
GLOBAL PATERNALISM

The UN and the New International Regulatory Order

Jeane J. Kirkpatrick

THE RANGE, the sheer proliferation, of United Nations activities aimed at the regulation of international business and commerce is simply awesome. These UN regulatory initiatives extend quite literally from the depths of the oceans to the heavens, from the Law of the Sea Convention to an agreement—and this is a formal title—An Agreement Covering the Activities of States on the Moon and Other Celestial Bodies. Nor are the more mundane economic activities in between neglected. The UN pursues regulatory codes of a very general nature—for example, the Commission on Transnational Corporations' draft code on the conduct of transnational corporations—as well as some aimed at specific industries, such as the infant formula code adopted by the World Health Organization (WHO) in 1981. A very small sampling of UN activities undertaken in the last two years would include nego-

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tiations within the UN Conference on Trade and Development (UNCTAD) on a code of conduct for the transfer of technology, and another code on conditions for the registration of ships; efforts within the World Intellectual Property Organization (the acronym is WIPO) to revise the Paris Industrial Property Convention governing the international patent system; the Food and Agriculture Organization's deliberations on a code of conduct in the trade and use of pesticides; work done under the aegis of the UN Environmental Program on toxic chemicals and on a convention for the protection of the stratospheric ozone layer; efforts within the UN Commission on Transnational Corporations to develop international standards on accounting and reporting as well as on trans-border data flow; and so forth.

There has been, in recent years, a veritable explosion of UN regulatory activity. It has occurred for a number of reasons, some very good and obvious ones. Important among these is the emergence of a number of new areas of activity that seem to many to require some sort of multinational agreement. The driving forces have included technological advance and, of

course, growing interdependence in the world economy. These are very real forces and require a response.

Moreover, international regulation is not always hostile to free enterprise, or to the smooth operation of markets, or to economic development, or to the efficient production of wealth. Some kinds of multinational agreements under some circumstances—consider GATT, the General Agreement on Tariffs and Trade, for example—can serve to facilitate commerce by achieving mutual reductions in national barriers to international trade and investment, by harmonizing national regulations, by providing a secure legal framework for international economic activities.

The tendency toward greater intergovernmental consultation can be both helpful and healthy. It would prevail, almost surely, even if the United Nations did not exist, because of the growing interdependence of the world economy. That is demonstrated, I believe, by the increasing use of such consultative mechanisms by the industrialized market economies in the Organization for Economic Cooperation and Development.

The Power of Negative Motivation

But the United Nations does exist, and within it an ever more active role is played by those organizations involved in one or another kind of international regulatory activity. And within the UN context, even when genuine problems are being addressed, there are invariably some powerful factors and motives at work pushing UN regulatory initiatives in some very unfortunate directions. The process of regulation in the United Nations is distorted at several levels—at the ideological level, the political level, the technical level and, finally, at the level of implementation.

Ideological distortion. The first distortion occurs, I think, at the ideological level. How an issue is defined has obvious consequences for how it is going to be dealt with. And in the UN context the definition of the issue gets shaped, naturally, by the dominant ideology. Unfortunately for us Americans—and for anyone interested in economic growth and development—the dominant ideology in the United Nations concerning economic regulation is a version of class war that has been developed by a kind of

gross adaptation of Marxist categories to relations among nations. According to this version of class war, the many poor nations are locked in a bitter and ongoing struggle with the few rich nations, very much as the working class or proletariat is, according to Marxist ideology, locked in an ongoing struggle with the few capitalists inside nations.

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According to this theory, if property isn't theft, it is something very much like it. And because poverty, in this view, is caused by exploitation, the very fact of underdevelopment is seen as proof that a nation has been exploited. Wealth, on the other hand, is seen as won by exploiting others. The very fact of affluence proves that a nation has been guilty of exploitation. Disparities of wealth, in this view, are seen as intrinsically unjust. Justice, therefore, requires redistributing wealth from the rich nations to the poor nations. That is another way of saying that the political culture that prevails in the UN system on economic matters has two distinctive characteristics: It asserts the need for a more equal distribution of the world's wealth and it provides a moral justification for that redistribution. It is hostile or at best indifferent to the production of wealth in general and to those corporations in particular which operate across national boundaries (transnationals) or whose ownership is multinational.

Political distortion. These ideological factors inevitably come into play as regulatory negotiations are undertaken and carried out under UN auspices. To this ideological context is added the political structure of the United Nations, a very important and very little understood factor. The United Nations is not simply a body in which representatives of 157 sovereign nations meet. It is a body in which groups interact very much as individuals form parties in legislatures.

Nations in the United Nations are organized into a series of overlapping groups, or blocs, and the business of the United Nations takes place through the interaction of these groups. There is, for example, the Soviet bloc, there is the European Community bloc, there is the Nonaligned bloc, there is the Group of 77. (The G-77 is the third world organized for economic purposes; the Nonaligned is the third world organized for political purposes.) Each of these blocs has its own particular dynamic. Each of them has a problem, too—which is to maintain its own internal unity and cohesion. The blocs are formed as small nations try to develop greater strength by joining together, and they get that strength only at the price of maintaining their own internal unity.

But each of the blocs is filled with internal contradictions because of their members' conflicting interests and very different perspectives. They maintain unity chiefly by aggregating concern for all the specific interests of all the specific members. At last count, the G-77 had 126 members, and it is not much of an exaggeration to say that the G-77's bargaining positions very frequently turn out to be the sum total of all those members' demands. That adds up to a lot of demands. This method of establishing a negotiating position by accumulation, so to speak, naturally results in some very unrealistic demands. It also gives the most extreme positions of the most extreme members of the group a decisive effect on the negotiating position of the total group. A bloc's unity—particularly the unity of a big bloc, and to a certain extent of a smaller bloc, too—is bought, in many cases, at the price of the group's acquiescence in the most extreme demands of its most extreme members.

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Technical distortion. And that is not all. There is also distortion at the technical level where, it is important to note, the people who shape the negotiations and the debates concerning regulation almost invariably utterly

lack technical expertise about the matters to be negotiated, to be regulated. Therefore, political concerns dominate. The process of goal-setting and problem-defining is governed not by consideration of what is technically necessary, desirable, or feasible, but quite simply by the politics of the blocs, in the political culture of international class struggle.

Politics at the UN takes a rather pure form, worthy of our state legislatures at the turn of the century. There is a good deal of vote trading, arm-twisting, demagoguery, playing to the galleries, a certain amount of buying and selling, logrolling, and pork-barreling. All those highly developed political skills are very much in fashion at the UN. There is widespread cynicism and tacit understanding that a good many of the declarations of intentions that are made there will never be implemented.

The result of all this is that the problems that are going to be addressed by the regulatory mechanisms are often defined ideologically, unrealistically, and in a manner that is technically inappropriate. In most legislatures, such political dynamics exist of course, but their distorting impact is moderated once the technical experts take over and try to translate into technically meaningful terms the broad commands of general policy. Unfortunately, that does not necessarily happen in the UN context. There, the technical level, too, is not only bureaucratic and suffers from all the problems endemic to bureaucracies, but there is another problem: inside the United Nations, technicians are drawn from 157 countries. Not all technical bodies have technicians from all 157 countries, but there are always a good many nations represented and all the major blocs are represented. To the usual array of bureaucratic problems, such as red tape and duplication, are added the conflicting codes of international civil service behavior. Whether you think you ought to represent your technical expertise or your nation is an open question. Whether the conflicting national codes of bureaucratic and technical behavior can be made harmonious is also an open question and frequently, unfortunately, it is a question that cannot be answered in the affirmative.

Implementational distortion. Finally, even at the level of implementation, we find another distorting factor. Many of the regulations enacted by the United Nations have consequences

for the member states. And since the people who are implementing these regulations are representatives of member states, some of which think it is the job of all their citizens to work all the time for their own state, there is a level of nationalist distortion that takes place at the implementation level and affects everything that goes on. The consequence is a hodgepodge of ideological, political, bureaucratic, and national practices—and theories—that frequently distorts the regulatory process in the UN context beyond anything dreamed of in the national regulatory context.

Law of the Sea on the Bias

The interaction of all these factors comes into play in almost every regulatory negotiation and almost every regulatory implementation. The consequence is that while there are agreements that are ostensibly aimed at the benefit of all nations, in fact these agreements often turn out to be, above all, instruments for global redistribution of wealth and a new global paternalism which works to the advantage of somebody besides those nations and people interested in the production of wealth and economic development in the world.

The clearest case, I believe, of a UN regulatory effort being vitiated by this drive for global redistribution is the Law of the Sea Convention. During the last several decades, the economic resources of the ocean have become much more important—or, more accurately, we have thought of ways to make them more important to us. The world's harvest of fish has grown sharply, oil in increasing amounts is being extracted from the continental shelf, and, of course, the prospects of deep-sea mining of valuable minerals not too long ago seemed on the verge of realization, and may still be realized someday. At the same time, coastal nations were declaring various and conflicting economic and territorial claims to adjoining areas. In these circumstances, it seemed to many that useful rules and agreements on the use of the oceans might require international collaboration.

In fact, in most of its aspects the Law of the Sea Convention is a constructive response to the problems it was designed to solve. The United States has affirmed on several occasions

that it finds acceptable many of the convention's provisions dealing with navigation, overflight, continental shelf, marine research, environment, and many other aspects. But we were not among the nations signing the Law of the Sea Convention in Montego Bay, Jamaica last December 10, because we could not accept the convention's provisions on seabed mining. The seabed regime established by the convention represents the full flowering of the redistributionist outlook I described before. Mistakenly concluding from the fact that the seabed belongs to no one that it is the joint property of all, the convention creates an International Seabed Authority, a gigantic bureaucracy, governed and structured along typical United Nations lines.

"Typical United Nations lines" means, of course, that there is an enormous gap between the nations bearing the costs and the nations making the decisions. This disjunction was reflected in the final vote on the Law of the Sea Convention. The four nations that voted against the convention and the seventeen that abstained not only produce more than 60 percent of the world's GNP and provide more than 60 percent of the United Nations' contributions, but they also include virtually all of the nations likely to develop seabed mining technology. Robert Goldwin of the American Enterprise Institute, in a succinct statement of what the convention's seabed regime would entail, has pointed out

that mining companies could invest billions of dollars to scoop up the nodules of manganese, copper, nickel, and cobalt that lie at the bottom of the sea only as licensed by the new International Seabed Authority; that they would have to pay the Authority for the privilege; that they would have to put the Authority's own operating company (called the Enterprise) into business with capital and technology; that the United States and other developed nations would have a minimal voice within the Authority; and that all disputes, regulations, production levels (and hence, prices and profits) would be set by one or another organ of the Authority.

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In all of which we would have a very large responsibility and a very minor voice.

As President Reagan noted in explaining the United States' decision not to sign the Law

of the Sea Convention, such provisions are likely to "deter future development of deep seabed mineral resources, when such development should serve the interests of all countries." The redistributionist bonanza some third world countries aimed at will almost certainly never materialize. Moreover, the United States has made clear its position that its right to carry out seabed mining, subject to reasonable regard for the interests of other states, will not be affected by its decision not to sign the convention. Clearly, however, it would have been in the best interest of all parties if the convention had contained an acceptable seabed mining section that would have permitted all the leading seabed mining countries (and all those likely to develop the capacity) to join.

Global Technocrats Know Best

The goals sought in the Law of the Sea Convention, as in many other UN regulatory initiatives, are clear. Those goals are to gain economic benefit by securing and legitimizing a claim on the wealth and technology generated by the developed countries and their corporations. But there is another class of UN regulations also championed by third world representatives, where economic motives are less prominent. I refer to recent international regulatory efforts ostensibly aimed at protecting human health and safety, such as WHO's infant formula code. Another example of this new wave of paternalistic regulation emerged in the 1982 General Assembly session in the form of a resolution on harmful products, which in its original version would have totally prohibited the export of any product banned from domestic use for any reason whatsoever.

There are genuine problems of health and safety requiring intergovernmental cooperation, especially in terms of improved information exchange. Attempts to deal with these problems within the United Nations, however, too often are caught up in a very crude kind of anticapitalist ideology that is more concerned with restricting and discrediting multinational/transnational corporations, claiming they are very bad institutions which do harm to the countries in which they operate. There is a single exception to this: it is also assumed, when the question of investment in South Africa is

considered, that multinational corporations *help* South Africa—the only example in the world in the UN context in which multinational corporations are seen as of economic benefit to the country in which they operate.

Multinational corporations are bad guys on the UN scene. I was visited a few weeks ago by a group of parliamentarians of a friendly European democracy, and one of them asked me why it was that the United States had voted "no" on a particular paragraph of a particular resolution. This asserted that women's rights were horribly abused all over the world, but especially in rural areas, and that the principal cause of these miseries and deprivations of rural women in less-developed areas was—you guessed it—exploitation by transnational corporations. (The U.S. delegation at the UN generally votes "no," I observed, on ludicrous distortions of reality.)

Transnational corporations, as they are usually called in the UN, are regularly tried and found guilty of the most extraordinary range of crimes. Naturally, therefore, punitive regulation of transnational corporations becomes a kind of a good in itself. The rhetoric used gives the game away—rhetoric like "killing babies for profit" and that sort of thing. Some people apparently think that that rhetoric has greater resonance in the West than do the standard third world appeals about redistributing wealth, which may be one of the reasons it is emphasized.

An interesting role is played in this regulatory process by nongovernmental organizations—which, loosely defined, include numerous public interest groups from both ends of the political spectrum. Apparently, some of the nongovernmental organizations that do not achieve much success in this country, or in other Western countries, have focused very heavily on the United Nations as the point at which to try to secure adoption of the regulatory and punitive policies they cannot get adopted in their own political systems. It has been observed, at the UN, that there is emerging a kind of recognizable "iron triangle" uniting nongovernmental organizations, third world representatives (particularly of the radical third world countries), and ideologically sympathetic international bureaucrats in quest of restrictive international health and safety regulations. Interestingly, this new internation-

al paternalism almost invariably advocates adoption in the UN of restrictions on activities which could just as easily, in principle, be adopted within the specific countries of the member nations, if those countries chose to do so. If, for example, the countries of Africa did not desire the marketing and advertising of infant formula, there is no reason in the world that their governments could not so decide, and adopt such policies at the national level.

The fact that this regulatory thrust is focused at the level of the international bureaucracy is, I think, a suggestive clue about the strategy for establishing this new global socialism, this new paternalism, in which an international bureaucracy believes it knows what is better for everyone—better for us, better for the third world, better for everyone. In the UN system, the view is widespread that the institutions of the United Nations itself are the arena in which the “new international economic order” can be achieved. They are, after all, the institutions in which a majority exists that can be counted on—on the basis of one country, one vote—to favor projects that are highly discriminatory from the point of view of the most powerful nations in the world, including our own. The powerful nations are outnumbered in the UN; we constitute a reliable minority. There has been a lot of talk about the automatic majority in the UN. But for every automatic majority there is an automatic minority, and that’s us.

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UN agencies, then, are the scene of a struggle that we seem doomed to lose. Regulation is the instrument for the redistribution of what is called the world’s wealth. The international bureaucracy functions as the “new class” to which power is to be transferred. Global socialism is the expected and, from the point of view of many, the desired result.

The problem with this is, of course, that it is bad theory. It is bad theory in the technical sense that its major terms do not accurately describe the world with which they deal. Wealth is not created by theft or transfer from less developed countries to more developed countries. It is created, as Adam Smith well understood, by innovation, investment, entrepreneurship. Wealth is created by growth. Computers, automobiles, aviation, looms, locomotives, the steam engine itself were not stolen from the third world. They were invented in the first world. Neither was the poverty of the least developed countries caused by the ravages of multinationals, or even by colonialism—for which, by the way, we Americans had no responsibility. The theory of international class war is equally misleading with regard to development. Poverty cannot be ended by redistribution. It can only be ended by economic development which, as we all know, is a creative process in which all sectors of a society become involved.

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Finally, at the core of this theory of international class struggle lies another very curious notion: the idea that there is such a thing as the world’s property—sea, space, whatever—and that the United Nations has a right to it. On exactly this theory rests the claim, the United Nations’ claim, of sovereignty over oceans and space. The argument is that whatever belongs to no one belongs to the United Nations. It is a strange doctrine of property, a mistaken theory of development, and a destructive doctrine of regulation. Doubtless, international regulation is needed in a good many domains. Doubtless, consumers in remote places need protection against unscrupulous multinationals. (They need protection in ways that do not inhibit economic development and growth, I may say, as well.) And doubtless, too, all of us need protection against the arrogance of the new international “new class.” ■