V).

73. Also see rule 2 of the Rules of Procedure of the Assembly.

74. See Article 33 of the Statute.

of the International Atomic Energy Agency (21 October 1956) similarly stipulates that the sessions of the General Conference of the Organization shall be held at the headquarters of the Agency unless determined otherwise by the Conference itself.

On the other hand, some of the international assemblies do not meet at a fixed place or at the seat of the organization. In such cases the assembly itself decides at its annual session the name of the country or the place where it will meet next. The Health Assembly at each annual session, for example, selects the country or region in which its next annual session shall be held and the Executive Board generally names the place. This, in fact, involves a cumbersome procedure and its utility is of doubtful value. So far as the General Assembly is concerned, such a movement every year, involving huge travelling arrangements, would be almost disastrous. Even when the General Assembly held its sixth session at Paris in 1951 it was not a very happy experience. The decision of the General Assembly (20 March 1951) to move 3000 miles away from its headquarters for holding its session simply 'in order to give people in other countries the opportunity to see the U.N. in action'<sup>75</sup> caused more difficulties than people would ever realise.<sup>76</sup> For this session, 700 staff members were sent from headquarters and an equal number of staff had to be recruited locally.<sup>77</sup> A number of building constructions and alterations had to be undertaken.<sup>78</sup> Special agreements had to be concluded with the French Government on a number of points, including matters regarding privileges and immunities to be granted to the representatives of member States, specialized agencies, and Secretariat officials, etc.<sup>79</sup> Then there were problems connected with travel and hotel accommodation in Paris. Press coverage had to be more extensive.<sup>80</sup> The '700-odd locally recruited personnel' had to be trained through orientation courses.<sup>81</sup> Then, finally, after the session was over, there were problems connected with the liquidation of the conference.<sup>82</sup> So much so, that one of the organizers of this session pointed out

The second point I should like to emphasize is the importance for delegations to weigh carefully the pros and cons before deciding to meet away from headquarters. One thing is clear—no conference can operate as cheaply or as efficiently away from home base. In addition to the direct costs, there are always hidden ones. The disruption of the substantive and technical work of the Secretariat can be very marked. Normal duties cannot be carried on as efficiently when staffs are split between two locations. A great deal of time is lost in travelling.<sup>83</sup>

75. See Lall, S., 'Notes on the sixth session of the General Assembly of the United Nations', *International Social Science Bulletin* (1953), vol. 5, No. 2, p. 360.

76. *Ibid.*, p. 363.

77. *Ibid.*

78. *Ibid.*, pp. 362-363.

79. *Ibid.*

80. *Ibid.*, p. 364.

81. *Ibid.*

82. *Ibid.*, p. 365.

83. *Ibid.*, pp. 365-366.

This word of caution is in fact a pertinent warning. What one must realize now is that travelling conferences are a thing of the past and what we need is permanent assemblies meeting at permanently fixed headquarters. Once an organization has acquired permanent headquarters there is everything to be gained from the point of view of efficiency in holding plenary meetings of its assembly there. Loss of efficiency and additional costs probably offset the publicity value of operating an assembly in different countries. This is particularly true of a large and highly complex organization like the U.N. in which the numbers of personnel involved and the mechanics of conference organization are considerable. The present trend in the U.N. is to use the European Headquarters at Geneva for some ECOSOC meetings and for the huge codification conferences like the Law of the Sea Conferences in 1958 and 1960, and this not so much for publicity purposes, but rather to relieve the pressure upon the Headquarters facilities in New York. The convening of the conferences on Diplomatic and Consular Relations in Vienna in 1961 and 1963 can be largely explained by the historic associations of Vienna with the subject of Diplomatic Relations — the Act of Vienna of 1815 — and perhaps by the desire of many delegations simply to have a change from New York or Geneva. However, there is always a price to be paid for this concession to 'tourism'.

(d) *Representatives to the international assemblies*

As a rule representatives attending the assemblies of inter-governmental organizations are government delegates. Only the members of the European Assemblies cannot be called 'government representatives'; they are neither briefed by foreign offices nor by any government department and have always full liberty to vote in all matters as they please.<sup>84</sup> On the other hand, the members of national delegations to the General Assembly, in their capacity as government representatives, must follow the instructions given to them by the foreign offices or their respective national governments. They are neither free to interpret 'international interests' on their own, nor to align themselves into different blocs or parties as they please. They must remain, first and foremost, the advocates of national policies.

Another pattern of membership in the international assemblies, and quite a unique one too, is provided by the General Conference of the I.L.O. whose members are composed of four representatives of each of the member States: two government delegates and the other two representing the working people and employers respectively. This idea of giving representation to the 'working people' and the 'employers' has

84. See Løchen, Einar, 'A comparative study of certain European parliamentary assemblies', *European Yearbook*, vol. IV, at p. 153 where he states that in the composition of all the six European 'Assemblies there is a certain similarity. The members are acting in an individual capacity, not as governmental representatives bound by instructions. A member may therefore freely express his views, without committing his Parliament or Government'.

These six assemblies are: 1. The Consultative Assembly of the Council of Europe; 2. The Nordic Council; 3. The European Parliament; 4. The Conference of N.A.T.O. Parliamentarians; 5. The Western European Union Assembly; and 6. The Benelux Parliamentary Council.

been quite revolutionary when viewed against the traditional background — it was revolutionary in giving representation to the employers and employees along with governments in an international body established for adopting international conventions of a law-making character. To make this representation effective it was further provided that: 'Every delegate shall be entitled to vote individually on all matters which are taken into consideration by the Conference'.

(e) *Nature of representation*

The nature of representation in international assemblies is generally of three kinds: political or diplomatic or technical — or varying combinations of these three. As a rule, assemblies discharging political functions necessarily involve political representation.

In some cases the constitutional texts lay down specific provisions on this point. For instance, Article 11 of the W.H.O. Constitution specifically states that the delegates to the sessions of the Health Assembly 'should be chosen from among persons most qualified by their technical competence in the field of health, preferably representing national health administration of the Members'. Such a clause obviously limits the choice of national governments in appointing their representatives.<sup>85</sup> But no such limitation is placed in respect of the membership of the assemblies of general international organizations such as the General Assembly of the United Nations or the Consultative Assembly of the Council of Europe.

The representation in the General Assembly is always chiefly of a political nature, though technical experts and parliamentarians are quite often included in the national delegations. The head of a national delegation is nearly always a political representative whether he is a national Minister or the Permanent Representative in New York or a person especially appointed to head a particular delegation. Usually the head of a delegation to the General Assembly is 'a Foreign Minister and sometimes even a Prime Minister'.<sup>86</sup>

The representation in the European Assemblies is also of a political nature, but unlike that in the General Assembly, it is not based on the principle of the equality of States.

(f) *The size of 'national delegations' to international assemblies*

Excepting the European Assemblies which follow a different system, representation in other international assemblies is generally based on the principle of the equality of States, which means that each State can exercise only one vote through its representative or representatives;

85. See, for another example, Article 6(a) of the Constitution of the World Meteorological Organization (11 October 1947) which lays down: 'The Congress is the supreme body of the Organization and shall be composed of delegates representing Members. Each Member shall designate one of its delegates, who should be the director of its meteorological service, as its principal delegate'.

86. Hadwen, J.G. and Kaufmann, J., *How United Nations Decisions Are Made* (1962), p. 28.

but this does not signify that a State cannot send more than one representative simply because it can exercise only one vote. In all the international assemblies member States are generally allowed to send a number of representatives, alternates and advisers. It is, in fact, this team of representatives, alternates and advisers which is generally called a 'national delegation'.<sup>87</sup>

The number of representatives which a State is entitled to send is generally laid down in the constitutional texts and varies from assembly to assembly.<sup>88</sup> For instance, Article 9(2) of the U.N. Charter states: 'Each Member shall have not more than five representatives in the General Assembly'. Under Article 11 of the W.H.O. Constitution, each member State of the Organization shall be represented in the Health Assembly, 'by not more than three delegates, one of whom shall be designated by the Member as chief delegate'.

According to Article 5(b) of the Statute of I.A.E.A., each member is entitled to be represented in the General Conference 'by one delegate who may be accompanied by alternates and advisers'.<sup>89</sup>

In contrast to this, in the European Assemblies, each member State is entitled to send a specific number of representatives,<sup>90</sup> each representative having the power to vote individually. Although such a group of national representatives may be loosely called a 'national delegation' but it will be a far from appropriate use of the term,<sup>91</sup>

87. For the distinction between a 'mission' and a 'delegation' see Hadwen and Kaufmann, *op.cit.*, p. 26.

88. At the Congress of Vienna, each participating State had a delegation consisting of three or four envoys, see Mowat, R.B., *A History of European Diplomacy, 1815-1914* (1927).

89. For a similar provision see rules 7 and 8 of the Rules of Procedure of the I.M.C.O. Assembly.

90. In the European Parliamentary Assembly, Belgium and the Netherlands are represented by 14 delegates each; Germany, France and Italy by 36 delegates each and Luxembourg by 6 delegates.

In the Consultative Assembly of the Council of Europe, U.K., France, Italy and the Federal Republic of Germany are represented by 18 representatives each; Turkey has 10 representatives; Belgium, Greece and the Netherlands have 7 representatives each; Sweden, Switzerland and Austria have 6 representatives each; Denmark and Norway have 5 representatives each; Ireland has 4 representatives; and Iceland, Malta, Cyprus and Luxembourg have 3 representatives each. (Article 26 of the Statute, as amended in December 1951, in May 1958, in November 1961, in May 1963 and in May 1965).

In the Nordic Council, Norway, Finland, Denmark and Sweden are represented by 16 delegates each while Iceland has only 3.

91. See Robertson, H., *The Law of International Institutions in Europe* (1961), at p. 39 where he points out: 'Though one speaks of "national delegations" and of "representatives" to the Assembly, both terms are rather misleading. The members of the Assembly from a particular country do not constitute a "delegation" in the accepted sense of the term as known in Geneva or in New York, they do not speak with one voice, or vote as a *bloc*, or even sit together in the Assembly Chamber. (Seating is in alphabetical order and not by country.) Nor are they there to "represent" their countries; different Representatives from the same country may — and quite often do — vote on different sides of the same question'.

mainly because this group of representatives neither sits as a compact bloc within the assembly nor does it act or vote as a unit.

The practice of sending 'national delegations' is in fact quite old and represents a system peculiar to all international conferences and assemblies which follow the traditional rule of representation based on the principle of equality of States. On the other hand, the European Assemblies are following the national parliamentary pattern, in which representation must vary on the basis of population and certain other factors.

(g) *The duration of their mandate*

National delegates to international assemblies, unlike the members of national parliaments who are usually elected for a fixed period ranging between 2 to 6 years,<sup>92</sup> are generally appointed for a much shorter term. For instance, the national delegations to the assemblies of the U.N., W.H.O., I.A.E.A., F.A.O., etc. are normally sent for one particular session only. Again, the members of these delegations can be changed by the national governments during the sessions of the assemblies.

In marked contrast to this, the representatives to the Consultative Assembly of the Council of Europe are elected or appointed (as the case may be) for a fixed period and cannot be deprived of their seats 'during a session of the Assembly without the agreement of the Assembly'.<sup>93</sup> The statutory term of office for the representatives to the Consultative Assembly has been laid down in Article 25(a) of the Statute as follows:

The term of office of Representatives...will date from the opening of the Ordinary Session following their appointment; it will expire at the opening of the next Ordinary Session or of a later Ordinary Session, except that, in the event of elections to their Parliaments having taken place, Members shall be entitled to make new appointments.

In actual practice, national representatives to the Consultative Assembly are generally elected by national parliaments for a period ranging between one and six years.<sup>94</sup> Further, these representatives are normally re-elected and sent to Strasbourg again and again.<sup>95</sup>

92. See *Parliaments*, pp. 48-51.

93. Article 25 (b) of the Statute. See also *The Consultative Assembly — Procedure and Practice* (4th ed., 1961), pp. 71-74. It records an interesting case, wherein, 'on 14th October 1955, at the resumption of its Seventh Ordinary Session, the attention of the Assembly was drawn to the fact that, because of the political circumstances in his own country, M. Ergin (Turkey) had been excluded from his political party and that the Turkish Government had refused to pay his expenses in attending the Assembly. The President informed the Assembly that, at the request of the Standing Committee, he had unofficially drawn the attention of the Turkish Government to Article 25 of the Statute — under which no representative may be replaced during a Session without the leave of the Assembly — and Article 38 — under which each member State was responsible for the expenses of its own Representatives. As a result of this approach by the President, the Turkish Government in a telegram signified its agreement that the mandate of M. Ergin was still valid'.

94. See Lindsay, K., *Towards a European Parliament* (1958), pp. 24-55; ———, *European Assemblies* (1960), especially the background papers, pp. 115-214.

95. See Lindsay, K., *European Assemblies*, p. 120.

This continuity of membership has, of course, important consequences for the general spirit of understanding and co-operation which it is the aim of international organizations to foster. Even in the United Nations where the delegations are nominated for each session, in practice the national delegations tend to include the same members year after year.

This inevitably leads to greater understanding, respect and trust amongst delegations than would be the case if delegations consisted of people largely strangers to their counterparts in other delegations.

(h) *Alternates and advisers*

Under rule 25 of the General Assembly's Rules of Procedure,

The delegation of a Member shall consist of not more than five representatives and five alternate representatives, and as many advisers, technical advisers, experts and persons of similar status as may be required by the delegation.

In this connection the Rules of Procedure clearly supplement the U.N. Charter. Article 9(2) of the U.N. Charter only states that each member in the General Assembly shall be represented by 'not more than five representatives' but the 'rules of procedure' provide further for a number of five 'alternate representatives' and for any number of advisers and experts. Furthermore under rule 26 an 'alternate representative' may even be allowed to act as a representative if he is so designated by the head of the delegation. Similarly, under rule 103, 'upon designation by the Chairman of the delegation', advisers, experts or persons of similar status can act as members of committees.

This will usefully show the importance of the alternates and advisers in the work of the modern international assemblies which have come to acquire a complex structure consisting of numerous committees, sub-committees, study groups, etc. It is indeed difficult for one delegate or even a few delegates to manage to attend all the meetings or the work of the assemblies.<sup>96</sup> It has in fact become necessary that delegates or representatives to international assemblies be accompanied by substitutes or alternates — a matter which the drafters of the Statute of the Council of Europe did not leave to be governed by rules of procedure but provided for within the constitutional treaty. Thus, Article 25(c) of the Statute of the Council of Europe specifically provides that each representative to the Consultative Assembly 'may have a substitute who may, in the absence of the Representative, sit, speak and vote in his place'.<sup>97</sup>

(i) *Committees and committee structure*

Whatever may be the committee structure, the employment of committees is pre-eminently a parliamentary technique. Whereas the most important function of the international assemblies is to hold debates

96. This system is indeed of great help to countries with small delegations or even to larger countries when sub-committees are dealing with highly technical matters upon which the technical advisers are really the best people to represent their countries.

97. See generally, Robertson, *op.cit.*, p. 42.



and general discussions, it is generally the duty of the committees to prepare subjects for such debates and discussions.

Plenary organs by the very nature of their composition are not appropriate bodies for detailed and technical inquiries, nor are they suited for the preparation and drafting of precise texts. It is generally necessary that an agenda item be fully examined by a select or smaller body and the necessary details worked out before it goes on the floor of the assemblies. This reliance on the initial work of the committees in fact reduces much of the work at the plenary sessions.

One can read about the formation of committees even at the Congress of Vienna of 1815<sup>98</sup> or the Paris Conference of 1856<sup>99</sup> but it was not until the Hague Conference that committees were properly and effectively utilized as a vital part of the conference machinery. Since then 'committees' have become a usual and necessary feature of the conference technique.

The 'committees' are generally of two main types:

1. committees representing all the member States; or
2. committees having a select membership.

In the first category come the 'Main Committees' of the General Assembly,<sup>1</sup> which are:

1. First Committee which deals with political and security questions, including the regulation of armaments;
2. Special Political Committee;
3. Second Committee which deals with economic and financial questions;
4. Third Committee which deals with social, humanitarian and cultural questions;
5. Fourth Committee which deals with Trusteeship matters;
6. Fifth Committee which deals with administrative and budgetary questions; and
7. Sixth Committee which deals with legal matters and is called the Legal Committee.

Thus, in all there are seven 'Main Committees' of the General Assembly which are in fact 'committees of the Whole House'. A 'Committee of the Whole House' represents a typical Anglo-Saxon parliamentary

98. See Satow, E., *International Congresses* (1920), pp. 67-70.

99. *Ibid*, pp. 70-71.

1. See rule 102 of the General Assembly's Rules of Procedure. For a useful discussion of the Assembly's committee structure see Bailey, S.D., *The General Assembly of the United Nations* (1960), pp. 113-121.

practice.<sup>2</sup> In Sir T. Erskine May's treatise on *The Law, Privileges, Proceedings and Usage of Parliament*, it has been defined as follows:

A committee of the Whole House consists, as its name implies, of all the members of the House. It is, in fact, the House itself in a less formal guise, presided over by a Chairman instead of the Speaker and conducting its business according to more flexible rules of procedure.<sup>3</sup>

Usually most of the items on the General Assembly's agenda are first thoroughly screened and fully discussed by these Main Committees before they are submitted by them to the General Assembly for its final consideration; the Main Committees however do not generally speaking involve themselves with questions of detail or questions of a technical nature which are nearly always attended to by select committees. The usefulness of this system lies mainly in the fact that it helps in reducing the divergence of opinion among the members of the General Assembly at its plenary session by a prior thorough discussion of a subject at one of the 'main committees'.

In addition to the seven Main Committees, the General Assembly of the United Nations is assisted by two 'procedural committees' and two 'standing committees'. The General Committee and the Credentials Committee form the *procedural committees*, whereas the Advisory Committee on Administrative and Budgetary Questions and the Committee on Contributions are called *standing committees*. These committees are of the second type, i.e. they are composed of select membership and their composition does not follow any uniform pattern. They also have different functions to perform. For instance, the General Committee is composed of the President, the seventeen Vice-Presidents of the General Assembly and the Chairmen of the seven Main Committees,<sup>4</sup> whereas the Credentials Committee consists only of nine members and as its name suggests has to concern itself with matters relating to credentials of the delegates. The Advisory Committee on Administrative and Budgetary Questions has a membership of twelve, including at least three financial experts of recognized standing, and the Committee on Contributions consists of twelve members. Their functions also vary considerably. The Advisory Committee on Administrative and Budgetary Questions is responsible 'for expert examination of the budget of the United Nations' and has also been charged with the duty to assist the Fifth Committee of the General Assembly.<sup>5</sup> The Committee on Contributions advises

the General Assembly concerning the apportionment under Article 17, paragraph 2, of the Charter, of the expenses of the Organization among Members, broadly according to capacity to pay.<sup>6</sup>

2. See Scelle, *op.cit.*, p. 249. The obvious difference is that these committees do not meet at infrequent intervals but have become a regular feature of the parliamentary practice of some of the international assemblies.
3. See the 16th edition (1957), p. 603.
4. See General Assembly resolution 1990 (XVIII) of 17 December 1963 which amended rules 31 and 38 of the Assembly's Rules of Procedure. For a full description of the work of the General Committee see Bailey, *op.cit.*, pp. 91-96; Werners, S.E., *The Presiding Officers in the United Nations* (1967), pp. 63-67.
5. See rule 158 of the General Assembly's Rules of Procedure.
6. See *ibid.*, rule 161.

It also advises

the General Assembly on the assessments to be fixed for new Members, on appeals by Members for a change of assessments, and on the action to be taken with regard to the application of Article 19 of the Charter.<sup>7</sup>

Apart from the committees discussed above, which have been specifically provided for and mentioned in the Rules of Procedure, the General Assembly also enjoys a general power under rule 98 to 'set up such committees as it deems necessary for the performance of its functions'.<sup>8</sup> Under this provision the General Assembly can set up both types of committees and has, in fact, set up a number of *ad hoc* and sessional committees from time to time. These *ad hoc* or special committees are appointed, as the need arises, for considering or inquiring into special or particular matters; sessional committees are appointed for considering subjects of a particular nature arising during the course of a particular session. Again, these *ad hoc* or special committees may be appointed for a specific period of time or there may be no time-limit at all. In this connection reference can be made to such committees as the Advisory Committee on the U.N. Emergency Force, Collective Measures Committee, Committee on South West Africa, Committee on the Peaceful Uses of Outer Space, Negotiating Committee for Extra-Budgetary Funds and Scientific Advisory Committee; all are committees of select membership and have been in existence for quite a long time. As their names indicate, they have been established for special purposes and some of them have proved very useful.

The value of plenary committees, i.e. 'committees of the Whole House', has recently been questioned.<sup>9</sup> It is true that the institution of the 'committee of the Whole House' cannot always be used with successful results because it is the projection of one and the same body in a different guise. The creation of the Interim Committee or the 'Little Assembly' was not successful because the nations as yet do not seriously feel the necessity of an Assembly in continuous session. However, this is not to question the value of the Main Committees and, indeed, there may be purposes for which even a special plenary committee would be an advantage.

In the British House of Commons a select committee generally does not consist of more than fifteen members (see Standing Order No. 66) but there is no such rule for the select committees of the House of Lords.<sup>10</sup> The General Assembly's Rules of Procedure have nothing to say on this point and the select committees can be as large or as small as the General Assembly may decide. Even though we are told that as a rule committees should not consist of more than 15 members,<sup>11</sup> in

7. *Ibid.*

8. This power can also be deduced from Article 22 of the Charter.

9. See Bailey, *op.cit.*, p. 207.

10. See Erskine May, *op.cit.*, p. 611.

11. See Loveday, A., *Reflections on International Administration* (1956) at p. 185, where he suggests that 'international committees of more than fifteen members are certain to waste time... when a Committee exceeds fifteen in number it tends to change its nature altogether. It ceases to be a working group and becomes a debating society'.

practice the composition of committees should be determined according to their purpose and functions rather than on the basis of some previously decided numerical figure. It is also natural that some committees should be more representative than others and there is no wisdom in adhering to any rigid system of numbers.

All the committees established by the General Assembly elect their own chairman, vice-chairman and rapporteurs on the basis of 'equitable geographical distribution, experience and personal competence'.<sup>12</sup> Their elections are held by secret ballot.

The World Health Assembly has an almost similar committee structure. It has two 'main committees':<sup>13</sup> the Committee on Programme and Budget and the Committee on Administration, Finance and Legal Matters; like the 'main committees' of the General Assembly, every member State is represented. In addition to these two 'main committees', the Health Assembly has three 'select committees' which have been specifically mentioned in its Rules of Procedure, i.e. the Committee on Credentials,<sup>14</sup> the Committee on Nominations<sup>15</sup> and the General Committee.<sup>16</sup> Under rule 41 of its Rules of Procedure the Health Assembly can further 'appoint, or authorize the appointment of, any other committee or sub-division which it deems necessary'.

The General Conference of the I.L.O. is assisted by several committees, such as the 'Selection Committee',<sup>17</sup> 'Credentials Committee',<sup>18</sup> 'Conference Drafting Committee',<sup>19</sup> 'Committee on the Application of Conventions and Recommendations',<sup>20</sup> and the 'Finance Committee of Government Representatives',<sup>21</sup> but none of these committees can be called a 'committee of the Whole House'. These committees<sup>22</sup> are all 'committees of select membership'.

The Consultative Assembly of the Council of Europe does not have any committee which could be called a committee of the Whole House, rather all its committees are committees of select membership. It has one Standing Committee, thirteen General Committees and several other

12. See rule 105 of the General Assembly's Rules of Procedure. This is also generally the case with the committees of other international assemblies. See rules 34, 36 and 42 of the World Health Assembly's Rules of Procedure.
13. See rule 34 of World Health Assembly's Rules of Procedure.
14. See *ibid.*, rule 23.
15. See *ibid.*, rules 24-25.
16. See *ibid.*, rules 31-33.
17. See Article 4 of the Standing Orders of the I.L.O. Conference, *Constitution of the International Labour Organization and Standing Orders of the International Labour Conference*.
18. See *ibid.*, Article 5.
19. See *ibid.*, Article 6.
20. See *ibid.*, Article 7.
21. See *ibid.*, Article 7 *bis*.
22. For detailed rules governing the appointment of these committees, see *ibid.*, Article 9.

ancillary and special committees.<sup>23</sup> The Standing Committee consists of the President, the Vice-Presidents of the Assembly, and the Chairmen of the General Committees. It is appointed by the Assembly before the closing of the first part of each session and looks after the work of the Assembly during the intervening period between its sessions. The General Committees 'have the duty of considering and making reports upon the main categories of the business of the Assembly'.

(j) *Officers of international assemblies*<sup>24</sup>

The 'speakers' and 'deputy speakers' of the international assemblies are in a way its 'presidents' and 'vice-presidents'; both are usually elected. Before the establishment of the permanent assemblies, it was customary to elect the foreign minister or the senior delegate of the country where the conference was held as the president of the conference.<sup>25</sup> After his election (which was an election only in name) the President used to name the secretaries of the conference who were nearly always members of his delegation. But in this way the procedural work of the conference was nearly always largely controlled by the host governments because they provided not only the key officers of the conference but also the secretariat staff.

Article 21 of the U.N. Charter specifically lays down that the General Assembly 'shall elect its President for each session'. Under Article 28 (a) of the Statute of the Council of Europe, the Consultative Assembly also elects its president from among its members; he remains in office until the next ordinary session. Article 16 of the W.H.O.'s Constitution states that

The Health Assembly shall elect its President and other officers at the beginning of each annual session. They shall hold office until their successors are elected.

The General Conferences of U.N.E.S.C.O.<sup>26</sup> and I.L.O.<sup>27</sup> also elect their own presidents and vice-presidents.

The president of the international assembly is very much like the speaker of a national parliament. He is both a judge and an administrator within the assembly hall,<sup>28</sup> and he interprets as well as applies the 'rules of procedure'.

23. For a detailed description of these committees, see *Manual of the Council of Europe* (1970), pp. 42-43.

24. See generally, Hadwen and Kaufmann, *How United Nations Decisions are Made* (1962), pp. 45-46.

25. See *ante*, p. In contrast to this procedure the President of the Rhine Commission used to be elected by lot, see Chamberlain, J.P., *The Regime of the International Rivers* (1923), pp. 186, 204.

26. Article 4, paragraph 10, of the Constitution.

27. Article 17(1) of the Constitution.

28. Jessup, *op.cit.*, p. 266. In the Security Council the position is entirely different. The presidency rotates among the members and the president also acts and votes in the capacity of a national representative. Actually he is expected to make his position clear by pointing out during discussions whether he is speaking as the president or as a national representative.

The President of the General Assembly,<sup>29</sup> subject to the provisions of the 'rules of procedure', enjoys and exercises 'complete control' over the proceedings at all the plenary meetings of the General Assembly. Some of his most important functions are: to declare the opening and closing of each plenary meeting of the Assembly's sessions; to direct the discussions at the plenary meetings; to accord the right to speak; to rule on points of order; to propose to the General Assembly, in the course of the discussion of an item, the limitation of the time to be allowed to speakers, the limitation of the number of times that a representative may speak on any question, the closure of the list of speakers or the closure of the debate and also the suspension or adjournment of a meeting or debate on an item under discussion; to announce decisions; and finally to maintain order at the meetings.<sup>30</sup> The rulings given by the President of the General Assembly on a point of order can be the subject of an appeal. Under rule 73 of the General Assembly's Rules of Procedure

A representative may appeal against the ruling of the President. The appeal shall be immediately put to the vote and the President's ruling shall stand unless overruled by a majority of the Members present and voting.

Although the President may give rulings he has no right to vote.<sup>31</sup> This incapacity to vote or take an active part in discussions does in effect force the President of the General Assembly to play the role of an impartial mediator. Furthermore, he knows that his rulings can be appealed against—a fact which always provides a powerful check against his attempt or desire to play a partisan role.

Muhammad Zafrulla Khan, an ex-president of the General Assembly, in one of his recent writings has been much more inclined to regard the office of the President of the General Assembly in a comparison with the Speakers of the House of Representatives and the House of Commons, as closer to that of the Speaker of the House of Commons.<sup>32</sup> However, in this context it must be pointed out that the Speaker of the House of Commons has much more authority than the President of the General Assembly. His rulings 'constitute precedents by which subsequent speakers, members and officers are guided'.<sup>33</sup> But, in comparison with the Speaker of the House of Lords (the Lord Chancellor), the President of the General Assembly commands greater power and authority. The House of Lords 'within the limits prescribed by its

29. See generally Cordier, Andrew W., 'The General Assembly', *A.R.U.N.A.* (1953), pp. 64-65; Werners, S.E., *The Presiding Officers in the United Nations* (1967), pp. 5-20.

30. See rule 35 of the Rules of Procedure. Also see Khan, M.Z., 'The president of the General Assembly of the United Nations', *International Organization* (Spring 1964), vol. 17, No. 2, pp. 231-240.

31. The Chairmen of the 'main committees' also do not have the power to vote. See rule 106 of the General Assembly's Rules of Procedure.

32. *Op.cit.*, p. 240.

33. These 'precedents are collected and in course of time may be formulated as principles or rules of practice. It is largely through this method that the modern practice of the House of Commons has developed'. See Erskine May, *op.cit.*, pp. 249-250.

Standing Orders, is master of its own procedure and the Lord Chancellor has no authority beyond that of any other member in matters of order which are decided by the House itself.<sup>34</sup>

The Presidents of the Health Assembly<sup>35</sup> and the General Conference of the I.L.O.<sup>36</sup> have nearly the same functions as those of the President of the General Assembly.

Even though the president of the international assembly usually does not participate in debates, nonetheless he remains the representative of a particular State. Usually he appoints another member of his delegation to vote in his place and there is also nothing to stop him from guiding or advising other members of his delegation. Because of his somewhat 'partisan' position, the president of an international assembly may well not hold the kind of impartial office which one finds in the office of the Speaker of the House of Commons in England and the President of the Chamber of Deputies in France, but this should not, however, lead us to deny the parliamentary character of the office of the presiding officer. Generally it is he who rules on points of order, announces or closes the list of speakers, calls a speaker to order, and closes, suspends or adjourns the sessions formally. The President of the Consultative Assembly<sup>37</sup> of the Council of Europe has even the power to exclude a member of the Assembly from the chamber under rule 12 of the Rules of Procedure. In serious cases he can even propose that the Assembly pass a vote of censure against a member who has failed to heed his rulings which may involve his 'immediate exclusion from the chamber for a period from two to five days'.

The position of a President of a codification conference, summoned *ad hoc*, can vary from that of the President of a standing assembly, indeed, a good deal may depend on the character of the individual elected to the office. An interesting contrast is afforded by the presidencies of the U.N. Conference on the Law of the Sea in 1958 and the U.N. Conference on Statelessness in 1959. In the former case the President, Prince Wan (Thailand), a former President of the Assembly acted throughout as would the President of the Assembly: he cast no votes and made no policy speeches, leaving this to the deputy head of the delegation; the rules of procedure however excluded only his right to vote.<sup>38</sup> In the Conference on Statelessness, the President, Mr. Larsen

34. *Ibid.*, pp. 242-243.

35. See Rules 27 and 29 of the W.H.A. Rules of Procedure.

36. See Article 13 of the Standing Orders of the I.L.O. Conference.

37. For details relating to the election of the President and Vice-Presidents of the Consultative Assembly, see *The Consultative Assembly, op.cit.*, pp. 102-105.

38. A/CONF. 13/38, vol. 11, p. xxxi, rule 12. For the same rule at the Vienna conference on Diplomatic Intercourse and Immunities, see A/CONF. 20/14, p. xxiii, rule 12.

(Denmark), although distinguishing those interventions he made as President from those he made in his capacity as the Danish representative, participated widely in the debate and at one juncture resigned temporarily as President when he suffered a reverse on a matter of substance. Certainly this particular incident suggests the desirability of the 'impartial' President who leaves the policy statements to another member of his delegation.

(k) *Political groups in international assemblies*

(i) *Groups and blocs within the General Assembly*

Today the existence of a certain number of groups within the General Assembly<sup>39</sup> of the United Nations has come to be regarded as an established fact. Even in legal writings one can find considerable discussion of these groups or 'blocs' — particularly on questions concerning their membership and organization.<sup>40</sup>

At present there appear to be four major groups in the General Assembly, viz., the Soviet bloc, the Western Powers, the Latin American group and the Afro-Asian group.

A 'bloc' has been defined 'as a group of states which meets regularly in caucus and the members of which are bound in their votes in the General Assembly by the caucus decision'.<sup>41</sup> In this sense there is only one 'bloc' within the General Assembly, i.e. the Soviet bloc. The mem-

39. See Nicholas, H.G., *The United Nations as a Political Institution* (1962), pp. 117-122. Among other things he points out: 'It is in elections... that the General Assembly displays most clearly its own equivalent of the party system.... On the identity of the principal blocs there is general agreement. The Organization itself, has lent them a kind of official recognition, as is evidenced, for example, in the allocation of seats on the Assembly's General Committee' — pp. 117-118. Bailey thinks: 'One of the reasons why the General Assembly of the United Nations bears some resemblance to a parliamentary body is that there operates within it an embryonic party system. And just as political parties were once regarded as disreputable instruments for the suppression of individual liberty, so the activities of blocs and groups of states at the United Nations have sometimes been condemned on the ground that moral principle is cynically sacrificed to some selfish sectional interest' — *The General Assembly of the United Nations* (1964). No doubt the development of blocs and groups will inevitably reduce the role of individuals within the Assembly, but whether this is a welcome change or a change for the worse, none can fully predict at the present moment.

40. See generally, Cordier, A.W., 'The General Assembly', *A.R.U.N.A.* (1953), p. 62; Howard, Harry N., 'The Arab-Asian States in the United Nations', *The Middle East Journal* (1953), vol. 7, pp. 279-292; Hovet, T., *Bloc Politics in the United Nations* (1960); Ogley, R., 'Voting and politics in the General Assembly', *International Relations* (1961), vol. 2, No. 3, pp. 156-167; Bailey, *op.cit.*, pp. 21-40; Palmer, Norman D., 'The Afro-Asians in the United Nations' in *The United States and the United Nations* (1964), edited by Franz B. Gross, pp. 125-169; Whitaker, A.P., 'The Latin-American bloc', *ibid.*, pp. 170-196; Alker, H.R. and Russett, Bruce M., *World Politics in the General Assembly* (1965), pp. 145-166.

41. Hovet, *op.cit.*, p. 30.



bers of this bloc vote as a unit and have almost always followed a uniform policy on all major questions.<sup>42</sup>

The Western Powers do not constitute a distinct and well organized group in the General Assembly. The term usually refers to a large number of States including the United States, the United Kingdom, France, the Netherlands, Italy and so on; it being understood that these States are bound by common cultural traditions and similar political beliefs. In this sense there does exist a group within the Assembly but it has never consistently followed any uniform policy in respect of major international questions. Perhaps the reason why the Western Powers do not have a common and uniform policy is that it consists of several groups, each having its distinct policies and interests. For instance, there is the 'American group' led by the United States, then there is the old Commonwealth and the group of E.F.T.A. countries led by the United Kingdom and finally, the group of the Common Market countries: clearly the Benelux group, the Scandinavian group, the Western European group and the members of the Council of Europe all come within the much more comprehensive group generally called the 'Western Powers'.

The position of the Commonwealth<sup>43</sup> is unique; it is difficult to classify it as a sub-group of any major group in the Assembly. Some of the members of the Commonwealth, such as India, Ghana, Kenya, Malaysia, Nigeria, Pakistan, Sierra Leone, Tanganyika, Trinidad and Tobago, Uganda and Zanzibar clearly belong to the Afro-Asian group, whereas Canada, New Zealand and Australia, generally speaking, follow the lead given by the United States and the United Kingdom and are normally included in the 'Western Powers'. However, the Commonwealth countries do constitute a distinct group within the General Assembly even though the group never votes as a compact unit and has never followed any uniform policy with regard to questions of international importance. The group holds both formal and informal meetings when the General Assembly is in session.<sup>44</sup>

The most compact group, which on political issues normally affiliates to the Western Powers, is the group of Latin-American States.<sup>45</sup> It

42. *Ibid.*, pp. 47-55; Bailey comments as follows: 'Whether the States of the Soviet Bloc reach binding decisions after consultation, or whether identity of view is reached by other means, is immaterial. The fact is that these States have a uniform policy on major questions. Divergencies in voting rarely occur on matters of major importance; deviations on matters of lesser importance happen from time to time, through these may be caused by a misunderstanding either as to what the position of the Bloc is or what exactly was being voted on. If deviations because of misunderstanding occur, members of the Bloc usually try to change their votes subsequently so as to present a united front' — *The General Assembly of the United Nations* (1964), pp. 32-33. Also see Ogley, R., 'Voting and politics in the General Assembly', *International Relations* (April 1961), vol. 2, No. 3, pp. 156-167.

43. The Commonwealth has clearly no ideological or geographical basis. See Fawcett, J.E.S., *The British Commonwealth in International Law* (1963), p. 1 and generally. Also see Bailey, *op.cit.*, pp. 35-36; Hovet, *op.cit.*, pp. 69-73.

44. Fawcett, J.E.S., *op.cit.*, p. 226; Bailey, *op.cit.*, p. 35.

45. See generally, Whitaker, *op.cit.*, pp. 170-196.

is also by far the most well organized group. Its meetings are held almost every other week<sup>46</sup> during the sessions of the General Assembly and about once a month at other times of the year.<sup>47</sup>

The Afro-Asian group<sup>48</sup> is often called the group of 'non-aligned' nations.<sup>49</sup> It consists of several Afro-Asian States, mainly those who have acquired their independence during the last two or three decades. Their votes constitute the floating votes—they can go to either side, i.e. the Soviet bloc or the Western Powers. Its most well organized sub-group is the Arab Group.<sup>50</sup> Then there is the 'African group'. But even these sub-groups can hardly be properly defined. For example, Egypt comes into the Arab group as well as the African group.

In course of time these groups and sub-groups may acquire a definite character and membership and then a proper description of their nature, functions and overall role can more easily be essayed. At present the boundaries of the provinces are not only ill-defined but also constantly shifting. Indeed, one of the difficulties of classifying these groups is that their unity, and the way in which their votes will be cast, depends very much upon the matter in issue. On 'colonial' issues the United States of America is a lukewarm member of the Western Powers and the Commonwealth splits asunder; on economic issues, such as those arising out of the fishery problems dealt with at the Law of the Sea Conferences where the United States of America lost most of its traditional support from the Latin-American States, there is often no certainty; even on political issues it is difficult to predict a unity of policy, and in the Congo debates in 1960-61 a very marked rift of opinion developed even between the African States.

(ii) *The relative absence of political groups in the assemblies dealing with technical matters*

It is mainly in those assemblies which have a competence to discuss political matters or to perform political functions that one can expect to find the formation of distinct political groups and blocs.<sup>51</sup>

46. The Latin-American Vice-President of the General Assembly automatically becomes the chairman of the Group — see generally Hovet, *op.cit.*, p. 65. As pointed out by Whitaker 'it is one of the oldest and best organized groups of its kind in the United Nations' but 'unlike the Soviet bloc, it is not monolithic', *op.cit.*, p. 171.

47. Bailey, *op.cit.*, pp. 26-27.

48. Hovet, *op.cit.*, pp. 78-91; Bailey, *op.cit.*, pp. 22-31; Nicholas, *op.cit.*, pp. 188-189. Also see generally, Howard, H.N., 'The Arab-Asian states in the United Nations', *The Middle East Journal* (summer 1953), vol. 7, pp. 279-292; Lall, Arthur, 'The Asian nations and the United Nations', *The United Nations in the Balance* (1965), pp. 364-384.

49. For a comprehensive treatment of this subject see Jansen, G.H., *Afro-Asia and Non-Alignment* (1966).

50. See generally, Dib, Moussa, *The Arab Bloc in the United Nations* (1956).

51. Even within the municipal sphere national parties thrive largely on political ideologies, on political programmes; inevitably it is the national or regional politics within a State which provides a firm basis for the national party systems. But in the international assemblies dealing with technical matters it is difficult to envisage the evolution of a definite party system mainly because of the nature of their functions.

Leaving the European Assemblies apart because they almost constitute a distinct class by themselves, the members of other international assemblies such as those of the W.H.O., I.A.E.A., U.N.E.S.C.O., I.C.A.O., F.A.O., I.M.C.O., etc., are nearly always government representatives and technical or expert delegates. The I.L.O. is, of course, the exception, since its tripartite structure invites, and was indeed intended to foster, a grouping into governmental, employers' and employees' delegates.

Perhaps the one really significant area in which there has been a resurgence of the 'bloc' system in these technical organizations is that where questions relating to South Africa arise, for here, even in the technical organizations, the Afro-Asian bloc has organized sanctions against Portugal and the Union of South Africa, parallel to those organized within the U.N.

(iii) *Political groups and parties in the European assemblies*<sup>52</sup>

It is only in some of the European Assemblies that groups based on distinct party lines have made their appearance.

The members of the Consultative Assembly of the Council of Europe are now generally classified into five distinct groups:<sup>53</sup>

1. Christian Democrats;
2. Liberals;
3. Socialists;
4. 'Non-inscrits'; and
5. Independents.

The existence of the political groups within the Assembly was officially recognized when in a political debate — on the status of Berlin in January 1959 — only three speeches were made by the spokesmen of the existing groups. This practice was commented upon by the President of the Assembly as follows:

Ladies and Gentlemen, Lord Grantchester's speech is the last to be made by a spokesman of the existing Political Groups of the Assembly. Perhaps I may say that this procedure is a welcome precedent, for, if I am not mistaken, this is the first time it has been employed in the Consultative Assembly of the Council of Europe....<sup>54</sup>

The evolution of a party system within the Consultative Assembly has been facilitated by several factors, the most important of which is obviously the fact that its members are not government representatives acting under instructions from their respective governments. Further,

52. See generally, *European Political Parties* (1969), edited by Stanley Henig and John Pinder, especially chapter 12.

53. See *Manual of the Council of Europe* (1970), prepared by a group of officials of the Secretariat, p. 25. The activities of the 'Political groups' is said to have at first started in connection with the selection of candidates for important posts and was later on extended to other fields. See Robertson, *op.cit.*, p. 43.

54. Cited by Robertson, see p. 44. In a way official recognition had come earlier in 1956 when the Bureau and the Secretariat were asked to make suitable arrangements for providing these groups with certain facilities, such as rooms for their offices and services regarding interpretation, translation and duplication of documents.

they are seated in the Assembly not in national groups but according to the alphabetical order of their names. This has been done intentionally to prevent members from individual States from becoming too closely identified as national groups. In practice, members generally vote on party lines.<sup>55</sup>

The members of the European Parliament are generally classified into four political groups:

1. Christian Democrats;
2. Socialists;
3. Liberals; and
4. European Democratic Unionists.<sup>56</sup>

These groups are based on genuine political lines<sup>57</sup> and in fact represent political parties which conduct their parliamentary campaigns, on the community level, on the same lines as do national parties within a State.<sup>58</sup> These political parties bring out their own political programmes and issue statements on every issue or policy which may have to be decided by the institutions of the communities. It is also of some interest to note that, in contrast to the seating arrangement followed within the Consultative Assembly, the members of the European Parliament sit in distinct group formations.

#### 5. RULES OF PROCEDURE AND THE METHODS OF WORK

Now only rarely do modern international conferences proceed with their work in the absence of the rules of procedure.<sup>59</sup> So far as international assemblies are concerned it is inconceivable that they can at all function properly in the absence of 'rules of procedure'.

55. On the question of 'voting behaviour' on the part of these political groups, see Merkl, Peter H., "European Assembly parties and national delegations" *The Journal of Conflict Resolution* (1964), vol. 8, pp. 55-60.

56. Following the amendment of Article 36(5) of the rules of procedure a fourth political group was formed, known as the European Democratic Union — see the *Eighth General Report of the European Economic Community Commission on the Activities of the Community* (1965), p. 339.

57. On the question of the organization of these groups see Oudenhove, G. van, *The Political Parties in the European Parliament* (1964), p. 30 *et seq.*; *European Political Parties* (1969), edited by Stanley Henig and John Pinder, p. 477 *et seq.*

58. Delegates are always selected on a party basis. Proposals for direct elections have already been worked out by a *Working Party on European Elections* under the chairmanship of Professor Pernand Dehousse in the form of a draft convention. These were duly approved by the Committee on Political and Institutional Questions and later on by the Assembly itself on 17 May 1960. For details relating to the case for direct elections to the European Parliament see *The Case for Elections to the European Parliament by Direct Universal Suffrage: Selected Documents* (September 1969), Publication of the Directorate-General for Parliamentary Documentation and Information.

59. The Bandung Conference of 1954 had no 'rules of procedure'. 'It was left to the Chairman of the Conference to conduct the meetings in accordance with the generally accepted conventions of international conferences'; see Appadorai, 'The Bandung Conference', *India Quarterly* (1955), vol. 11, pp. 207, 212.

The Council of NATO also does not have any written rules of procedure; see Ismay, Lord, *NATO, The First Five Years 1949-1954*, p. 60.

All the international assemblies adopt their own rules of procedure and in almost every case on the basis of a majority vote.<sup>60</sup> Their 'constitutional' importance is generally recognized;<sup>61</sup> although these rules cannot override provisions contained in a constitutional treaty, they are in practice as effective and binding as rules<sup>62</sup> laid down in constitutional treaties.

The value of these 'rules of procedure' can be demonstrated only by describing the way in which they supplement treaty provisions in procedural matters. If one examines the Charter provisions concerning voting in the General Assembly it will be seen that all that Article 18 says is that each member of the General Assembly shall have one vote; that decisions on important questions shall be made by a two-thirds majority of the members present and voting; and that other questions, including the determination of additional categories to be decided by a two-thirds majority, shall be decided by a majority of the members present and voting. But this is not sufficient in practice. For example, the provisions contained in Article 18 do not tell us whether voting is allowed by proxy or not. The Article does not say anything about the methods of voting to be followed in the Assembly or the rules relating to the counting of votes. Though these may be minor questions they are important and must be properly regulated. It is in connection with such details that the importance of the rules of procedure becomes undeniable.

It is admitted that such detailed rules cannot be laid down in a constitutional treaty, but there is also no criteria for determining what matters should be regulated through treaty-provisions and what should be left to be governed by the 'rules of procedure', or more exactly through the legislative power of the international assemblies. Occasionally it happens that in respect of one international assembly a particular question may be regulated by treaty-provisions whereas the same question in respect of another assembly may have been left for regulation by the 'rules of procedure'. This is indeed significant for in both the cases the subject matter to be governed, though the same, has been regulated by different legislative instruments. For example, rules regarding the seat where the Consultative Assembly should meet in ordinary sessions have been laid down in the Statute of the Council of Europe,<sup>63</sup> whereas in the case of the General Assembly they can be found only in the 'rules of procedure'.<sup>64</sup> The practical value of the rules in both cases is the same. One can argue that rules of procedure can be easily amended or abrogated whereas treaty-provisions may not (and this is

60. See Scelle, G., 'The evolution of international conferences', *International Social Science Bulletin* (1953), vol. 5, p. 247.

61. For a detailed discussion regarding the legal character of the 'rules of procedure' see Jessup, P.C., 'Parliamentary diplomacy', *Recueil des Cours* (1956), vol. 89, pp. 220-226, 230-232; Detter, I., *Law Making by International Organizations* (1965), pp. 44-45.

62. See Jessup, *op.cit.*, p. 204.

63. See Article 33.

64. See rule 3, General Assembly's Rules of Procedure (hereafter will be referred to as G.A.R.P.).

perhaps an argument for including most of the details in the rules of procedure rather than the treaty), but that does not mean that the rules of procedure are less effective while they are in force.

The 'methods of work' followed by permanent international assemblies are generally outlined in their 'rules of procedure',<sup>65</sup> but in the case of independent or special international conferences they may be defined in a separate memorandum. For example, the U.N. Secretariat had submitted in addition to the 'Provisional Rules of Procedure'<sup>66</sup> for the U.N. Conference on the Law of the Sea, a *Memorandum Concerning the Method of Work and Procedures of the Conference*.<sup>67</sup> This 'memorandum', apart from defining the scope of the Conference and its agenda, also stressed general principles of action, such as:

the very wide scope of the Conference renders it essential that the greater part of the work should be done in committees, and it is assumed that there will not be a general debate in the plenary meetings of the Conference.<sup>68</sup>

This 'memorandum' was inevitably linked to and explained some of the provisions contained in the 'Provisional Rules of Procedure'.

An examination of the methods of work of the various assemblies can be undertaken by following their procedure with regard to,

1. the adoption of agenda,
2. the division of work among committees,
3. the conduct of business at committee and plenary sessions, and
4. the drafting of resolutions and texts at the committee stage.

#### (a) *Agenda*

Agendas of each regular session are usually sent in advance of the opening date of the session to the member States or member representatives. The provisional agenda of the General Assembly must be communicated by the Secretary-General to the member States of the

65. On the question of methods and procedures of the General Assembly also see the following: (1) Recommendations and suggestions of the Special Committee on Methods and Procedures of the General Assembly approved by the Assembly on 22 October 1949 by resolution 362 (IV); (2) The Report of the Special Committee appointed for the consideration of the methods and procedures of the General Assembly dealing with legal and drafting questions — Doc. A/2174 and General Assembly resolution 684 (VII) of 6 November 1952; (3) Letter dated 26 April 1962 from the President of the General Assembly to the Secretary-General, transmitting a memorandum on the work of the Assembly covering matters relating to the opening date of the regular session of the General Assembly, elimination of the 'general debate' on certain items, and grouping of items on the provisional agenda dealing with the same problem — Doc. A/5123, 3 May 1962 — *G.A.O.R.* (XVII), Annexes, Agenda item 86; (4) The Report of the *Ad Hoc* Committee on the Improvement of the Methods of Work of the General Assembly — Doc. A/5423, 28 May 1963 — *G.A.O.R.* (XVIII), Annexes, Agenda item 25 — and General Assembly resolution 1898 (XVIII) of 11 November 1963; (5) The Report of the Special Committee on the Rationalization of the Procedures and Organization of the General Assembly — Doc. A/8426, *G.A.O.R.* (XXVI), Supp. No. 26 — and General Assembly resolution 2837 (XXVI) of 17 December 1971.

66. See A/CONF. 13/10 dated 5 November 1957.

67. A/CONF. 13/11 dated 5 November 1957.

68. *Ibid.*, p. 6.

United Nations at least sixty days before the opening of the session.<sup>69</sup> Similarly, that of the Health Assembly must be sent by the Director-General of the Organization not less than sixty days before the date fixed for the opening session,<sup>70</sup> and that of the Consultative Assembly must be communicated not less than six weeks before the date of the opening of or resumption of a session to all the representatives and substitutes.<sup>71</sup>

The agendas are mostly drawn up by an executive organ or the secretariat of the organization concerned. The provisional agenda of the General Assembly is always prepared by the Secretary-General,<sup>72</sup> that of the Health Assembly is prepared by the Executive Board,<sup>73</sup> and the agenda of the Consultative Assembly is prepared by the Bureau.<sup>74</sup> The agendas prepared by the Secretary-General or the Executive Board or the Bureau are generally regarded as provisional until finally and formally adopted by the Assemblies or one of the organs specifically authorized for the purpose. For example, the General Assembly must approve the provisional agenda circulated by the Secretary-General 'as soon as possible after the opening of the session'.<sup>75</sup> The agenda drawn up by the Bureau of the Consultative Assembly must be adopted by the Standing Committee before it is sent to the representatives and substitutes and then it must be approved by the Assembly at its first sitting.<sup>76</sup>

(b) *Distribution of agenda items to various committees*

Though the international assemblies can always decide that a particular subject shall not be referred to a committee, it is now established practice that they do not take a final decision upon any substantive item on their agendas until that item has been thoroughly examined by one of their committees.<sup>77</sup> Further, as indicated in rule 99 of the General Assembly's Rules of Procedure, items relating to the same category of subjects are generally referred to the committee or committees dealing with that category of subjects.

69. Rule 12, G.A.R.P. The Special Committee on the Rationalization of the Procedures and Organization of the General Assembly has recently made a number of suggestions concerning the presentation and preliminary consideration of the provisional agenda of the General Assembly, reduction in the number of agenda items and allocation of agenda items — see The Report of the Special Committee, *G.A.O.R.* (XXVI), Supp. No. 26 (A/8426), paras. 64, 65, 70, 74, 75, 79, 80, 84, 89-91 and 95.
70. Rules 3 and 4, World Health Assembly's Rules of Procedure (hereafter will be referred to as W.H.A.R.P.).
71. *The Consultative Assembly*, *op.cit.*, p. 120.
72. Rule 12, G.A.R.P. For a similar provision see rule 13 of the Rules of Procedure of the I.M.C.O. Assembly.
73. Rule 4, W.H.A.R.P.
74. See rule 15, Consultative Assembly's Rules of Procedure (hereafter will be referred to as C.A.R.P.).
75. Rule 21, G.A.R.P.
76. Rule 16, C.A.R.P.
77. See rule 67 of the G.A.R.P. Also see rule 27 of the C.A.R.P.

The distribution of agenda items to various committees is made by the Assemblies at a plenary meeting. The procedure generally followed is that one of the committees authorized in this behalf recommends the allocation of the various items to different committees and its proposals are generally approved. Under rule 33(c) of W.H.A.'s Rules of Procedure, the 'General Committee' of the Health Assembly has been specifically authorized to make recommendations for the allocation of the items on the Assembly's agenda. Under the General Assembly's Rules of Procedure, the General Committee has no such specific authorization. However, in practice, it always makes proposals as to how the General Assembly's agenda items might be allocated to various committees.<sup>78</sup>

But it is not necessary that this procedure be followed by 'independent' or *ad hoc* conferences. The U.N. Conference on the Law of the Sea followed a different method. The *Memorandum Concerning the Method of Work and Procedures of the Conference* (A/CONF.13/11, 5 November 1957)<sup>79</sup> provided a complete plan for the division of the work among the 'Main Committees' of the Conference. For instance, the First Committee was entrusted with questions relating to 'Territorial Sea and Contiguous Zone' — articles 1-25 and 66; the Second Committee with 'High Seas: General Regime' — articles 26-48 and 61-65; the Third Committee with 'High Seas: Fishing, Conservation of the Living Resources' — articles 49-60; and the Fourth Committee with 'Continental Shelf' — articles 67-73. For dealing with 'the question of free access to the sea of land-locked countries' the Memorandum had suggested the establishment of a Special Committee. Thus in this case we find that the allocation of work among committees had been decided much before the Conference actually met, largely as a result of the excellent preparatory work done by the U.N. Secretariat and its concern for making the Conference a success. However, the importance of the General Committee is not diminished if a certain plan of work has already been laid down by the organizers of the Conference, since it can always suggest the reallocation of work among various committees (in the interests of proper co-ordination and balanced distribution of work between them).<sup>80</sup>

78. The General Committee makes several reports in connection with the item (usually item no. 8) entitled 'Adoption of the Agenda'. The President first of all asks the Assembly to examine questions relating to the organization of the session and thereafter if there is no objection or discussion, the General Committee's recommendations in that regard are adopted. Later the President proposes the consideration of the Committee's report, section by section or in any order that he may deem proper. The usual procedure is that the 'inclusion of items' in the agenda is taken up first and their allocation to plenary meetings and the committees are taken up next. Most of the items recommended are generally included or allocated without any discussion whatsoever but sometimes a vote by roll-call is taken to decide the matter, normally in those cases when the competence of the Organization to deal with the item is disputed.

79. See paras. 16 and 20.

80. See *United Nations Conference on Consular Relations* (1963). The General Committee did suggest the reallocation of Articles among the First and the Second Committee — A/CONF. 25/9, 27 March 1963.



(c) *Conduct of business at plenary sessions*

Apart from the opening of the session, formation of committees and election of officers, which are principally procedural matters, the formal work at the annual sessions of the international assemblies like the General Assembly of the United Nations or the Consultative Assembly of the Council of Europe is generally initiated through a 'general debate' on common problems facing the Organizations and the assemblies in particular.

Surprisingly enough, the General Assembly's Rules of Procedure have nothing to say in respect of the 'general debate' although it is, in a sense, always the most important item on its agenda. As a time-consuming item it has no parallel. At its sixteenth session, out of a total of 74 plenary meetings, the General Assembly devoted 29 plenary meetings to the general debate.<sup>81</sup> In all, there were 97 items on the agenda out of which the first seven were disposed of in four plenary meetings,<sup>82</sup> the eighth item (approval of the agenda) was discussed at six different meetings<sup>83</sup> and the ninth item, i.e. the General Debate, took twenty-nine plenary meetings to be concluded—a highly disproportionate distribution of time to various agenda items.

A general debate, by its very nature, is likely to be diffuse and erratic.<sup>84</sup> Subject to the rules of order this debate is virtually of an unrestricted character. If one has the patience to go through some of the speeches made during the 'general debate', one would find apart from repetition,<sup>85</sup> long passages unnecessarily devoted to matters which could more easily be dealt with collectively by adopting a resolution, e.g., remarks directed to congratulating the President on his election or deploring the absence of an ex-Secretary-General, and so on. General remarks about the history of war and peace, though befitting college text-books, should not be, as a rule, included in such speeches.<sup>86</sup> As a rule, no voting takes place during the general debate which is always formally closed by the President when the list of speakers has been exhausted and there are no more speeches to be made. The one advantage of the general debate is that it affords an opportunity where major statesmen can make important policy statements.

81. From 1011th to 1039th plenary meeting. See *G.A.O.R.* (Plenary Meetings).

82. From 1007th to 1010th plenary meeting.

83. 1014th, 1018th, 1036th, 1059th, 1083rd, and 1109th plenary meetings.

84. See Nicholas, *op.cit.*, p. 97.

85. See Bailey, *op.cit.*, p. 74.

86. Perhaps the General Assembly can save more time by properly regulating the general debate than by any other method. The Special Committee on the Rationalization of the Procedures and Organization of the General Assembly has made some useful suggestions in this connection, e.g. that its length should not exceed two and a half weeks; that the list of speakers wishing to take part in the general debate should be generally closed at the end of the third day after the opening of the debate; and that the delegations taking part in this debate should ensure that the speeches are not excessively long. See the Report of the Special Committee, *G.A.O.R.* (XXVI), Supp. No. 26 (A/8426), paras. 142, 144 and 147.

One possibly unfortunate repercussion of this practice in the General Assembly has been the tendency in the U.N. Codification Conferences to adopt the same practice. The Secretariat's Memorandum on Methods of Work for the Law of the Sea Conference of 1958<sup>87</sup> failed to convince member States of the futility of a long general debate in the committees, and scarcely an issue raised in that debate could not have been raised equally well in the committee discussions of particular articles of the I.L.C. Draft. Some justification for this long period of repetitious debate is to be found in the need to give the delegations time to negotiate on compromises before the substantive work in the committee proceeds to discussion and vote. However, this merely points to the inadequacy of pre-conference informal negotiation either through diplomatic channels or through the Permanent Missions in New York. The general debate in codification conferences is, by and large, an expensive and fruitless use of valuable time.

No such general debates are held in other permanent international assemblies, wherein, after the election of the president and his address, the assemblies straightaway proceed to the consideration of agenda items dealing with substantive matters.

(d) *Quorum*

In most of the international assemblies a majority of the members is generally regarded sufficient to constitute a proper quorum.<sup>88</sup>

(e) *Point of order*<sup>89</sup>

Nearly all the international assemblies provide for rules under which a representative or a member may rise to a 'point of order' which is then decided by the president of the assembly in accordance with

87. A/CONF. 13/11, paras. 14, 18. The general debate admittedly took place in the plenary committees rather than in the plenary conference.

88. See rule 36, C.A.R.P., rule 53, W.H.A.R.P.; Article 20 of the Standing Orders of the I.L.O. Conference; rule 41 of the Rules of Procedure of the I.M.C.O. Assembly; Article 5 of the Statute of I.A.E.A. Also see rule 69, G.A.R.P. as amended recently by General Assembly resolution 2837 (XXVI) of 17 December 1971, which authorises the President of the General Assembly to 'declare a meeting open and permit the debate to proceed when at least one third of the Members of the General Assembly are present'.

89. This is supposed to be a typical English parliamentary practice. It has been described in Erskine May's treatise as follows: 'Although it is the duty of the Speaker to interfere in the first instance for the preservation of order when, in his judgment, the occasion demands his interference, it is also the right of any Member who conceives that a breach of order has been committed, if the Speaker refrains from interfering... to rise in his place, interrupting any Member who may be speaking, and direct the attention of the Chair to the matter, provided he does so the moment the alleged breach of order occurs. When a Member speaks to order he must simply direct attention to the point complained of, and submit it to the decision of the Speaker'. *Op.cit.*, p. 470. Also see U.N. Docs. A/2402, paras. 41-42, and A/937, para. 37 for its definition in the U.N. practice; Report of the Special Committee, *G.A.O.R.* (XXVI), Supp. No. 26 (A/8426), para. 229. Points of order have been unknown to French Parliamentary practice — see *G.A.O.R.* (VII), 6th Committee, 352nd Meeting, 16 December 1952, para. 2.

Can invited participants' raise points of order? When this question arose at one of the meetings of the Security Council the President ruled that only the members of the Council enjoy the right to raise points of order —, pp. 6-7 see *U.N.M.C.* (November 1965), pp. 6-7.

the rules of procedure.<sup>90</sup> The president's ruling is generally not final and can be appealed against.<sup>91</sup>

(f) *Speeches*

Generally, no member or representative can speak unless called by the President or without having previously obtained his permission.<sup>92</sup> Sometimes the right to speak is regulated by specific provisions such as: 'speakers shall be called upon in the order in which they have signified their desire to speak'.<sup>93</sup>

(g) *Limitations on the right of speak*

Although it is highly desirable that members of international assemblies should be able to participate freely in any debate and to express their views on all questions, it is also equally important that there should be rules for preventing the abuse of this right.

The President of the General Assembly can always, in the course of discussion of an item, propose to the Assembly a general limitation of the time to be allowed to speakers or the number of times that each representative may speak on any question.<sup>94</sup>

When debate is limited and a representative has spoken his allotted time, the President shall call him to order without delay.

In contrast to this, the Standing Orders of the I.L.O. Conference have much more specific and rigid provisions on this point, e.g., under Article 14(3)

No delegate shall speak more than once upon the same motion, resolution or amendment, without the special permission of the Conference, provided that the mover of a motion, resolution or amendment shall have the right to speak twice....

or again, under paragraph 6 of the same Article, 'Except with the special consent of the Conference no speech shall exceed 15 minutes exclusive of the time for translation'. In the Council of Europe, there is no time limit for speeches, except in certain minor forms of discussion.

(h) *Speeches for the purpose of explaining votes*

In the General Assembly's Rules of Procedure there is a specific rule on this point (rule 90 and rule 129 for committees) whereby the

90. See rule 73, G.A.R.P.; rule 57, W.H.A.R.P.; rule 32, C.A.R.P.; Article 14(5) of the Standing Orders of the I.L.O. Conference; rule 45 of the Rules of Procedure of the I.M.C.O. Assembly.

91. See rule 73, G.A.R.P.; rule 57 of W.H.A.R.P.; and rule 45 of the Rules of Procedure of the I.M.C.O. Assembly.

92. See rule 70, G.A.R.P.; rule 54, W.H.A.R.P.; rule 31(1), (2) of C.A.R.P.; Article 14(1), (2) of the Standing Orders of the I.L.O. Conference.

93. In the Consultative Assembly the President is not bound to call the speakers in the order in which their names have been entered in the 'Speaker's Book'.

94. Rule 35, G.A.R.P. Also see rule 74, G.A.R.P., as amended by the General Assembly in its recent resolution 2837 (XXVI) of 17 December 1971.

President may permit members to explain their votes.<sup>95</sup> Under this provision sometimes lengthy speeches are made and perhaps a general limitation might be very useful, say, a limitation of five minutes. There tends to be a general disinterest on the part of the delegations in these explanations of votes, although occasionally they are of value, particularly where a delegation has chosen to make a statement on its position rather than prolong the debate prior to the vote.

(i) *Closing list of speakers*

In the General Assembly the President may announce the list of speakers during the course of a debate and can further, with the consent of the Assembly, declare the list closed. However he has also been authorized to 'accord the right of reply to any Member if a speech delivered after he has declared the list closed makes this desirable'.<sup>96</sup> This provision is useful for setting a limit to the debates and for compelling delegations wishing to participate to inscribe their names and prepare their interventions.

(j) *Procedural motions*

Though there may be some doubts as to the distinction between 'points of order' and 'procedural motions' generally,<sup>97</sup> there is no confusion in this regard in the context of the U.N. parliamentary practice. A point of order may be raised by a representative if he thinks there is a breach of the rules of procedure, whereas 'procedural motions' as the name suggests, are concerned with substantive procedural questions, such as the suspension or adjournment of a meeting, adjournment or closure of debate, and putting amendments to a vote.

The Standing Orders of the I.L.O. Conference define more precisely what procedural motions are. Article 15, 2(2) says:

Motions as to procedure include the following:

- (a) a motion to refer the matter back;
- (b) a motion to postpone consideration of the question;
- (c) a motion to adjourn the sitting;
- (d) a motion to adjourn the debate on a particular question;
- (e) a motion that the Conference proceed with the next item on the agenda for the sitting;
- (f) a motion to ask for the opinion of the President, the Secretary-General or the Legal Adviser of the Conference;
- (g) a motion for the closure of the discussion.

Some of the international assemblies specifically provide the order of precedence to be followed in the consideration of procedural motions.<sup>98</sup>

95. For a description regarding the proposals made by the General Assembly to limit explanations of vote, see Bailey, *op.cit.*, pp. 134-135; also see the Report of the Special Committee, *G.A.O.R.* (XXVI), Supp. No. 26 (A/8426), paras. 216-218.

96. See rule 75, G.A.R.P.; rule 58, W.H.A.R.P.

97. It was pointed out by a representative at one of the plenary meetings of the General Assembly that in some parliamentary bodies no distinction is made between a point of order and a procedural motion. See *G.A.O.R.* (VII), 38th Plenary Meeting, 24 October 1952, para. 73.

98. See rule 79, G.A.R.P.; rule 62, W.H.A.R.P.

(k) *Proposals and amendments*

Article 15(3) of the Standing Orders of the I.L.O. Conference provides that, except for 'procedural motions', all resolutions and amendments must be submitted in writing which are then translated and circulated among the members of the Conference by the Secretariat 'not later than the day following' that on which they were received. The General Assembly also follows a similar procedure:<sup>99</sup> under rule 80 proposals and amendments have to be normally introduced in writing and handed over to the Secretary-General who then circulates copies to the delegations. It is further prescribed in the rule that as a general rule no proposal shall be discussed unless copies have been circulated to all the delegations 'not later than the day preceding the meeting'.

Generally an amendment to a proposal is put to the vote first. This is in direct contrast to the practice adopted at the First Hague Conference where the proposal was first put to a vote with the result that, if it was accepted, the amendment could not be put to a vote at all.<sup>1</sup>

Some of the assemblies have included detailed rules on the subject of amendments to proposals. For instance, rule 65 of the World Health Assembly's Rules of Procedure lays down that when two or more amendments are moved the President shall put the amendment farthest removed in substance from the original proposal to the vote first and so on,<sup>2</sup> but where the adoption of an amendment leads to the rejection of another, the latter amendment is not put to vote.<sup>3</sup>

In relation to the post-war codification conferences convened by the U.N. there was a special problem posed by the fact that they have, as the basis of their work, a draft or drafts prepared by the I.L.C. The exact status of these drafts was open to question, and it could have been argued that any State could submit a text of an article or articles to the conference and claim for it an equal standing with the text proposed by the I.L.C. Fortunately, at the 1958 Law of the Sea Conference it was agreed that the I.L.C. draft constituted the basic proposals to which all other proposals were treated as amendments, and this has been the practice since followed at Vienna with the two drafts on Diplomats and Consuls. Admittedly, when the I.L.C. draft is incomplete (and it did not in 1958 cover the question of land-locked States) the basic proposals will have to come from the States, but it does confer an advantage on the I.L.C. draft for, with the rejection of successive amendments, the weight of voting tends to move in favour of the basic I.L.C. draft since States are not over-ready to vote against every text on a particular topic.

99. Also see rule 43 of the Rules of Procedure of the I.M.C.O. Assembly.

1. See Dunn, *op.cit.*, pp. 132-133.

2. This is also the rule followed in the General Assembly and the Consultative Assembly of the Council of Europe; see rule 92, G.A.R.P. and rule 29, C.A.R.P.

3. The same procedure is followed in the General Assembly and the Consultative Assembly.

It may be added that in treating the 'proposals' of States as amendments to the basic I.L.C. proposals, there is the difficult problem of deciding, for voting purposes, which are farthest removed in substance from the I.L.C. text (which is the last to be put to the vote).<sup>4</sup> This is a problem which admits of no formula for its solution: it is for the Chairman to agree informally on the order in which the amendments will be put to vote with the delegations sponsoring them. Failure to agree in advance may well lead to endless challenges to the procedure proposed by the Chairman.

It may finally be noted that, in the true codification conference, it becomes extremely difficult to adhere rigidly to any rule requiring circulation of the texts of amendments the day preceding the meeting.<sup>5</sup> The inevitable tendency is for the President or Chairman to waive this requirement, with the approval of the Conference or Committee, in order to allow the 'last-minute' compromise formulas to be put. When these involve minimal changes of wording this can often be done by reliance on the simultaneous interpretation system, with no written text: in other cases the written text may only be available in one or two of the working languages and often only a matter of hours before the actual vote on the text. There is nothing intrinsically wrong with this informal system provided it is applied to amendments or proposals which could not reasonably have been submitted earlier and provided all the delegations clearly understand for what they are being required to vote.

(1) *Conclusion of debate and voting*

When the debates on substantive items are concluded, they are put to a vote by the assemblies concerned and decisions reached. The general, and sensible, rule is that once voting has started a representative may only intervene on a matter affecting the conduct of the voting and on a point of order.

(m) *The conduct of business in committees*

The conduct of business in committees follows with few minor changes or variations almost the same pattern described above in connection with the conduct of business at the plenary meetings.

The committees are nearly always empowered to set up sub-committees.<sup>6</sup> Usually the committees elect their own chairmen, vice-

4. See A/CONF. 13/35, rules 40, 41. It may be noted that the result of this practice was to minimise the use of rule 41, dealing with proposals, and to replace the 'priority of submission' rule relating to proposals by the 'furthest removed in substance' rule relating to amendments.

5. *Ibid.*, rule 29.

6. See rule 104, G.A.R.P.; rule 42(2), C.A.R.P.; rule 39, W.H.A.R.P.; Article 59(2) of the Standing Orders of the I.L.O. Conference.

chairmen and rapporteurs.<sup>7</sup> The Chairmen of the Main Committees of the General Assembly do not vote<sup>8</sup> but the chairmen of the committees of the I.L.O. Conference '... have the right to take part in the discussions and to vote except when replaced on the committee by a substitute'.<sup>9</sup> The quorum for the committees is not always the same. In respect of the General Assembly's committees only one quarter of the members are sufficient to constitute a proper quorum<sup>10</sup> but for the committees of the I.L.O. Conference a different formula has been adopted.<sup>11</sup>

Decisions are always taken in the committees by a majority vote,<sup>12</sup> and this, as compared with the differing requirements of simple or two-thirds majority vote in the plenary Assembly or Conference, constitutes the major difference in procedure.

In respect of other matters such as speeches, precedence, points of order, time limit on speeches, closing of list of speakers, adjournment of debate, closure of debate, suspension or adjournment of the meeting, order of procedural motions, withdrawal of motions, etc. the committees generally follow the same rules which govern the plenary meetings.<sup>13</sup> On these subjects the General Assembly's Rules of Procedure reproduce almost the same rules for the committees as have been prescribed for the plenary meetings.

7. See rule 105 G.A.R.P.; rules 40 and 43, C.A.R.P.; Article 57 (2) and (3) of the Standing Orders of the I.L.O. Conference.

The chairmen of the 'main committees' of the Health Assembly are elected by the Health Assembly on the report of the Committee on Nominations. But the 'main committees' elect their vice-chairmen and rapporteurs (rule 36). Any committee or its sub-committee is authorized to appoint one or more rapporteurs as required (rule 42). Also see rule 40.

8. Rule 106, G.A.R.P.

9. Article 61(3), Standing Orders of the I.L.O. Conference.

10. Rule 110, G.A.R.P.

11. See Article 66(1), Standing Orders of the I.L.O. Conference.

12. See rule 126, G.A.R.P.; Article 65 of the Standing Orders of the I.L.O. Conference; rule 42(4), C.A.R.P.

The World Health Assembly has laid down a general rule which says: 'Subject to any decision of the Health Assembly the procedure governing the conduct of business and voting by committees shall conform as far as practicable to the Rules relative to the conduct of business and voting in plenary meetings' — (Rule 80). The Health Assembly follows both the two-thirds majority rule and the simple majority rule.

For the differences in voting in Codification Conferences, as between the Plenary Conference and Committees, see A/CONF. 13/35, rules 35 and 53; also rule 56 of the Vienna Conference of 1961.

The Committee on the Peaceful Uses of Outer Space and its sub-committees have followed the unanimity principle in reaching their decisions, an exception to the general practice — see Zemanek, K., 'The United Nations and the law of outer space', *The Yearbook of World Affairs* (1965), vol. 19, p. 202.

13. See rule 80, W.H.A.R.P. quoted above. Rule 24 of the Rules of Procedure of the I.M.C.O. Assembly provides: 'The Assembly may establish such temporary or, upon the recommendation of the Council, such permanent bodies as it considers necessary' and 'such subsidiary bodies shall follow the present rules of procedure so far as they are applicable'.

(n) *Drafting of resolutions and texts at the committee stage*<sup>14</sup>

The earlier practice was for resolutions and texts of international conventions to be finally drafted by a select committee *after* the substance had been generally agreed upon at the plenary meetings. The present practice is for these resolutions and texts to be drafted by special or select committees, after the committee stage but before the text is considered at the plenary sessions. The Main Committees of the General Assembly always enclose draft resolutions and texts (if it is necessary or desirable) along with their reports. These drafts are nearly always thoroughly discussed at the committee stage and sometimes even voted on section by section or part by part.

The preparation of 'draft treaties' or 'draft resolutions' is a highly specialized work and is generally left to small committees;<sup>15</sup> the plenary assemblies are evidently not suitable agencies for this task. But here it may be pointed out that it is highly desirable that a general 'legislative drafting bureau' be attached to each international assembly for providing expert legal and other technical advice to committees engaged in drafting international instruments.

In general the task of the drafting committee is restricted to drafting and does not include a power to vary or alter the substance of the text agreed to in the main committees.

Clearly, where there are several committees working on different parts of what is to be eventually a coherent treaty, or even a series of interrelated treaties, there is an advantage in having a second drafting stage at which a drafting committee reviews the drafts submitted by the drafting committees and eliminates inconsistencies or completes cross-references before the text or texts are finally approved by the plenary conference.<sup>16</sup> This proved vital, for example, when the Main Committees of the U.N. Conference on the Law of the Sea in 1958 submitted drafts (which had already been before their own drafting committees) to the Plenary Conference; a drafting committee of the Plenary Conference dealt with the entirety of the drafts submitted before final adoption by the Conference.

14. See generally Hadwen and Kaufmann, *How United Nations Decisions are Made* (1962), pp. 36-44.

15. Some of the Assemblies have specifically provided for the establishment of expert drafting committees. See for instance Article 59 of the Standing Orders of the I.L.O. Conference.

16. See rule 48 of the Rules of Procedure adopted by the United Nations Conference on Diplomatic Intercourse and Immunities (A/CONF. 20/9, 6 March 1961) which provided: 'The Conference shall appoint on the proposal of the General Committee, a Drafting Committee which shall consist of not more than nine members. This Committee shall be responsible for the final drafting and co-ordination of the instruments approved by the committees of the Conference'. Later the membership was raised to twelve instead of nine on the recommendation of the General Committee and the rule was amended accordingly (see A/CONF. 20/14, p. 6).



6. VOTING IN INTERNATIONAL ASSEMBLIES<sup>17</sup>(a) *Progress from unanimity to majority rule*

The principle of unanimity which had been regarded as a sacrosanct rule for all diplomatic gatherings in the early nineteenth century,<sup>18</sup> if not completely abandoned, now appears to have been generally rejected in the practice and procedure of modern international conferences and assemblies.

As stated earlier the Berne Conference of 1874 had successfully applied the principle of majority voting in transacting all its business.<sup>19</sup> At the Congress of Berlin (1878) resolutions on procedural matters 'were adopted when approved by a majority unless the minority registered a formal protest'.<sup>20</sup> At the First Hague Conference we come across a curious instance of a proposal being adopted by the Conference 'unanimously with the exception of two votes (United States and Great Britain) and one abstention (Portugal)'.<sup>21</sup> At the Second Hague Conference 'a majority was sometimes regarded as enough for a proposal to be regarded as part of the proceedings'.<sup>22</sup> In fact, as has been shown earlier, although the principle of majority voting had been successfully applied by a number of international conferences and international com-

17. See generally, Jacob, Philip E. and Atherton, Alexine L., *The Dynamics of International Organization* (1965), pp. 29-33; Jenks, C.W., 'Unanimity, the veto, weighted voting, special and simple majorities and consensus as modes of decision in international organizations', *Cambridge Essays in International Law* (1965), pp. 48-63; Manno, C.S., 'Selected weighted voting in the U.N. General Assembly: rationale and methods', *I.O.* (1966), vol. 20, No. 1, pp. 37-62.

18. See the statement of the first French delegate at the Geneva Conference of 1864 which led to the defeat of the attempt to introduce voting at the Conference on the ground that the majority had no power to bind even an insignificant minority. Commenting upon the statement of the French delegate Satow remarked in a footnote that 'without doubt this is the correct international doctrine' — *Guide to Diplomatic Practice* (1917), 1st ed., p. 120.

See the statement of President Nelidow at the Second Hague Conference in 1907 which ran as follows: 'The first principle of every conference is that of unanimity; it is not an empty form but the basis of every political understanding. ...' Lord Robert Cecil again asserted at the Paris Peace Conference of 1919 that 'all international decisions must by the nature of things be unanimous' — see Miller, D.H., *The Drafting of the Covenant* (1928), vol. 1, p. 161.

Also see the Advisory Opinion no. 12 of the P.C.I.J. (Series B/12, pp. 6-35) — Hudson, M.O., *World Court Reports* (1922-1926), vol. I, pp. 740-741. 'The Court identified the rule of unanimity 'with the unvarying tradition of all diplomatic meetings or conferences'.

19. See *ante*, p. 4.

20. See *Voting in International Organizations* (1 December 1947), Information Paper No. 2, prepared by the Research Section of the Department of Public Information, p. 4.

21. The First Committee had recommended a formula on the question of the suppression of explosive bullets which was voted upon by the Conference before it was finally adopted. See *Proceedings of the Conference*, Carnegie Endowment for International Peace publication, p. 87.

22. *Voting in International Organizations*, *op.cit.*, p. 4.

missions before the establishment of the League of Nations,<sup>23</sup> it is only after the second World War<sup>24</sup> that the principle of majority voting has become the *normal* rule of action for international conferences and assemblies.<sup>25</sup>

Though unanimity is still required for certain types of action in a number of organizations,<sup>26</sup> it has been discarded both by the United Nations and the specialized agencies.<sup>27</sup> Even for the decisions of the Security Council it is only the unanimity of the 'big five' which is required and not the unanimity of *all* the members of the Council.<sup>28</sup>

23. See *ante*, pp. 4-9. Bowett, *The Law of International Institutions* (1970), 2nd edition, pp. 358-359. Also see *Voting in International Organizations*, *op.cit.*, pp. 5-7; Hill, N.L., 'Unanimous consent in international organizations', *A.J.I.L.* (1928), pp. 320-329, who lists a number of instances wherein the principle of unanimity was not strictly adhered to or followed before and after the League of Nations.

See generally, Riches, C.A., *Majority Rule in International Organizations* (1940); Koo, Wellington, *Voting Procedure in International Political Organizations* (1947).

24. Both the Assembly and the Council of the League of Nations could take important decisions only if there was unanimity among its members. See Article 5 of the Covenant which prescribed unanimity as the general rule. No doubt, the Assembly and the Council could take decisions on a majority vote in certain cases but 'these were the exceptions; the normal rule was most certainly one of unanimity' — see Bowett, *op.cit.*, p. 360.

For a brief discussion on the question, see *Voting in International Organizations*, *op.cit.*, pp. 8-11. The paper also examines the modification of the unanimity rule in the practice of the League — pp. 11-18.

Also see Riches, *op.cit.*, pp. 20-29 where the writer lists those cases wherein majority vote usually sufficed; especially p. 90, where he discusses some of those cases where insignificant minorities in fact defeated important proposals under the unanimity rule both in the Assembly and the Council.

25. See Jenks, C.W., 'Some constitutional problems of international organizations', *B.Y.I.L.* (1945), vol. 22, at p. 34 where he states: 'The battle to substitute majority decision for the requirement of unanimity in international organizations has now been largely won'. Again, he states at p. 35: 'The cumulative effect of these developments has been to make majority rule in some form *normal practice* instead of *strictly limited exception to normal practice*'. (Italics added.)

On the question of the progress from unanimity to majority vote in international assemblies, see Jessup, P.C., 'Parliamentary diplomacy', *Recueil des Cours* (1956), vol. 89, pp. 241-247.

26. The Council of the O.E.C.D. acts mainly on the principle of unanimity. See Article 6(1) of the 1960 Convention which provides that: 'Unless the Organization otherwise agrees unanimously for special cases, decisions shall be taken and recommendations shall be made by mutual agreement of all the members'. It may further be pointed out that the Council of the O.E.C.D. is the plenary organ of the Organization and not an executive body composed of select membership.

The Committee of Ministers of the Council of Europe and the Council of the European Communities of the 'Six', in a number of specified cases, can take a decision only when there is unanimity among their members.

The Council of the League of Arab States while determining 'the necessary measures' under Article 6 of the Pact (22 March 1945) for repelling an aggression must act unanimously. The unanimity principle has also been retained in the COMECON and the Warsaw Treaty Organization.

27. See Bowett, *op.cit.*, at p. 360 where he points out: 'Unanimity has... virtually disappeared from the specialized agencies'. Also see Rosenne, S., 'United Nations treaty practice', *Recueil des Cours* (1954), vol. 86, p. 314.

28. See Article 27 of the U.N. Charter.

The 'majority principle' has also been consistently followed by all the international conferences held under the auspices of the United Nations.<sup>29</sup> However, whilst in an international organization a decision adopted by majority vote tends to bind all members, it must be pointed out that majority decisions leading to the adoption of a treaty or convention are different from other administrative decisions, for here the decision merely leads to the adoption of the text and does not *per se* impose any obligation on participating States. The obligations contained in the treaty or convention are assumed by some subsequent act of acceptance or ratification of the treaty or convention and, in principle, the rule remains that no State is bound against its will.

(b) *Majority rule in international assemblies*

Except for the Councils of the O.E.C.D. and COMECON, all other international assemblies apply the majority rule in arriving at their decisions.

Generally the voting techniques adopted by the assemblies make a distinction between 'substantive' and 'procedural' matters<sup>30</sup> or 'important' and 'less important' questions by providing two distinct kinds of voting formula for each. For example, under Article 18 of the U.N. Charter, two distinct types of voting formula have been laid down

29. See generally the 'rules of procedure' of the following conference: U.N. Maritime Conference (1948); U.N. Conference on Freedom of Information (1948); U.N. Conference on Road and Motor Transport (1949); U.N. Conference on Declaration of Death of Missing Persons (1950); Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons (1954); International Conference on Conservation of Living Resources of the Sea (1955); U.N. Conference on Maintenance Obligations (1956); U.N. Conference of Plenipotentiaries on a Supplementary Convention on the Abolition of Slavery (1956); U.N. Conference on Diplomatic Intercourse and Immunities (1961); and U.N. Conference on the Law of Treaties (1968, 1969).

Rule 35 of the Rules of Procedure adopted by the U.N. Conference on the Law of the Sea in 1958 provided that

1. Decisions of the Conference shall on all matters of substance be taken by a two-thirds majority of the representatives present and voting.
2. Decisions of the Conference on matters of procedure shall be taken by a majority of the representatives present and voting'.

This provision was exactly reproduced in rule 56 of the Rules of Procedure adopted at the Vienna Conference of 1961. Also see rule 36 of the Rules of Procedure of the U.N. Conference on the Law of Treaties. In fact, these conferences nearly always reached their decisions through the vote of the majority of the representatives present and voting.

Jessup has even stated that 'it is rare indeed to find a requirement in a modern international organization for unanimity', *op.cit.*, p. 246.

30. Distinction between 'substantive' and 'procedural' matters for voting purposes was made as early as 1875 in the Convention for the Unification and Improvement of the Metric System and at the Congress of Berlin in 1878. This distinction also underlay the voting procedures prescribed under the League Covenant.

for the General Assembly;<sup>31</sup> it must decide 'important questions' by a two-thirds majority vote and 'other questions including the determination of additional categories of questions to be decided by a two-thirds majority' by a simple majority vote. A similar voting arrangement is also followed by the Health Assembly,<sup>32</sup> the General Conference of the I.A.E.A.,<sup>33</sup> and the Consultative Assembly of the Council of Europe.<sup>34</sup>

In some of the other assemblies, simple majority voting is the *rule* though in respect of a number of specific subjects or questions two-thirds majority voting is prescribed. For example, though the General Conference of the I.L.O. as a general rule acts by a simple majority vote in deciding most matters,<sup>35</sup> it can adopt recommendations and conventions only on a two-thirds majority vote.<sup>36</sup> The U.N.E.S.C.O. General Conference<sup>37</sup> and the F.A.O. Conference<sup>38</sup> have adopted similar voting arrangements. The European Parliament acts on a simple majority vote<sup>39</sup> except where a two-thirds majority vote has been specially prescribed by the provisions of the constitutional treaties.<sup>40</sup> The I.M.C.O. Assembly also as a rule acts on the basis of a simple majority vote,<sup>41</sup> excepting those cases for which a two-thirds majority vote has been prescribed by the constitutional convention.<sup>42</sup>

A contrast is provided by the voting requirements laid down for the W.M.O. Congress. Under Article 10(b) of the Convention of the World Meteorological Organization (11 December 1947)

31. One can even add a third kind by referring to the voting procedure governing amendments to the U.N. Charter (Article 108).

That the use of the adjective 'important' in Article 18, apart from providing grounds for protracted debates in the General Assembly concerning whether a particular question should be regarded 'important' and consequently to be decided by a two-thirds vote, has in practice produced some curious results — see Jessup, P.C., 'Parliamentary diplomacy', *Recueil des Cours* (1956), vol. 89, pp. 280-284.

So far as the decisions 'on amendments to proposals relating to important questions, and on parts of such proposals put to the vote separately' are concerned they are also made by a two-thirds vote of the members present and voting — see rule 86, G.A.R.P.; Report of the Secretary-General on this question, A/1356; Remarks made by Mr. Ballard of Australia and Mr. Kerno, Assistant Secretary-General before the Sixth Committee, 213th meeting/27 September 1960; the statement of Mr. Bartos of Yugoslavia at the 214th meeting of the Sixth Committee.

32. See Article 60 of the W.H.O. Constitution. Also rules 67 & 68, W.H.A.R.P.  
 33. See Article 5(c) of the Statute of the I.A.E.A.  
 34. See Articles 29 and 30 of the Statute and rule 35, C.A.R.P.  
 35. See Article 17(2) of the Constitution.  
 36. *Ibid.*, Article 19(2). Also see Article 6.  
 37. See Articles 4(8) and 4(4) of the Constitution. Also rules 80 and 81 of the Rules of Procedure of the UNESCO Conference.  
 38. See Article 3(8); Articles 4(3) and 14. Also rule 12 of the F.A.O. Conference Rules of Procedure.  
 39. See Article 141 of the E.E.C. Treaty; Article 111 of the EURATOM Treaty.  
 40. See Article 144 of the E.E.C. Treaty; Article 114 of the EURATOM Treaty; Article 24 of the E.C.S.C. Treaty.  
 41. See Article 43 of the I.M.C.O. Convention.  
 42. See *ibid.*, Article 44(b).

Decisions of the Congress shall be by two-thirds majority of the votes cast for and against, except that elections of individuals to serve in any capacity in the Organization shall be by simple majority of the votes cast. The provisions of this paragraph, however, shall not apply to decisions taken in accordance with Articles 3, 25, 26, and 28 of the present convention.

But, clearly, whether the requirement is of a qualified majority or of a simple majority, the 'majority principle' is now firmly entrenched in the practice and procedures of the international assemblies.

(c) *The procedures for voting in international assemblies*

Both national parliaments and international assemblies employ a variety of procedures for the purposes of counting or recording votes. They may be listed as follows:

1. vote by voice;
2. vote by show of hands;
3. vote by standing;
4. vote by roll-call;
5. vote by division;
6. vote by ballot;
7. vote by electrical equipment.

(i) *Vote by voice*

This method has been mostly followed in Commonwealth countries, the United States, the Philippines, Burma, China and Ireland.<sup>43</sup> In the national parliaments where this method is followed

members express their assent or dissent orally and the Chairman judges the nature of their decision from the voices; he then announces either that "the ayes have it" or "the noes have it" and the records simply show that the motion was passed or defeated, as the case may be, no record of the names or number of assenting or dissenting members being made.<sup>44</sup>

Of course, the decision of the presiding officer can be challenged and usually for the second count a different system of voting is used.

A somewhat similar system is also used in the international assemblies. The President or the Chairman may if he feels that a certain proposal is not likely to meet with any substantial opposition declare that 'if there is no objection, the proposal is adopted'. This method is generally used in connection with the election of committee officers or the adoption of non-controversial sections of committee reports. But if there is an objection or a request for a formal vote is made then other methods are used.

43. *Report of the Secretary-General* [on Agenda item 51, General Assembly (X)], Document A/2977, p. 2.

44. *Ibid.*

(ii) *Vote by show of hands*

This is the normal voting method in the national parliaments as well as international assemblies.<sup>45</sup> Rule 89 of the General Assembly's Rules of Procedure says, 'The General Assembly shall normally vote by show of hands or by standing, but any representative may request a roll-call'. Sometimes important questions such as the Yugoslav complaint against U.S.S.R. (December 1951) have been dealt with in this way. In the Health Assembly, instead of raising their hands, the members raise cards bearing the name of their countries.

(iii) *Vote by standing*

The 'rules of procedure' of the General Conference of U.N.E.S.C.O. (rule 83), the Assembly of I.C.A.O. (rule 47), the F.A.O. Conference (rule XII), and the Health Assembly (rule 66) provide for this method, which is also followed by the Senates of Belgium and Brazil, the Chamber of Deputies in Chile and Finland, the Assembly of Costa Rica, the Majlis of Iran, the Riksdag of Sweden and so on.<sup>46</sup>

Though the Rules of Procedure provide for it,<sup>47</sup> this method has not been used by the General Assembly or its committees.<sup>48</sup> It is also not used in the I.L.O. Conference.<sup>49</sup>

(iv) *Vote by roll-call*

Both in national parliaments and international assemblies this method is generally resorted to at a special request of the members.<sup>50</sup> In the General Assembly any representative can request a vote by roll-call. In such a case the roll-call is taken 'in the English alphabetical order of the names of the Members, beginning with the Member whose name is drawn by lot by the President'.<sup>51</sup> When the names of the members are called they must reply by saying 'yes', 'no' or 'abstention'.

45. See rule 34 of the Rules of Procedure of the I.M.C.O. Assembly which prescribes that: 'The Assembly shall normally vote by show of hands. However, any member may request a roll-call....' A provision almost similar to rule 89 of the G.A.R.P.

46. Belgium (Senate, Article 28; Chamber of Representatives, Article 57); Brazil (Senate, rule 159; Chamber of Deputies, rule 139); Chamber of Deputies of Chile (Article 145); Assembly of Costa Rica (Article 50); Chamber of Deputies of Finland (Article 45); Haiti (Senate, Article 10); Chamber of Deputies of Luxembourg (Article 63 of the Constitution; Article 27 of the rules of procedure of the Chamber of Deputies); First Chamber of the States-General of the Netherlands (Article 31).

47. See rule 89, cited above.

48. See the Report of the Secretary-General, *op.cit.*, p. 3.

49. *Ibid.*

50. *Ibid.*, p. 4.

51. This method does provide interesting cases especially when a 'satellite' member State is called upon to vote first and before it has a chance to ascertain from its patron State the way in which it should use its vote. This has been largely responsible for Byelorussia not having voted in line with the U.S.S.R. on one occasion. See Ogley, R., 'Voting and politics in the General Assembly', *International Relations* (April 1961), vol. 2, pp. 158, 166 and note 2b.

Another method of responding to a roll-call vote is by stating: 'non-participating'. This is a recent development in the voting procedures of the General Assembly and usually indicates a strong protest by the member which considers that the General Assembly has no authority to discuss a particular issue. France in connection with Algeria and South Africa over apartheid have responded in this manner.<sup>52</sup>

In some of the national parliaments and international assemblies voting by roll-call has been made compulsory with regard to certain matters. For instance, rule 34 of the Consultative Assembly's Rules of Procedure prescribes that the 'vote on a draft recommendation or resolution considered as a whole shall in all cases be taken by roll-call'. Similarly, the voting with regard to any bill as a whole must be taken by roll-call in the Belgian Senate (Article 28). The First Chamber of the States-General of the Netherlands uses the roll-call method as the ordinary procedure. The principal advantage of the roll-call vote over the three previous methods is that the count is likely to be more accurate and, moreover, the record will show which way each delegate voted.

(v) *Vote by division*<sup>53</sup>

Voting by division is completely unknown to international assemblies.

(vi) *Vote by ballot*

Voting by ballot always means voting by secret ballot unless specific provision has been made for a vote by 'open' ballot. In fact, voting by 'open' ballot is not completely unknown either to national or international assemblies.<sup>54</sup>

Rules 94 and 105 of the General Assembly's Rules of Procedure clearly lay down that all elections for the posts of the President and Vice-Presidents of the General Assembly and the Chairmen, Vice-Chairmen and Rapporteurs of the Main Committees, shall be held by 'secret ballot'.<sup>55</sup> The method used is that one ballot paper is distributed to each national delegation and a ballot box is placed in front of the rostrum. The Executive Secretary calls the names of member States in the English alphabetical order beginning with the member whose

52. *Ibid.*, p. 158. Also see *British Practice in International Law* (1 July - 31 December 1963), pp. 170-174.

53. This method is used in the House of Commons of the British Parliament, in the parliaments of the Commonwealth countries, Burma, Ireland, the Federal Republic of Germany and Italy; in practice it involves the members passing through a 'lobby' or doorway; separate doorways are provided for the 'ayes' and the 'noes', with tellers counting the members as they pass through.

54. The system of voting by 'open' ballot is used both in France and Turkey. Among the international assemblies, this system has to be used by the European Parliament in the adoption of a motion of censure against the Commission. See Articles: 144, E.E.C. Treaty; 24, E.C.S.C. Treaty; and 114, EURATOM Treaty.

55. For a similar provision see rule 37 of the Rules of Procedure of the I.M.C.O. Assembly.

The Special Committee on the Rationalization of the Procedures and Organization of the General Assembly has pointed out in its recent report that the terms of rule 105 now do not correspond with modern practice and that in connection with the election of officers of the Main Committees the procedure of voting by secret ballot has become superfluous — See *G.A.O.R.* (XXVI), Supp. No. 26 (A/8426), para. 161.

name is drawn by lot by the President. The representatives after inscribing the name of the State deposit the ballot in the box. Thereafter, the votes are counted by 'tellers' who are generally designated by the President.

With minor differences or variations this system is followed in other assemblies as well.<sup>56</sup> Elections of the President and Vice-Presidents of the Consultative Assembly are also made by secret ballot. Each representative is provided with a ballot paper on which he indicates the name of the candidate for whom he wishes to vote and after that, when his name is called, he goes to place his voting paper in a ballot-box. The votes are counted by 'tellers' who are chosen by lot and not by the Assembly President as is the case in the General Assembly.

(vii) *Vote by electrical devices*

In some of the national parliaments, such as the Senate of Belgium, the Parliament of Finland, the Riksdag of Sweden and in several State legislatures of the United States, electrical devices are used for the purpose of recording or registering votes.

The employment of electrical devices for the purpose of counting and recording votes decidedly saves a lot of time. The question of the installation of electrical equipment for counting and recording votes within the General Assembly Hall was a subject of study for quite a long time but now the General Assembly Hall is equipped with a highly efficient 'mechanical voting system': under this system votes are automatically tabulated on two large panels situated on the right and left of the podium within the Assembly Hall.<sup>57</sup>

The electrical voting system in the Assembly Hall can be used both for obtaining a 'non-recorded vote' as well as a 'recorded vote'.<sup>58</sup> Voting

56. That this method of voting is also used 'for the general items of the agenda in the UPU and ITU practice, see Schermers, H.G., 'Some constitutional notes on the Fifteenth Congress of the Universal Postal Union', *I.C.L.Q.* (1965), vol. 14, pp. 636-637.

57. See *G.A.O.R.* (III Session, Part 2), Plenary Meetings, Annexes, doc. A/825, p. 34; Docs. A/AC. 30/SR. 8, pp. 10-12; A/AC/SR. 9, pp. 2-3; A/AC. 30/SR. 20, p. 9; *G.A.O.R.* (IV), Sixth Committee, 156th meeting; the Report of the Secretary-General, *op.cit.*, pp. 6-7.

This system was first installed in the Assembly Hall, on an experimental basis — see General Assembly resolution 1957 (XVIII) of 12 December 1963. At its 1047th plenary meeting the General Assembly further extended the experimental use of this system for a period of one year. Thereafter the General Assembly approved the use of the mechanical voting system in the G.A. Hall on a permanent basis on 7 December 1966 — see *G.A.O.R.* (XXI), Plenary Meetings, 1486th meeting, para. 51.

The Secretary-General has also been authorized to arrange for the installation or a mechanical voting system in one of his Main Committee rooms — see *G.A.O.R.* (XXIV), Plenary Meetings, 1820th Meeting.

58. At its twenty-second session the General Assembly decided to amend rules 89 and 128 of its rules of procedure, with effect from 1 January 1968. Now the new para (b) of rule 89 reads: 'When the General Assembly votes by mechanical means, a non-recorded vote shall replace a vote by show of hands or by standing and a recorded vote shall replace a roll-call vote. Any representative may request a recorded vote. In the case of a recorded vote, the General Assembly shall, unless a representative requests otherwise, dispense with the procedure of calling out the names of the Members; nevertheless, the result of the voting shall be inserted in the record in the same manner as that of a roll-call vote' — see General Assembly resolution 2323 (XXII) of 16 December 1967.



by a 'recorded vote' is in fact an 'alternative procedure' to a roll-call vote in which the names of the delegations are not called out; those in favour of or against a motion or those who wish to abstain merely press the appropriate button and the automatically tabulated votes appear on the voting boards to the left and right of the podium; and at the same time an automatic printer produces a 'tally sheet' which is made available to all delegations. In the official records the result of voting is recorded by following the English alphabetical order of the names of the member States.

## 7. RELATIONSHIP OF ASSEMBLIES TO THE 'EXECUTIVE' ORGANS

There is in fact no rigid adherence to the theory of separation of powers within the international sphere and various patterns of the division of power among the assemblies and the executive organs are noticeable. Broadly these patterns are: firstly, where the executive organs act under instructions or authority of the assembly or occupy a definitely subordinate position; secondly, where neither acts under the authority of the other; thirdly, where the assembly has no power to act independently and has to submit its conclusions to the executive organ; and fourthly, where the executive organ or organs have both executive and legislative powers and the assembly is only granted the right to be consulted or a power to review the action of the executive organs.

The first type of relationship is evidenced in the relationship between the governing body of the I.L.O. and its General Conference.<sup>59</sup> Or, again, in that between the Executive Board of the W.H.O. and the Health Assembly. Under Article 5(3) of the F.A.O. Constitution, the F.A.O. Council can only have 'such powers as the Conference may delegate to it'. Similarly, the I.M.C.O. Council cannot take any important decision independently and can be viewed as a subordinate organ. The Board of Governors of the I.A.E.A. has been granted the 'authority to carry out the functions of the Agency in accordance with the Statute, subject to its responsibilities to the General Conference....'

The second type of relationship is illustrated by the position of the Security Council and the General Assembly under the U.N. Charter. Both the organs, in fact, act independently of each other and the Charter has also attempted a certain delimitation of their powers so as to avoid conflicts of jurisdiction. It is however a different matter that in practice the position has somewhat changed. Moreover, the General Assembly exercises an important power in reviewing and criticising the work of the Security Council, whereas the latter has hardly any such power over the General Assembly. There is no exaggeration in saying that the General Assembly has in fact become the dominant organ of the United Nations.

59. Also see Article 5(5) of the UNESCO Constitution which lays down that the Executive Board of the Organization shall act 'under the authority of the General Conference, shall be responsible for the execution of the programme adopted by the conference and shall prepare its agenda and programme of work'.

The relationship between the Consultative Assembly and the Committee of Ministers of the Council of Europe provides an illustration of the third type. Article 22 of the Statute of the Council of Europe makes it mandatory that the Consultative Assembly shall 'present its conclusions, in the form of recommendations, to the Committee of Ministers'. However, if the experience at Strasbourg is any indication, it does not seem that Assemblies are long content with this subordinate role.

For describing the fourth type of relationship we must turn to the European Communities of the 'Six'. The position of the European Parliament *vis-a-vis* the Council and the Commission is insignificant. It can certainly discuss, at a public meeting, the annual reports submitted to it by the Commission, and the Commission is also under a duty to 'reply orally or in writing' to all questions put to it by the Parliament or its members, but this 'parliamentary review' does not add much to its powers. It can certainly "censure" the Commission, but the European Parliament remains, in the absence of any law-making functions, only a debating forum.

## 8. CONCLUSIONS

The very idea that the system of international law requires further additions to its rules or the amendment of its existing rules through conscious legislative efforts, in contradistinction to the gradual growth of custom or the elaboration of law via the judicial process is of a recent origin.<sup>60</sup> It is only since 1815 that rules of international law have been consciously created in the same sense in which legislation is enacted within national states. The reasons for this are obvious; transnational relationships were increasing and the international society was beginning to be organized on a truly international scale. Moreover custom could no longer provide the rules necessary for governing the expanding international activities and, there being no international court in existence, there was no possibility of substantial additions to law via the judicial process. In other words, the evolution of a legislative process via the technique of international conference was inevitable. But once the technique of conscious law-making was learnt it was not forgotten. Rather, the technique has been constantly improved upon and today it compares well with the technique of law-making employed within the national legal systems. The belief in the existence of a law-creating and law-amending process within the international legal order and similar to the legislative processes obtaining within the State-societies is held not as a mere jural hypothesis, but as a matter of deduction from the actual practice of States<sup>61</sup> — a belief which is shared by a majority of writers in international law.<sup>62</sup> Even a cursory survey of

60. For a detailed discussion of this point see Singh, N.N., *The Legislative Process in International Law* (1964), unpublished doctoral dissertation, Cambridge University, p. 86 *et. seq.*

61. See *ibid.*, Chapters IV and V.

62. See Singh, N.N., 'The existence of legislation and a legislative process in international law', *Malaya Law Review* (1971), vol. 13, No. 1, p. 190 *et. seq.*

the international legislative activity in retrospect and the legislative processes of modern international organizations will clearly demonstrate the vast growth and the enormously increasing sphere of modern international legislation over the years since 1815. Problems which impinge upon inter-State relationships tend, sooner or later, to be tackled by resolutions or law-making decisions or to be regulated by treaty-law. In this context it is not very surprising that the material content of international law, chiefly because of this 'legislative process', has become far different from what it was at the beginning of the nineteenth century. It is no longer a purely 'State-made' law. It is also no longer a law governing the conduct of States only. This tendency of international law to develop rules governing more than purely inter-State relations is reflected in the writings of those who describe modern international law as tending to become the 'common law of mankind'.

No system of law can afford to become divorced from general accepted practice; and no development or codification can succeed unless there is sufficient evidence of a general consensus to permit agreement to such development or codification. But, given sufficient consensus, international society can legislate and codify. This has been amply demonstrated by the action of the General Assembly of the United Nations in promoting the progressive development of international law and its codification.

Although some may regard the General Assembly as a purely deliberative organ where national delegations merely perform exercises in political propaganda, such an attitude can hardly ignore the fact that it is the most representative organ of the organized international community and, secondly, that it is only the General Assembly which provides a forum appropriate for regulating general problems affecting international society as a whole.

Whilst the General Assembly is perhaps unique in the breadth of its competence, it is by no means unique in its legislative function.

In modern times the growing importance of the 'permanent assembly' for legislative purposes is particularly striking. It provides a machinery through which international legislation can be initiated with comparative ease and facility (even in comparison with the *ad hoc* conference method). In actual practice the assemblies of international organizations exercise enormous influence on the policies and legislation of national States. They can criticise the actions of States and even attack their domestic policies. But even more important than this are their functions of reminder, insistence and persuasion of a recalcitrant minority, and this becomes of particular relevance to their legislative role in inducing ratification, adoption and implementation by national legislation of treaties drafted and concluded under the auspices of their organizations. The techniques of the I.L.O. have become a model in this respect. States may still, in general, have the power to accept or reject the decisions and recommendations of international assemblies, but they do not have the power to completely ignore international opinion which in many cases finds powerful expression through the resolutions of such international organs.

Compared with the early diplomatic gatherings or congresses, both the *ad hoc* conferences and the permanent assemblies conduct their business in a true parliamentary spirit and fashion. At the Congress of Westphalia (1648) where the negotiations were carried on simultaneously at two different places — 30 miles apart from each other — there was no presiding officer and there were no committees, no reports, no votes. There was no definite agenda and there were no rules of procedure. But today the situation is different. Both the *ad hoc* conferences and the international assemblies are as a rule well organized and, moreover, their contribution in sponsoring the conclusion and adoption of numerous legislative conventions has been almost spectacular.

Leaving aside their final acceptance as a separate issue, these conventions have generally been formulated and adopted on the basis of majority votes. And in this particular context, it is significant to note that 'majority rule' has become the *normal* voting rule in the modern international conferences and assemblies, which, when compared with the nineteenth century practice, further shows the declining importance of the role of 'consent' in the elaboration of the rules of international law.<sup>63</sup> No doubt States cannot still be forced to accept a convention or treaty against their will, but certainly considerable international pressure is exerted against those States who for no strong and valid reason refuse to follow the action of the majority. Their continued refusal to abide by the rules laid down and followed by a majority of States tends to become less and less feasible in practice. Thus, in the course of time, they will tend to acquiesce in or to accept what the majority has ruled.

The main asset of the contemporary assembly is not simply that it has this power of bringing world opinion to bear upon States so as to bring their conduct into conformity with the provisions or rules laid down in resolutions, declarations or conventions. A considerable part of its asset lies in the elaborate procedure whereby a project is initiated, drafted, commented upon and, finally, embodied in the appropriate vehicle of resolution, declaration or convention. Even a cursory study of the mechanics of the operations through which a project is actually drafted by the International Law Commission or other international organs before being adopted by a conference of plenipotentiaries will show that these are generally designed to lead to eventual codification or legislation of an 'international character', a character bearing the imprint of the views of many different States (and even individuals), which was never possible in the nineteenth century when a 'host' State could convene a conference, submit its own draft, and limit the number of participants. Particularly in this context the modern international conference can be rightly described as the legislative forum of international society.

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63. Also see Singh, N.N., 'The absence of an international legislature and its consequences for international law', *Malaya Law Review* (1970), vol. 12, p. 288 *et. seq.*

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