

Taking Turns

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The turn by U.S. legal scholarship from domestic delegations to international delegations is constructive, inevitable, and fraught with difficulty. On the one hand, U.S.-based analysis provides a host of useful analogies. Moreover, U.S. analysis may be required to the extent that constitutional principles inhibit an international delegation – or, as I have previously argued, provide a warrant *for* international delegations¹ – and it is extraordinarily difficult in any event to create an international legal perspective wholly divorced from domestic legal concepts. On the other hand, U.S. legal analysis of domestic delegations has not had much practical or conceptual success, and its frailties may reflect particular domestic constraints (such as justiciability) that have less purchase on the international plane.

This paper will illustrate some difficulties in turning from the domestic to the international plane. First, I will reconsider the indispensable elements of an international delegation in the abstract, largely but not exclusively for reasons having to do with the limits of the domestic analogy. Second, I will consider an example of a candidate for analysis as an international delegation – the existence of rotating presidencies of certain international organizations, particularly at the United Nations Security Council – that pushes the envelope of conventional typologies. My primary purpose is to argue in favor of regarding international delegations as *sui generis* undertakings requiring some critical distance from domestic considerations; it follows, I think, that particular caution should be used in describing international delegations as legal or illegal.

1. Profiling Delegations

Those interested in international delegations almost invariably puzzle over their constituent elements, whether as an abstract matter or in trying to establish the significance of a practice or institution in which they are interested. The excellent working definition provided by Curtis Bradley and Judith Kelley – that an international delegation is “a grant of authority by a state to an entity to make decision or take actions that bind the state or commit its resources” – sets out formally some suppositions that generally reflect positions previously expressed in the literature.

A. Binding Authority

One common supposition that the international institution’s authority must be binding. Nominally, this criterion is directly responsive to the international context – a

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¹ The Constitutionality of International Delegations, 104 Colum. L. Rev. 1492 (2004).

central virtue, voiced by Bradley and Kelley but shared by others writing in this area, is that without such a restriction non-binding advisory authority, which falls under the peculiar description of “soft law,” would have to be included.

The reasons for avoiding that outcome are significant but not clearly compelling. Excluding soft law does make the discussion more manageable, by clarifying a large and potentially boundless topic, but it essentially substitutes a legal criterion for any other metric for significance. It may be true, as the authors continue, that “the sovereignty costs associated with delegations of binding authority will generally be more significant than delegations of non-binding authority because of the loss of state control over the issue,” but whether something is binding seems imperfectly correlated with a loss of control (which may or may not be the same thing as “sovereignty costs”), and seems a debatable basis for a categorical exclusion. Nor is an adequate explanation provided by the suggestion that focusing on legally binding delegations has an interdisciplinary advantage, insofar as it stipulates a question in which lawyers have an interest. This underestimates the range of legal interest, particularly by internationalists; the fact that (for better or for worse) soft law attracts so much legal attention is almost proof enough, and this would be an indirect way of saying that such attention is misdirected.

What is lost by a narrower approach? Two things, by my reckoning, neither of which is necessarily conclusive. First, focusing on whether delegated authority is binding may overlook other exercises of authority that are more significant. Most executive branch officials would probably regard an invitation to deliver unsworn testimony before a congressional committee (or even a probing letter from a Senator) as a greater restriction on their autonomy than a parking ticket. Second, the quest for binding authority permits forensic shortcuts that, while enormously convenient and appealing, tend underestimate the significance of unwritten power. Congress’s authority to declare war looks significant on the face of the Constitution, and the President’s foreign affairs power looks empty, but that is not the way things have worked out.

B. Control

A second supposition is that the authority delegated by the state may not be subject to its residual control (a point clearly related to the above-noted concern over “the loss of state control”). As Bradley and Kelley put it, to be included the “state must lack full formal control over the decisions or actions of the entity.” On its face, this test is *more* demanding than that used for domestic law purposes: as Eric Posner has rightly insisted, Congress does not, in any conventional sense, lack full formal control over most of its agents.² Perhaps such a requirement is necessary to ensure that delegations are truly international in character, but again, one might equally claim that such a distinction was necessary on the domestic front to ensure that delegations were purely non-congressional (but legislative) in character.

As I have previously argued, drawing distinctions based on the existence of residual state authority – even something so tangible as a veto – is, if anything, especially

² Perhaps retroactive control is meant to be excluded, but that is not clear.

misplace on the international plane. First, whether a veto confers control depends substantially on the authority vested in other states: a veto means more if it is unique, and less where unanimity is required. In the latter case, for example, not only is the veto holder less able to demand concessions in order to obtain its support for a proposed measure, but it must carefully assess whether its veto should be withheld in exchange for forbearance by other nations on other matters. Second, emphases on the veto assume that action is the only means by which delegated power may be exercised. But if veto authority is vested as part of a compromise of state prerogatives, such as took place with the adoption of the Charter, the fact that the veto may stymie Council progress is less than wholly redemptive.

C. International Institutions

A third concern involves the involvement of some international institution. Here Bradley and Kelley make a concerted effort to be inclusive by including short-lived bodies, using the term “entity” (seemingly to avoid any restrictions that might be imposed by using terms like “organization” – though “institution” may have a yet broader connotation), and avoiding also the more generic “agent,” which is intended to permit including those who are ostensibly neutral, like arbitral tribunals. The practices to be excluded are primarily one-time commitment like the terms of international agreements, which do not vest the kind of continuing authority with which most or all delegation analyses are concerned.

This approach is entirely sensible, but as with the other criteria, it may indirectly shift focus from some phenomena of interest. First, the authority that an international institution has exercised may change how its *future* authority may be used – even under a static conception of an organization’s mandate – in a way directly pertaining to state control. A particularly pointed example is provided by the reverse veto. Granting that permanent members of the Security Council have the ability to put the kibosh on any new initiatives, they lose the ability to relieve their states from the burdens of a prior Chapter VII decision once that has been taken³ – which may, given the increasingly legislative character of Security Council pronouncements, emerge as a significant constraint.⁴ The combination of the rules set out in the Charter restricting state autonomy, and the decision of state agents to approve Security Council measures under what are often exigent circumstances, may inhibit state authority at a future point.

Second, institutions may change through the evolution of their practices. Take, again, the Security Council. The rules governing how abstentions are reckoned – that is, allowing measures to be approved without the affirmative vote of all permanent members – is a notorious example of a practice that was not specified in the initial treaty commitment and that, indeed, seems inconsistent with it.⁵ The Security Council is not

³ Swaine, *supra*, at 1538-39.

⁴ Swaine, *supra*, at 1515-17; e.g., Paul C. Szasz, *The Security Council Starts Legislating*, 96 *Am. J. Int'l L.* 901 (2002).

⁵ Article 27(3) of the UN Charter provides that “[d]ecisions of the Security Council on all [substantive] matters shall be made by an affirmative vote of nine members including the concurring votes

alone; Bradley and Kelley note, for example, the Human Rights Committee's assertion of legal authority to determine the validity of reservations.

Third, institutions may change under the terms of the original scheme, in a way that affects state control. Bradley and Kelly note that non-members of the Security Council, and non-permanent members of the Security Council, may be regarded as delegating authority to the Council in light of the fact that none possess veto authority. Whether a state is a member of the Security Council may, of course, depend on the period in question; in instances in which the Council exercises authority by virtue of consensus, a given (non-permanent) member may have control over that authority one year but not the next. As considered below, this kind of scheme may affect the analysis of international delegations in a substantial way.

2. Taking Turns

In part as devil's advocacy, I want to sketch a problem on the periphery of existing approaches to international delegations – the revolving presidencies of international institutions, particularly that of the Security Council. The objective is to unsettle any emerging consensus of the topic's bounds, and in doing so prompt discussion of how legal analysis of international delegations should proceed.

A. The Security Council's Presidency

Article 30 of the UN Charter provides that “[t]he Security Council shall adopt its own rules of procedure, including the method of selecting its President.” Its procedure is described in part by a provisional set of rules that have never been made permanent.⁶ Rule 18 provides that the Security Council presidency is held in turn by members of the Security Council (permanent and non-permanent) in the English alphabetical order of their (state) names for a period of one month. The President's functions include the responsibility for presiding over Security Council meetings and representing it as an organ of the United Nations (Rule 19); the authority to call meetings at his or her discretion (Rule 1) and, upon another member's request or certain other specified conditions, as a mandatory matter (Rules 2 and 3); the power to decide points of order, and resolve the order in which to consider proposed amendment to motions and draft resolutions (Rule 36); and the power to approve the agenda for meetings that has been drawn up in the first instance by the Secretary General (Rule 7).

of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.” One might well have concluded that an “affirmative vote” requires just that; as to the possibility of an abstention, the mention of mandatory abstention in connection with certain matters arguably suggests that the drafters knew how to anticipate and address other forms of abstention. On the other hand, a more aggressive style of interpretation might, seemingly, resolve the problem of the reverse veto, by construing the references to “decisions” to refer to new ones.

⁶ Provisional Rules of Procedure of the Security Council, Rule 48, UN Doc. S/96/Rev. 7 (1983).

A small literature describes the President's less well-defined functions,⁷ which include:

- The power to declare that the Council remains seized of a matter.⁸
- The power to take diplomatic initiative without consulting the Council in a formal meeting.⁹
- A sometime lead role in issuing so-called presidential statements;¹⁰ these statements, which touch on nearly the same field of issues as do resolutions,¹¹ are in some years issued more often than resolutions.¹²

⁷ See, e.g., Davidson Nicol, *The United Nations Security Council: Towards Greater Effectiveness* ch. 2 (1977); *Paths to Peace: The U.N. Security Council and its Presidency* (Davidson Nicol ed., 1981); Siegfried E. Werners, *The Presiding Officers in the United Nations* (1967); Yehuda Z. Blum, *The Presidency of the Security Council and the Duty of Impartiality*, in *International Law at a Time of Perplexity* (Yoram Dinstein ed. 1989); Istvan Pogany, *The Role of the President of the U.N. Security Council*, 31 *Int'l & Comp. L.Q.* 231 (1982); see generally Sydney D. Bailey & Sam Daws, *The Procedure of the Security Council* 124-37 (3rd ed. 1998).

⁸ Bailey & Daws, *supra*, at 131.

⁹ Bailey & Daws, *supra*, at 134-35. They note, though, that the most prominent instances in which this power was exercised all occurred in 1948.

¹⁰ One commentator defined these as "statements on behalf of the Security Council read out by the President in a formal meeting after the text of the statement has been agreed upon at informal consultations of the whole." Stefan Talmon, *The Statements by the President of the Security Council*, 2 *Chinese J. Int'l L.* 419, 427 (2003).

¹¹ Ten years ago, Frederick Kirgis catalogued the kinds of statements that had emerged during just one season:

- (1) to establish a procedure that would keep governments contributing peacekeeping troops better informed;
- (2) to report the results of the Council's review of sanctions in force against a particular state;
- (3) to report that the Council had considered taking certain action, but had deferred doing so;
- (4) to express the Council's condemnation of recent unacceptable conduct;
- (5) to warn parties not to engage in proscribed conduct in the future;
- (6) to instruct the Secretary-General;
- (7) to announce procedural decisions; and
- (8) even to set forth quasi-judicial determinations by the Council about international law.

Frederick L. Kirgis, Jr., *The Security Council's First Fifty Years*, 89 *Am. J. Int'l L.* 506, 519 (1995) (citations omitted). States seem to regard these statements as having practical significance. See, e.g., Matthew Happold, *Darfur, the Security Council, and the International Criminal Court*, 55 *Int'l & Comp. L.Q.* 226, 227-28 (2006) (noting significance of presidential statements in addressing the deteriorating situation in Darfur, and in inspiring parallel language in a subsequent resolution adopted by the Council); Samantha Power, *A Problem from Hell: America and the Age of Genocide* 361 (2002) (describing how the U.S. Ambassador led demands that the word "genocide" be dropped from a presidential statement regarding Rwanda that was issued in 1994); U.K. Attorney General, *Memo to the Prime Minister on Resolution 1441*, available at www.lslo.gov.uk/Foi/Iraq_Resolution_1441.pdf, reprinted in 54 *Int'l & Comp. L.Q.* 767 (2005) (indicating that the Foreign Office Legal Advisers of the United Kingdom took the position that a presidential statement was sufficient to signal a violation of Iraq's obligations under Security Council Resolution 678, and hence to authorize the use of force against it).

¹² Although present nearly from the Council's inception, they have only recently become so numerous as to warrant their own U.N. document code, with the number increasing from an average of four

- The power – situated in the state holding the presidency, rather than in the president per se – to determine most chairmanships of committees of the Council.¹³
- Additional tasks occasionally assigned by the Security Council, such as obtaining information, designating members of a subsidiary organ, and conferring with the Secretary-General; meeting with and appealing to parties to a conflict to adhere to Council decisions, and conducting other informal consultations; and monitoring compliance with resolutions or decisions of the Council.¹⁴

B. The Presidency as a Delegation

Most of the legal issues relating to the President's role have been so ridiculously trivial – ranging from the choice of language used to establish the order of rotation, who presides over a post-midnight, end-of-the-month session that has lurched into a successor presidency, and whether the failure to extend diplomatic courtesies on a most favored nation basis violates the principle of neutrality¹⁵ – as to ward off any serious attention. This is unfortunate, because the President's functions raise questions that are potentially of interest to international delegations scholarship.

1. Binding Authority

The Security Council exercises what by most reckoning constitutes binding authority, at least when it operates under Chapter VII. But does the President? Not on the face of it. The only authorities the President wields autonomously are informal and nonbinding, such as the power to make statements to the press.¹⁶

Under the proposed criteria for international delegations, it is not clear what standard the President's power needs to fulfill – whether, that is, a mechanism internal to an international institution wielding delegated power must itself qualify as an international delegation in order to be regarded as problematic. In practice, though, the President's informal authority – limited by the authority of the permanent and non-permanent members – may be vastly more significant in its effect on sovereignty than more binding authority exercised with respect to more transient or incidental matters. While the Provisional Rules have the President serve as more of a conduit for the Council's agenda than anything, there is general agreement that the President is able to able to exercise substantial influence, at least where there is a sound working relationship

per year from 1946-1990 to an average of 50 per year – such that in some years more presidential statements are issued than resolutions Talmon, *supra*, at 420.

¹³ Nicol, *The United Nations Security Council*, *supra*, at 21.

¹⁴ Bailey & Daws, *supra*, at 134.

¹⁵ See Bailey & Daws, *supra*, at 132-33; Blum, *supra*, at 55-59 (complaining regarding breaches of protocol by the Council President, the representative from Jordan, toward the representative from Israel).

¹⁶ See Talmon, *supra*, at 427-30.

with the Secretary-General.¹⁷ The President's control over procedure can also prove more important than the Rules would suggest;¹⁸ indeed, that control may be influenced by the President's seemingly discretionary choice as to which *version* of the rules he or she deems to govern.¹⁹

Some commentators have ventured that “the role of the President has assumed increasing importance and has been pivotal in the conduct of multilateral diplomacy”;²⁰ more negatively, the presidency “may be exploited by a cynical incumbent to frustrate the effectiveness of the Security Council as an instrument for the maintenance or restoration of international peace and security.”²¹ As the post-Cold War Council expands its areas of concern, possessing the presidency may be increasingly relevant to promoting initiatives of significance to the state concerned. Recently, for example, the U.S. presidency has been accused of attempting to wrest power from developing nations and General Assembly by dint of its efforts to pursue UN reform of peacekeeping operations.²²

Influence of this kind is much harder on line-drawing than a standard of binding authority, but that does not provide a complete warrant against it. Agenda setting, for example, is a standard subject of legitimate legal concern, including in the delegation

¹⁷ See, e.g., Nicol, *The United Nations Security Council*, supra, at 22 (citing former Council Presidents to the effect that one “can have a great deal of influence,” and “had the power to influence the direction taken by the Security Council”); American Leadership at the U.N., *N.Y. Times*, Jan. 4, 2000, at A18 (noting that while the Suggestion that Council presidency has limited powers, “the job involves close coordination with [the Secretary-General] and considerable control over the council’s agenda”); cf. Benedetto Confortiti, *The Law and Practice of the United Nations* 155 (2nd ed. __) (noting the power, in practice, to effectively exclude cases not worth pursuing).

¹⁸ Nicol, *The United Nations Security Council*, supra, at 22 (“Although, formally, the President’s competence in Council meetings is limited to procedural matters, and his rulings on procedure can be challenged and overruled by the Council, procedure often merges with substance and procedural solutions may prejudice substantive decisions. Potentially, therefore, the President is in a position to exercise an influence that in some circumstances can exceed the strict limits of his procedural functions.”).

¹⁹ The scenario in question may ultimately involve what is known as the “double veto” – involving, in essence, a preliminary question as to whether a matter is procedural or substantive (in which, by hypothesis, a permanent member exercises its veto – according to a practice established under the San Francisco Statement – so as to prevent the matter from being deemed procedural and thereby subject to approval by a majority of nine members under Article 27(2)), followed by the question as to whether the matter should be accepted as a substantive matter (which is subject to veto, presumably the same permanent member, under Article 27(3)).

The question arises, however, as to what would be vetoed. The usual predicate for both votes is a presidential ruling as to whether a question is procedural or substantive in character. Under the English version of Rule 30, if a presidential ruling is challenged, it is submitted to the Council for a decision, and stands unless overruled. On the other hand, if the President elects to invoke the French version, the question put before the Council is the *challenge* to the presidential ruling – meaning that nine votes are required to defeat a ruling of the President on a point of order, but only seven votes are required to sustain the President’s ruling. Unsurprisingly, this latter procedure is more often elected. Anjali Patil, *The UN Veto in World Affairs, 1946-1990*, at 16-17 (1992); Pogany, supra, at 233.

²⁰ Nicol, *The United Nations Security Council*, supra, at 23.

²¹ Pogany, supra, at 231.

²² Warren Hoge, *U.S. Criticized for Actions in U.N. Council*, *N.Y. Times*, Feb. 18, 2006.

setting.²³ The significance of such powers is vitally affected, of course, by the voting rules in question, among many other factors, but that is no reason to disregard them.²⁴

2. Control

Assuming the President exercises authority of the relevant kind, it may seem equally difficult to contend that the state lacks full formal control. The degree of control depends, manifestly, on which state is in the driver's seat. When a state has the presidency, it would be hard to say that control is absent; the President, when acting as such, is supposed *not* to be acting as the state's representative, but that distinction seems artificial. The issue arises more keenly when the presidency has rotated away, and a state must confront the exercise of presidential authority when wielded by a series of other friendly and not-so-friendly peers.

Is retaining the veto enough? The veto is meaningless if it cannot be exercised (or, at least, threatened); where a state has delegated the authority to act or refrain from acting, and the President can influence whether anything is put to a vote, the veto seems like an inadequate means of constraining the implementation of delegated power. Perhaps the most compelling evidence of practical significance involves circumstances in which states have sought to game the introduction and conclusion of measures so as to coordinate with the tenure of various presidencies. This was most conspicuous, for example, in the rush to complete the authorization of military force against Iraq in the first Gulf War, before the presidency passed from the United States to Yemen;²⁵ one senior U.S. official explained that while the presidency "has only limited powers of the council agenda, 'there are lots of ways to get thoroughly wrapped around the axle at the United Nations,'" and the "potential bureaucratic and procedural delays that the Yemen presidency might pose" made it important to resolve the resolution during the U.S. presidency.²⁶ The German and British presidencies were thought to hold similar authority in the run-up to the second Iraq war.²⁷

3. International Institutions

Whatever the other idiosyncrasies of the case, the Security Council presidency ably illustrates the changing nature of some international institutions – a nature that corresponds, not coincidentally, to my earlier comments on the proposed criteria. First, any given presidency confronts a pending agenda that has been established by its

²³ Rachel Brewster, *The Domestic Origins of International Agreements*, 44 *Va. J. Int'l L.* 501, 524-29 (2004); Richard H. Pildes & Elizabeth S. Anderson, *Slingshot Arrows at Democracy: Social Choice Theory, Value Pluralism, and Democratic Politics*, 90 *Colum. L. Rev.* 2121, 2196-97 (1990).

²⁴ Mark A. Pollack, *The Engines of European Integration* 47-56 (2003).

²⁵ George de Lama, *UN OKs Use of Force in Gulf*, *Chicago Tribune*, Nov. 30, 1990, at 1; *Yemen Rebuffs Baker on Backing in U.N. for Assault on Iraqi Forces*, *N.Y. Times*, Nov. 23, 1990, at A18.

²⁶ Robert C. Toth, *U.S. Polling Security Council on Use of Force*, *L.A. Times*, Nov. 16, 1990, at A17.

²⁷ Richard Beeston, *London Will Have to Mediate*, *Times (London)*, Aug. 29, 2003, at 16; K.K. Katyal, *Will the War Divide E.U.?*, *The Hindu*, March 20, 2003.

predecessors; these may be as concrete as a resolution that is still being negotiated, or a prior resolution the breach of which presents the question of enforcement responsibility.

Second, the presidency's powers have evolved to a substantial degree, in part due to shifts in the way the veto is exercised and the growth of the Council's legislative capacity. The increase in the number and significance of presidential statements may be particularly noteworthy, and the degree to which these are generated via ordinary Council decisionmaking processes merits further inquiry. The Council's decision to permit itself procedural flexibility, including as to the powers of the President, appears to have been a deliberate one,²⁸ and Article 30 of the Charter continues to provide the Council with the authority to alter the means of selecting the President.

Proposed reforms have raised the question whether the presidency should be given more authority relative to the permanent members,²⁹ or have its length extended in order to enhance that authority by other means.³⁰ The study of comparable institutions may be illuminating in this and other regards. The recent constitutional project in the EU considered, as one of its many elements, changes to the presidency of the European Council, which presently resolves among the member states every six months.³¹ Those interested in expanding the presidency's powers relative to other EU institutions contemplated enhancing both the types of authority exercised by the presidency and the term; the Commission, with an institutional interest in constraining the presidency, focused less on term length than on the scope of powers, including the inclusion of the European Council among the institutions subject to judicial review.³² The constitution is on hold, but it is interesting to note that the presidency as it is presently configured may play a role in how the constitution is modified and eventually approved;³³ it is also noteworthy that this presidency had humble beginnings not so very far removed from the Security Council President's own.³⁴

²⁸ Nicol, *The United Nations Security Council*, supra, at 19 (noting that the UN Preparatory Commission, and then the Security Council in 1946, faced choice between a detailed set of rules and "a bare framework with flexibility for adaptation" – and that generally the bare framework prevailed).

²⁹ During UN reform debates in the General Assembly, one member took the view that "the veto power must be democratized, and non-permanent members, during their presidency of the Council, should also have temporary veto power." Press Release GA/10276, 59th G.A. Plenary, 28th & 29th Meetings (Oct. 13, 2004).

³⁰ Important Improvements in the Functioning of the Principal Organs of the United Nations That Can be Made Without Charter Revision, 91 *Am. J. Int'l L.* 652, 654-55 (1997).

³¹ See, e.g., Bernhard Schloh, *The Presidency of the Council of the European Union*, 25 *Syracuse J. Int'l L. & Com.* 93 (1998).

³² Paul Craig, *European Governance: Executive and Administrative Powers under the New Constitutional Settlement*, 3 *Int'l J. Const. L.* 407 (2005).

³³ See, e.g., Finnish Presidency to Accept Changes in Constitution Text, *EU Observer*, Jan. 29, 2006.

³⁴ Big is Beautiful, *Economist*, Jan. 11, 1992, at 48 (noting how the presidency of the European Community used to resemble that of the Security Council, NATO, and the Council of Europe, "[b]ut the role its presidency has expanded with the EC's influence. The presidency sets the Community's agenda, chooses priorities, brokers compromises and takes charge of international activities, such as peacemaking in Yugoslavia.").

Third, and most basically, the presidency is of interest because of the way states take turns. This means, obviously enough, that any individual state experiences substantial shifts in its ability to exercise control. It also creates a dynamic in which states may be wary of exploiting authority when gained if it means setting bad precedent for future office-holders – or, conversely, of seeking to constrain privatistic behavior when the tables are turned, for fear of setting constraining precedent for themselves.

C. Potential Implications

How does this relate to the criteria for international delegations and its domestic origins, besides imperfectly? The point is not merely to illustrate that some international institutions are *sui generis*, though that is certainly the case, but rather to show through this unlikely case more general characteristics.

For one, the focus on legal effects may be misleading. In the domestic case, the binding quality of legislation is of interest for formal reasons having to do with the Article I jurisprudence,³⁵ and for practical reasons as well – the parties subject to the exercise of delegated authority, such as through an agency directive, plausibly distinguish sharply those instances in which they are bound to conform their conduct. In the international sphere, on the other hand, states more often are both the principals concerned and the immediate objects of the delegated power, and their interests are imperfectly correlated with legal effect. The Security Council presidency wields power which, while not binding in any tangible way, is of far greater significance to states than some international delegations that conform more closely to domestic criteria. It may be preferable, accordingly, to refocus attention on delegations that involve significant potential constraints on state autonomy – either to act or to refrain from acting – that are subject to legal control, rather than which feature binding legal effect.

The distinctive character of international delegations also matters when considering the world of alternatives. The starting point of domestic delegation doctrine is that Congress may unilaterally specify the terms of delegation (at least, by overriding a presidential veto), that the loss of congressional control largely redounds to the benefit of the agent’s autonomy (subject to concerns about capture), and that this authority may be reclaimed. From my perspective, the way in which states take turns in helming the Security Council illustrates a more general phenomenon that is inconsistent with those suppositions. States take turns in a broad sense when a collective or multiple principal(s) cooperatively manage an agent, bearing in mind the limits of control and the costs that constraining another’s authority may exact when it comes to tempering one’s own. What we need is a better way of segueing from one form of analysis to another, of taking turns between the domestic and international perspectives, so as to not overlook phenomena of potential importance.

³⁵ Under U.S. constitutional doctrine, the salient question is whether the agent exercises “legislative power,” and while that term is subject to disagreement the general assumption seems to be that it is the power to bind. See, e.g., *Whitman v. Am. Trucking Ass’n*, 531 U.S. 457 (2001).