

Diplomacy

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The Yale Law Journal, Vol. 55, No. 5 (Aug., 1946), 1067-1080.

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DIPLOMACY

HANS J. MORGENTHAU†

WHEN Metternich was informed of the death of the Russian ambassador at the Congress of Vienna, he is supposed to have exclaimed, "Ah, is that true? What can have been his motive?" The great diplomatist of the post-Napoleonic era was not alone in this moral depreciation of diplomacy. From the anti-Machiavellian writers to our time, the diplomat has been held in low esteem, and while his professional competence and even his ordinary intelligence have frequently been questioned, his moral qualities have always been under a cloud.

It is, however, one thing to have a low opinion of the intellectual and moral qualities of a group of professional men, and it is quite another to believe that they and their work fulfill no useful function, that they have become obsolete, and that their days are numbered. While the former opinion is as old as the profession of diplomacy itself, the latter belief has its roots in the liberal philosophy of the nineteenth century. In the Wilsonian conception of foreign affairs and the philosophy of the League of Nations it bursts forth in full bloom, and today we witness in the theory and practice of the United Nations and the movement for world government a second flowering of the same thought.

While the spokesmen of public opinion seem to be unanimous in opposition to traditional diplomacy, they split into two schools of thought on the question, what, if anything, shall replace the discarded method of conducting foreign affairs. There are those who believe that foreign policy itself is a relic of a pre-scientific past which will not survive the coming of the age of reason and good will; when foreign policy disappears, diplomacy as the technique by which foreign policy is effectuated will disappear, too. There are others who would substitute for power politics another type of foreign policy based on international law and consequently would replace the "old" diplomacy by a "new" one, the diplomat of national power by the advocate of international law.

The former school, which one might call perfectionist in contradistinction to the legalistic one, has found its typical representatives among nineteenth-century liberals, some Wilsonians, and contempo-

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aneous adherents of world government. The liberals of the nineteenth century saw in foreign policy a residue of the feudal age, an aristocratic pastime bound to disappear with the application of liberal principles to international affairs. According to Bentham,¹ "Nations are associates and not rivals in the grand social enterprise." "At some future election," said Cobden,² "we may probably see the test of 'no foreign politics' applied to those who offer to become the representatives of free constituencies." "The idea of conscious planning," says Paul S. Reinsch,³ "or striving to subject national and economic facts and all historic development to the conscious political will—that conception of diplomacy is synonymous with the essence of *politics* and will stand and fall with the continuance of the purely political state. Manipulative, and hence secret, diplomacy is in fact the most complete expression of the purely political factor in human affairs. To many, it will seem only a survival of a hyper-political era, as human society now tends to outgrow and transcend politics for more comprehensive, pervasive and essential principles of action. . . . But if it should be achieved, then plainly the old special functions of diplomacy will fall away and administrative conferences will take the place of diplomatic conversations. When Portugal became a republic, the proposal was made to abolish all diplomatic posts and have the international business of Portugal administered by consuls. That would eliminate politics from foreign relations."

Here, the disappearance of foreign policy and, with it, of diplomacy is expected as a by-product of the ascendancy of liberal principles over the feudal state, and this expectation is indeed in harmony with the laissez-faire philosophy of nineteenth-century liberalism. The twentieth-century opponents of any foreign policy and any kind of diplomacy have found in the conception of world government a positive instrumentality which will make foreign policy and diplomacy superfluous. "The United Nations," declares a group of distinguished members of the American Bar Association,⁴ "cannot be saved by the process of shunting all the major controversies between its members back for solution by diplomacy. It can only be saved . . . by transforming the present league structure into a general government to regulate and promote the common interests of the people of the States. The American Bar can dedicate itself to no greater responsibility nor higher aim than that of world government to make world laws for the control of world affairs so as to assure world peace."

The adherents of the legalistic school, too, believe in law as the

1. BENTHAM, *Principles of Penal Law* in 1 WORKS (1843) 563.

2. Quoted in BLEASE, *A SHORT HISTORY OF ENGLISH LIBERALISM* (1913) 195.

3. REINSCH, *SECRET DIPLOMACY* (1922) 13, 15.

4. (1946) 32 A. B. A. J. 270.

alternative to power politics. They expect, however, the preservation of peace not from a world law enacted by a world government, but from international law agreed upon by sovereign nations organized in a Holy Alliance, a League of Nations, or the United Nations. Traditional foreign policy pursuing the national interest is superseded by a new conception of international affairs, the essence of which is respect for international law as embodied in the fundamental law of an international organization. According to this school, the League of Nations and the United Nations supersede the methods by which foreign policy has been conducted in the past. The period of power politics, spheres of influence, alliances, and secret diplomacy has come to an end; a new conception of international affairs, recognizing the solidarity of all nations, based upon the respect for international law and operating through the instrumentality of the new organization, has come into being. Consequently, traditional diplomacy, too, must give way to a new conception of diplomatic intercourse appropriate to the new relations established between nations. If the end of the state is power, the character of its diplomacy will be adapted to that end. If the end of the state is the defense of international law, a different type of diplomacy will serve that end.

Woodrow Wilson is the most eloquent apostle of the new diplomacy of the League of Nations. It is true that sometimes Wilson seemed to join hands with the opponents of any diplomacy whatsoever, as when he wrote in his letter to Senator Hitchcock of March 8, 1920, "For my own part, I am not willing to trust to the council of diplomats the working out of any salvation of the world from the things which it has suffered." However, he saw more clearly than anybody else the intimate connection between the new conception of international affairs as embodied in the League of Nations and a new diplomatic technique by which that new conception was to be realized. The preamble to, and the first of, the Fourteen Points are still the most persuasive statement of the new philosophy of international affairs.⁵

The philosophy of the United Nations has added nothing to Wilson's program. While it equals the Wilsonian philosophy in its opposition

5. The Preamble to the Fourteen Points states, "It will be our wish and purpose that the processes of peace, when they are begun, shall be absolutely open, and that they shall involve and permit henceforth no secret understandings of any kind. The day of conquest and aggrandizement is gone by; so is also the day of secret covenants entered into in the interest of particular governments, and likely at some unlooked-for moment to upset the peace of the world. It is this happy fact, now clear to the view of every public man whose thoughts do not still linger in an age that is dead and gone, which makes it possible for every nation whose purposes are consistent with justice and the peace of the world to avow, now or at any other time, the objects it has in view." The first point reads, "Open covenants of peace, openly arrived at, after which there shall be no private international understandings of any kind, but diplomacy shall proceed always frankly and in the public view." HART, *SELECTED ADDRESSES AND PUBLIC PAPERS OF WOODROW WILSON* (1918) 247-8.

to traditional diplomacy, it is much less outspoken as to the alternative. Thus, the former Secretary of State, Cordell Hull, said on his return from the Moscow Conference⁶ that the new international organization would mean the end of power politics and usher in a new era of international collaboration. Mr. Philip Noel-Baker, British Minister of State, declared in the House of Commons⁷ that the British government was "determined to use the institutions of the United Nations to kill power politics, in order that, by the methods of democracy, the will of the people shall prevail." Mr. Ernest Bevin, the British Secretary of Foreign Affairs, in his speech of March 30, 1946,⁸ expressed in somewhat more cautious language the expectation that while "you cannot change a policy that has been pertaining for three or four hundred years among different powers in a moment," the United Nations would put an end to the imperialistic methods of the past. Secretary of State Byrnes declared in his address of February 28, 1946,⁹ that "we have pinned our hopes to the banner of the United Nations. . . . We have joined with our allies in the United Nations to put an end to war. We have covenanted not to use force except in the defense of law as embodied in the Purposes and Principles of the Charter. We intend to live up to that covenant."

Since the philosophy underlying these statements proclaims respect for international law and, more particularly, for the Charter of the United Nations as the alternative to traditional power politics, it is safe to assume that it favors a diplomacy commensurate with the new foreign policy. Indeed we have already seen this new legalistic diplomacy in action when the Security Council of the United Nations dealt on the basis of international law with the Greek, Syrian, Indonesian, Iranian, and Spanish situations.

Even those, however, who, like Mr. Noel-Baker, are out "to kill power politics" through the instrumentality of the United Nations must by implication admit that power politics, as of today, is still alive. Even those who, like the nineteenth-century liberals and their twentieth-century heirs, see in power politics nothing but an irrational atavism, cannot deny that the end of power politics is yet to come. They welcome the new legalistic diplomacy of the United Nations as a step toward the ultimate victory of law over politics. They expect that the persisting dualism between traditional and legalistic diplomacy will gradually transform itself into the monism of the latter. Though the heads of state still meet in secret conferences and the foreign ministers discuss the most important post-war problems accord-

6. N. Y. Times, Nov. 19, 1943, p. 1, col. 6.

7. 419 H. C. DEB. (5th ser. 1946) 1262.

8. N. Y. Times, March 31, 1946, p. 22, col. 1.

9. N. Y. Times, March 1, 1946, p. 10, col. 1.

ing to the procedures of traditional diplomacy, future negotiations of this kind will be carried out within the United Nations and according to the procedures of the new diplomacy. President Truman gave voice to this expectation when he told his press conference of March 21, 1946¹⁰ that "The United Nations Organization is supposed to take over the questions formerly discussed in Big Three meetings, and it was time it assumed that responsibility if there was to be peace in the world. . . ." The same philosophy, aiming to superimpose the new legalistic diplomacy of the United Nations upon the traditional diplomatic methods, is at the foundation of the proposal advanced by Secretary of State Byrnes to charge the Assembly of the United Nations with the task of writing the peace treaties with the powers defeated in the Second World War.¹¹

This philosophy of legalistic monism is, however, contradicted by the Charter of the United Nations itself which, explicitly and implicitly, recognizes a dualism between the methods of traditional diplomacy and the new diplomacy of the United Nations.

It should be noted in passing that this dualism between the old and the new methods of settling international disputes was expressly recognized in Article 13 of the Covenant of the League of Nations, which provides that certain disputes "which cannot be satisfactorily settled by diplomacy" shall be submitted to arbitration. This dualism was likewise recognized in the debates of the League of Nations. Thus, in the face of certain Iranian complaints submitted to the Sixth Committee of the Assembly of 1928, its president declared,¹² "Every country had diplomatic difficulties. If all these difficulties were discussed before the League of Nations, it would be overwhelmed with work. Each Government must try to solve its own difficulties by direct negotiations, and not refer them to the League unless the negotiations failed."

The dualism between the procedures of the League and those of traditional diplomacy became a manifest problem, however, mainly in the interpretation of Article 11, Paragraph 2, of the Covenant. Article 11, Paragraph 2, stipulated "the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends." Its function within the system of the Covenant was similar to that which Article 35, Paragraph 1, fulfills in the Charter of the United Nations.

The non-exclusive and supplementary character of the procedures

10. N. Y. Times, March 22, 1946, p. 1, col. 5.

11. N. Y. Times, May 21, 1946, p. 1, col. 8.

12. (1928) LEAGUE OF NATIONS OFFICIAL JOURNAL, Spec. Supp., No. 70, at 29.

under Article 11, and hence the dualism between the latter and the traditional procedures of diplomacy, was stressed in theory¹³ and practice.¹⁴ With an incisiveness and maturity of political judgment justifying extensive quotation, Mr. Jean Ray, the leading commentator of the Covenant of the League, pointed out under the heading of "Possible Abuses of Article 11,"¹⁵

"There are in international relations a great number of delicate or irritating questions: it is the function of diplomacy to resolve them. Any document which organizes an international agency creates a risk: the one of accentuating differences of opinion. This risk is increased when the document is very vague, and that is exactly the case of the second paragraph of Article 11. What is the circumstance which is not, more or less indirectly, of such a nature as to 'affect international relations' and which does not threaten therefore to 'disturb,' one day or another, the good understanding between the nations? One must therefore wish that this provision be applied with great zeal perhaps in certain exceptional cases but with great moderation in ordinary ones.

"Let us say, first of all, that it is not very fortunate that the eventual recourse to the League of Nations be presented, in the course of a negotiation, as a kind of threat. It is natural and excellent that this supreme remedy be envisaged, that it be taken into account beforehand, that it be raised in diplomatic conversations; but it seems to us a practice which ill prepares the League for its conciliatory function to mention the eventual appeal to the League in an official step in order to exert pressure upon the other side. . . . But in a certain number of cases states have submitted to the Council secondary questions which without doubt could have been settled by diplomatic means; in such cases the Council has adopted the wise policy of inviting the parties to come to an understanding outside the League."

13. See, *e.g.*, the Rutgers Memorandum on Articles 10, 11 and 16 of the Covenant, submitted in 1928 to the League's Committee of Arbitration and Security. The Memorandum declared, ". . . in certain cases it may be expedient to resort to all possible means of direct conciliation, and to the good offices of third Powers, before bringing a dispute before the Council.

" . . . if efforts of conciliation are to be successful, it may be essential that the question should be discussed by a very small number of Powers . . . [with] full latitude to decide whether the Council should be kept informed. . . ." 9 LEAGUE OF NATIONS OFFICIAL JOURNAL (1928) 670, 675-6.

14. See, *e.g.*, Politis' objection that Albania's bringing a complaint against Greece before the Council while direct diplomatic negotiations were in progress constituted "pressure" and "abuse" of Council procedure. *Id.* at 873. The Zaleski report on this dispute endorsed "friendly agreement" by "direct negotiation." *Id.* at 942. And see the debates on the applicability of Article 11, Paragraph 2 to the Swiss war claims and Finnish ships cases, 15 *id.* (1934) 1436 *et seq.*, 1454.

15. RAY, COMMENTAIRE DU PACTE DE LA SOCIÉTÉ DES NATIONS (1930) 380-1.

The theory and practice of the League of Nations had to develop this general dualism between the procedures of the League and of traditional diplomacy out of the interpretation of Article 11, Paragraph 2, of the Covenant and the explicit formulation of Article 13 which allowed, however, of only limited application. The over-all importance of this dualism is implicit in the structure of the Covenant and only the decay of the League of Nations in the 'thirties made it fully obvious. The Charter of the United Nations, on the contrary, makes this dualism explicit from the very outset in the words of its provisions. On the one hand, Article 24 establishes as a matter of principle the Security Council's "primary responsibility for the maintenance of international peace and security." On the other hand, in the specific provisions of Chapter VI the Charter makes explicit not only the general character of this dualism but also, as a matter of practical application, the primary importance of the traditional methods of diplomacy. At the very beginning Chapter VI stipulates in Article 33 that the parties shall "first of all" try to settle their disputes "by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice." Paragraph 2 gives the Security Council the right at its discretion to refer the parties to such traditional means of diplomatic and judicial settlement. Article 36 elaborates this right by empowering the Security Council to make recommendations, and stresses, in Paragraph 2, the primary importance of the traditional procedures of diplomacy by stipulating that "the Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties." While Articles 34 and 35 establish the discretionary competency of the United Nations, concurrent with the traditional methods of peaceful settlement, Article 37 reaffirms the primary character of the traditional methods and at the same time establishes the supplementary character of the procedure under the Security Council by obligating the parties who have failed to settle a dispute by the traditional means enumerated in Article 33 to refer it to the Security Council.

The same dualism is again explicitly recognized in Articles 51 and 52. Article 51 is in this respect important, as it stipulates "the inherent right of . . . collective self-defense." Collective self-defense, especially under the conditions of modern warfare, is impossible without political and military understandings anticipating military eventualities which might make collective military measures desirable. In other words, "the inherent right of . . . collective self-defense" involves the inherent right to conclude political and military alliances against a prospective aggressor.

The qualifications of this right in the remainder of Article 51 are of a verbal rather than of a substantive nature. These qualifications are

three-fold. First, the right of collective self-defense shall remain unimpaired only "until the Security Council has taken the measures necessary to maintain international peace and security." Yet the Security Council can act only through its member states, and when, as will be regularly the case, one of the permanent members of the Council is a party to collective self-defense, the requirement of the unanimity of the permanent members according to Article 27 will vouchsafe the identity of any measures taken by the Security Council with the measures taken in collective self-defense. Second, measures taken in collective self-defense have to be reported immediately to the Security Council, whose information through press, radio, and ordinary diplomatic channels will thus be duplicated. Finally, such measures shall not affect the authority and responsibility of the Security Council to take appropriate action itself. Here again, however, the Security Council is but another name for the five permanent members acting in unison, and the measures which one or the other of these members has taken by virtue of the right of self-defense will of necessity be in harmony with the measures to which these members are willing to agree by virtue of the Charter of the United Nations. Thus, while the wording of Article 51 seems to subordinate the traditional methods of international intercourse to the new diplomacy of the United Nations, its actual effect reverses this relationship.

It is in the light of this structure of Article 51 that one must read Articles 52 and 53. Article 52 stipulates not only the right but also the obligation of member states to use regional arrangements or agencies for the settlement of regional matters before they are referred to the Security Council. The latter, in turn, is charged with encouraging regional settlements and, in Article 53, with utilizing regional arrangements and agencies for enforcement actions. Such arrangements and agencies, however, must be created and maintained by the traditional methods of diplomacy. Since it is difficult to visualize an international dispute or situation which would not have a geographical focus, and therefore a regional character, Articles 52 and 53 not only reaffirm for practically all international situations and disputes the dualism between traditional and United Nations diplomacy but also establish the precedence of the former over the latter as both a right and a duty of all concerned. It is true that according to Article 52, Paragraph 4, Article 52 must be read in the light of Articles 34 and 35. But it is no less true, even though it is not expressly stated, that, in point of practical application, Articles 34 and 35 must be read in the light of Articles 51, 52, and 53.

This dualism between traditional diplomacy, conceived in terms of regionalism, and the new diplomacy of the United Nations suffers only one exception provided for in Article 53. Enforcement actions under regional arrangements or by regional agencies are subordinated

to the United Nations; they can be taken only with the authorization of the Security Council. Here again, however, the subordination is verbal rather than actual, for the likelihood that one of the nations instrumental in regional enforcement will be identical with one of the nations without whose consent the Security Council cannot act, will make it unlikely that the action which the Security Council is willing to authorize will diverge from the regional enforcement upon which that particular nation has decided.

Even this exception is, however, limited, at least for the time being, to enforcement actions which would be taken on a regional basis against states which have not been enemies of any signatory of the Charter. According to Articles 53, 106, and 107, any action, regional or otherwise, taken or to be taken against an enemy power as a result of the war or for the purpose of forestalling renewed aggression on the part of such power, is for the time being not subject to the limitations of the Charter. Here the dualism between traditional and United Nations procedures is replaced, at least temporarily, by the monism of the traditional methods of international intercourse. Traditional methods become here a substitute for United Nations procedures until the latter are available for the purpose of preventing aggression by an enemy state.¹⁶ Article 106 in particular establishes for the five big powers, as well as for other members of the United Nations, the obligation to consult outside the framework of the new organization, and reference to Paragraph 5 of the Moscow Declaration,¹⁷ whose purport is identical with that of Article 106, only serves to underline the monistic conception of this provision.

The dualism between traditional and United Nations diplomacy, explicitly stated or implicitly contained in the individual provisions of the Charter, reveals itself also in the over-all structure of the new organization. The United Nations, in the performance of its functions according to the purposes of its Charter, is predicated upon the continuing unity of the permanent members of the Security Council. In the scheme of the Charter these members are, as it were, the nucleus of a world federation, a Holy Alliance within a Holy Alliance, without whose consent the Security Council can make no binding

16. It might be mentioned in passing that the same dualism is also made explicit in Article 79 of the Charter, where the agreement on the terms of trusteeship is referred to the states directly concerned and where the agencies of the United Nations are only called upon for approval of the agreements arrived at in traditional diplomatic negotiations.

17. Paragraph 5 of the Moscow Declaration reads as follows: "That for the purpose of maintaining international peace and security pending the re-establishment of law and order and the inauguration of a system of general security, they will consult with one another and as occasion requires with other members of the United Nations with a view to joint action on behalf of the community of nations." *Official Documents* (1944) 38 AM. J. INT. L. (Supp.) 5.

decision in substantive matters. Under Article 27, Paragraph 3, the United Nations cannot exist as a functioning organization without the consent of all permanent members to decisions in substantive matters. This general rule is inapplicable only to the pacific settlement of disputes to which permanent members are party, their consent in this case not being required to make the decision of the Security Council legally binding. Yet their consent is required to enable the Security Council to enforce the pacific settlement through sanctions under Chapter VII. If the Security Council should try to enforce its decision despite the dissent of one or the other of its permanent members, the United Nations would lose its function for "the maintenance of international peace and security," and at the same time its legal identity; it would at best become a political and military coalition against the dissenting permanent member or members. The United Nations would break up into warring camps, and only through total victory in war would the Nations be re-United.

The consent of the permanent members, which is but the outward manifestation of their continuing political unity, the Charter does not create but presupposes. How is this unity to be created and maintained? The Charter does not say. Its silence refers by implication to those methods by which traditionally political unity among nations has been established and maintained, that is, the traditional methods of diplomacy. As the continuing political unity of the great powers (who are permanent members of the Security Council) is the foundation upon which the edifice of the United Nations rests, so is the successful operation of traditional diplomacy the cement which keeps that foundation together. The successful operation of the old methods gives the new diplomacy of the United Nations a chance to operate.

This dualism between old and new diplomacy and the dependence of the latter upon the success of the former are implicit in the structure of the United Nations. This dualism, however, if not the fundamental importance of the successful operation of traditional diplomacy, is expressly recognized by the Report of the Crimea Conference.¹⁸ Under the heading "Meetings of Foreign Secretaries" this report states:

"These meetings have proved of the utmost value and the Conference agreed that permanent machinery should be set up for regular consultation between the three Foreign Secretaries [of the United States, Great Britain, and the Soviet Union]. They will, therefore, meet as often as may be necessary, probably about every three or four months. These meetings will be held in rotation in the three capitals, the first meeting being held in London, after the United Nations Conference on World Organization."

18. (1945) 12 DEP'T OF STATE BULL. 213.

Here we are in the presence of a legal understanding establishing a concert of the great powers not for a limited purpose as envisaged in Article 106 of the Charter but, in view of its proved usefulness, on a permanent basis. In order to realize fully the import and the potentialities of this provision, it is useful to compare it with the text of Article 6 of the Treaty of Paris of November 20, 1815, which established the "diplomacy by conference" of the Holy Alliance:

"To facilitate and to secure the execution of the present Treaty, and to consolidate the connections which at the present moment so closely unite the Four Sovereigns for the happiness of the world, the High Contracting Parties have agreed to renew their Meetings at fixed periods, either under the immediate auspices of the Sovereigns themselves, or by their respective Ministers, for the purpose of consulting upon their common interests, and for the consideration of the measures which at each of those periods shall be considered the most salutary for the repose and prosperity of Nations, and for the maintenance of the Peace of Europe."¹⁹

Since it is not likely that the authors of the Report of the Crimea Conference had this article of the Treaty of Paris in mind when they phrased their document, the coincidence between the two provisions reveals a striking similarity in the underlying political situations.

The provision that this permanent machinery of traditional diplomacy should operate for the first time after the permanent machinery of the new diplomacy of the United Nations had been established makes the dualism between the two methods of international intercourse most emphatic. The quoted paragraph from the Report of the Crimea Conference has the same fundamental importance for traditional diplomacy which Article 24 of the Charter has for the new diplomacy of the United Nations. The organic link between both is provided by the structure of the United Nations, which presupposes the continuing political unity of the great powers without being able to create and maintain it. It is for the achievement of the latter task that the Crimea Conference has called upon the traditional diplomacy of the foreign offices.

The monism of the new diplomacy of the United Nations, proclaimed by the spokesmen of public opinion, finds no support in the Charter and structure of the new organization. Since the latter's inception, diplomatic procedure has been dualistic in practice. On the one hand, the chief executives and foreign ministers of the great powers have tried to solve by the traditional methods of diplomacy the fundamental political issues of the post-war world. On the other hand, the

19. ANDERSON, CONSTITUTIONS AND DOCUMENTS ILLUSTRATIVE OF THE HISTORY OF FRANCE, 1789-1901 (1904) 484-5.

Security Council of the United Nations has attacked by the new methods of legalistic diplomacy certain secondary issues, such as the Greek, Syrian, Indonesian, Iranian, and Spanish situations. The question arises as to which of the two methods is more appropriate to the problems dealt with and therefore more promising of success. For while it is obvious that the monism of United Nations diplomacy does not exist in actuality, it might be that it ought to exist by virtue of the superiority of United Nations diplomacy over the traditional diplomatic methods, and that therefore an ever greater number of ever more important international issues ought to be dealt with by the former rather than by the latter. Conversely, it is also possible that the legalistic approach to essentially political problems is but an aberration from the true laws of politics and that, far from increasing the scope of the new diplomacy, our statesmen ought to return to the traditional principles of diplomacy which, truly understood, reflect the nature of man, the nature of politics, and the conditions for successful political action. I shall try to prove that this latter conception is indeed correct.

The legal decision, by its very nature, is concerned with an isolated case. The facts of life to be dealt with by the legal decision are artificially separated from the facts which precede, accompany, and follow them and are thus transformed into a "case" of which the law disposes "on its merits." In the domestic field this procedure is not necessarily harmful, for here executive and legislative decisions, supposedly taking into account all the ramifications of a problem, together with the "spirit of the law" manifesting itself in a judicial tradition of long standing, give the isolated legal decisions a coherence which they cannot have standing alone.

On the international scene, however, these regulating and integrating factors are absent; for that reason the social forces operate on each other with particular directness and spontaneity, and the legal decision of isolated cases is particularly inadequate. A political situation presenting itself for a decision according to international law is always one particular phase of a much larger situation, rooted in the historic past and extending far beyond the issue under legal consideration. There is no doubt that the League of Nations was right, according to international law, in expelling Russia in 1939 because of her attack upon Finland. But the political and military problems with which Russia confronted the world did not begin with her attack on Finland and did not end there, and it was unwise to pretend that such was the case and to decide the issue on that pretense. History has proved this, for only Sweden's refusal to allow British and French troops to pass through Swedish territory in order to come to the aid of Finland saved Great Britain and France from being at war with Germany and Russia at the same time. Whenever the League of Nations endeavored to

deal with political situations presented as legal issues, it could deal with them only as isolated cases according to the applicable rules of international law and not as particular phases of an over-all political situation which required an over-all solution according to political principles. Hence, political problems were never solved but only tossed about and finally shelved according to the rules of the legal game.

What was true of the League of Nations has already proved to be true of the United Nations. In its approach to the Greek, Syrian, Indonesian, Iranian, and Spanish situations, the Security Council has remained faithful to the legalistic tradition established by the Council of the League of Nations. These cases have provided opportunities for exercise in parliamentary procedure and for just that chicanery for which traditional diplomacy has so often been reproached, but on no occasion has even an attempt been made to face the political issues of which these situations are the surface manifestations. What would have happened to Europe and to the world if the very similar conflicts which separated Great Britain and Russia in the 'seventies of the last century had been handled in 1878 by the Congress of Berlin in a similar manner?

Conflicts of this kind cannot be settled on the basis of established rules of law, for it is not the established law, its interpretation and application that is in doubt. The parties to the conflict were well aware of the law in the Ethiopian case of 1935, in the case of the Sudetenland in 1938, of Danzig in 1939, and of Iran in 1946. What they wanted to know was whether and how the law ought to be changed. Hence, what is at stake in conflicts of this kind is not who is right and who is wrong but what ought to be done to reconcile the particular interests of individual nations with the general interest in peace and order. The question to be answered is not what the law is but what it ought to be, and this question cannot be answered by the lawyer but only by the statesman. The choice is not between legality and illegality but between political wisdom and political stupidity. "The question with me," said Edmund Burke, "is not whether you have a right to render your people miserable, but whether it is not your interest to make them happy. It is not what a lawyer tells me I *may* do, but what humanity, reason and justice tell me I *ought* to do."²⁰ "Lawyers, I know," the same author said,²¹ "cannot make the distinction for which I contend, because they have their strict rule to go by. But legislators ought to do what lawyers cannot; for they have no other rules to bind them, but the great principles of reason and equity, and the general sense of mankind."

20. BURKE, *Speech on Conciliation with the Colonies* (1775) in 2 *THE WORKS OF EDMUND BURKE* (1920) 202.

21. BURKE, *Letter to the Sheriffs of Bristol* (1777) in *id.* at 247.

Law and political wisdom may or may not be on the same side. If they are not, the insistence upon the letter of the law will be inexpedient and may be immoral. The defense of the limited interest protected by the particular rule of law will injure the larger good which the legal system as a whole is supposed to serve. Therefore, when basic issues, on the national scene, in the form of economic, social, or constitutional conflicts demand a solution, we do not as a rule appeal to the legal acumen of the judge but to the political wisdom of the legislator and of the chief executive. Here we know that peace and order do not depend primarily upon the victory of the law with the aid of the sheriff and of the police but upon that approximation to justice which true statecraft discovers in, and imposes upon, the clash of hostile interests. If sometimes in our domestic affairs we are oblivious to this basic truth of statesmanship, we pay with social unrest, lawlessness, civil war, and revolution.

On the international scene we have not stopped paying for our forgetfulness since 1914, and we seem to be resolved to pay with all we have for the privilege of continuing to disregard the lessons of history. For here our first appeal is always to the law and to the lawyer, and since the questions which the law and the lawyer can answer are largely irrelevant to the fundamental issues upon which the peace and welfare of nations depend, our last appeal is always to the soldier. *Fiat justitia, pereat mundus* becomes the motto of a decadent legalistic statecraft. But this alternative to our legalism we do not dare face as long as we still can choose. Thus, an age which seems to be unable to meet the intellectual and moral challenge of true statesmanship, or to face in time the cruel alternative to its political failure, takes refuge in the illusion of a new diplomacy. The old diplomacy has failed, it is true, but so has the new one. The new diplomacy has failed and was bound to fail, for its legalistic tools have no access to the political problems to be solved. The old diplomacy has failed because the men who used it had forgotten the rules by which it operates. Blending misplaced idealism with misunderstood power politics, our statesmen vacillate between the old and the new, and each failure calls forth an ever stronger dose of an illusory remedy. Whether they swear by Wilson or follow Machiavelli,²² they are always Utopians pursuing either nothing but power or nothing but justice, yet never pausing to search for the rules of the political art which, in foreign affairs, is but another name for the traditional methods of diplomacy well understood.

22. Compare Morgenthau, *The Machiavellian Utopia* (1945) 55 ETHICS 145; for the philosophy underlying this article, see the author's forthcoming SCIENTIFIC MAN VS. POWER POLITICS (to be published by the University of Chicago Press).