

DISCUSSION PAPERS IN DIPLOMACY

***Getting to Fairness:
Negotiations over Global Public Goods***

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Netherlands Institute of International Relations 'Clingendael'

ISSN 1569-2981

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ABSTRACT

How can global public goods, which are so vital to human security and well-being, be managed and provided more effectively? This paper argues that negotiations and agreements concerned with such goods must better reflect considerations of justice and fairness. It contrasts concepts of justice and fairness found in the scholarly literature, with those held and put in practice by delegates to international negotiations. A framework for defining, conducting and promoting fair negotiations over global public goods more systematically is then put forward. The emphasis is on structural issues, such as agenda-setting and representation, and process issues, such as fair play and negotiation procedures.

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GETTING TO FAIRNESS: NEGOTIATIONS OVER GLOBAL PUBLIC GOODS

Cecilia Albin

At their July 2001 summit meeting in Genoa, Italy, the Group of Eight (G-8) defended free trade as the key to global prosperity and to poverty alleviation in developing countries. These representatives of the world's wealthiest countries also confirmed their commitment to development aid. Meanwhile, the world's attention was drawn to confrontations involving tens of thousands of demonstrators against the summit. The Genoa demonstrations followed similar protests against meetings of international financial institutions in Washington, D.C. in April 2000 and of the World Trade Organization (WTO) in Seattle, Washington (United States) in December 1999. These and other disputes suggest that some people – and sometimes many people – perceive certain international organizations, along with the negotiations which they initiate or host and the resulting outcomes, as one-sided and unfair.

Such perceptions are in many ways ironic. After all, international meetings and agreements are often focused on global public goods. Theoretically, such goods could be provided to all of the world's people. So what explains the demonstrations and the concerns about justice and fairness? This chapter addresses that question. More importantly, it proposes a framework for defining and implementing fair negotiation practice. The main message is: In order to manage and provide global public goods effectively, we need to ensure that considerations of justice and fairness are better reflected in negotiations and agreements concerned with them. Thus a more explicit focus is needed on such considerations. A good and politically feasible approach would be to start not with outcome justice, but with the fairness of the structure and process of negotiations where, in important ways, the outcome is often shaped considerably.

Negotiating global public goods

Parties enter and conduct negotiations when they expect this to serve their own interests better than unilateral options (Zartman and Berman 1982; Grieco 1988). Negotiation and cooperation are seen as tools to further self-

interest. All parties come to the table with their own concerns and objectives, so successful negotiations must achieve a mutually advantageous outcome. This requirement is widely recognized. Yet sharp disagreements often riddle the process, as negotiators seek to maximize their benefits. The type and extent of disagreement depend partly on the issues. Some issues are more “zero-sum” than others, in that one party’s gain may entail the other’s loss. An example is the delineation of territorial borders.

Other issues entail more positive-sum situations, and provide much scope for mutually advantageous agreements. Negotiations over global public goods often fall into this category, as they tend to be largely nonexcludable and nonrivalrous in consumption. Once such a good exists everyone (countries, firms, individuals) should, in principle, be able to enjoy it fully. Yet, as noted, fierce protests have arisen in recent years over the provision of global public goods. Frequently, the contentious issue was not *whether* to produce these goods, but *how to shape and provide them* so that they have positive utility for all.¹

So why these controversies? From a negotiation perspective, three factors shed light on this question.

The need for active involvement in setting agendas

Parties to international negotiations have different interests and priorities with regard to global public goods. Therefore, each party needs to ensure that it is actively involved in setting global agendas; otherwise a party may end up discussing merely the concerns of others at the expense of its own interests.

Efforts to launch another round of multilateral trade talks at the 1999 WTO meeting in Seattle fell partly over this matter. Major industrial countries suggested negotiations on issues of little immediate priority to developing countries such as electronic commerce, investment policy, and labor and environmental standards. Developing countries, for their part, insisted on the need for further progress on removing barriers to their exports of textiles and agricultural products before debating new concerns. Only two years later, at a meeting in Doha, Qatar, did delegations manage to

¹ See further the chapter by Griffith-Jones and Mendoza, in this volume.

formulate a reasonably broad and balanced agenda.² So while the provision of global public goods offers significant potential for mutual gains, it also raises important questions of fairness and distributive justice.

The distribution of costs

The benefits of global public goods are largely public. But the costs of providing them have to be shared; that is, distributed between countries and groups within countries. In negotiations over such goods, parties often seek to minimize the burden (e.g., financial costs, policy adjustments) that they will have to bear themselves. They reason that the smaller the price of their contribution to the provision of the goods is, the more they will benefit from the overall agreement.

Various criteria can be used to calculate benefits (Kanbur 2001). For example, governmental and non-governmental representatives, with their different political constraints and agendas, often do not rely on the same measuring rods. As a result they can expect or demand divergent measures and policies on an issue, even if they are from the same country. For example, American environmental experts and civil society representatives have criticized the Bush Administration's withdrawal from the Kyoto Protocol on cutting greenhouse gas emissions. During the negotiations in 2002 of a final document to be adopted by the International Conference on Financing for Development, non-governmental organizations headquartered in Europe strongly advocated the adoption of a common carbon tax or a currency transaction tax. Among the official delegations of the European Union (EU), however, such tax measures remained highly controversial.

Some parties may try to delay or avoid contributing to the provision of global public goods altogether. The EU was seen in this light when it sought to preserve the Common Agricultural Policy for so long in multilateral trade negotiations (see Albin 2001). When this happens other parties may claim a right to compensation and, if it is not fulfilled, consider withdrawing from joint ventures involving negotiation and cooperation altogether. In the negotiation of the 1987 Montreal Protocol on Substances That Deplete the

² "Doha WTO Ministerial 2001: Ministerial Declaration." WTO Doc. WT/MIN(01)/DEC/1. Geneva. 20 November 2001. [Retrieved from http://www-chil.wto-ministerial.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm.] See also de Jonquieres (2001).

Ozone Layer, compensation and incentives had to be extended to developing countries in order to encourage them to participate (Barrett 1999).

The global impact

Global public goods affect not only those parties or individuals seated around the international bargaining table, but they affect the lives of people worldwide. Indeed, deliberations over such goods ultimately concern not distant foreign affairs but people's daily lives. This raises difficult issues of justice and fairness which need to be considered and resolved in the negotiation process. Much can (and does) go wrong in that process given the distributive obstacles and challenges. But it also offers win-win opportunities. A primary incentive for parties to work to exploit these opportunities is that few global public goods can be produced or provided on a unilateral basis. Cooperation on a large scale is required, and this is rarely possible to get underway or sustain without some measure of justice and fairness. These values play an important role in bringing the parties to the negotiating table, keeping them there, and in motivating them to honor agreements. What then do these values mean? How are they defined?

Concepts of justice

Justice can be viewed as a "macro" concept which refers to general criteria of what is right and wrong. Their exact meaning in practical contexts is often unclear. Fairness, by contrast, can be seen as a "micro" concept which suggests what is right and wrong in particular circumstances, for individual parties and specific issues (Albin 1993). Principles of fairness are often applications and interpretations of more general notions of justice. An outcome can therefore be fair to a group of parties within a local or issue-specific context, but unjust from a broader (e.g., global) perspective. Conversely, an arrangement may be just in the sense of being based on a general distributive principle, but unfair in how the principle has been applied in a particular case.

The importance of "mutual advantage" has been put forward as principle of justice (Gauthier 1986). The idea that justice has something to do with mutual gains is far less controversial among parties to international negotiations than in the relevant literature (see Barry 1989, 1995; Albin, 2001). From a broader pragmatic viewpoint, it is also widely recognized that

successful negotiations and agreements depend to a large extent on their ability to deliver net benefits to all those whose participation and cooperation are needed.

Another principle is “reciprocity”, that is, the responsiveness of parties to each other’s concessions. Again, the extent to which this behavior has anything to do with justice or fairness is contested in the scholarly literature. Some authors endorse this principle as intrinsically just (Gauthier 1986; Gouldner 1960) and as instrumental in achieving cooperation in an anarchic world (Axelrod 1984). Elsewhere it is rejected for leaving those unable to reciprocate and offer benefits to others, such as the very poor or disabled, outside the bounds of justice and outside cooperative ventures (Barry 1995). Delegates to actual international negotiations tend to agree that reciprocity is essential to fairness, but also that variations in resources and circumstances need to be taken into account. They often appear to aim for an overall balance of reciprocal benefits, which requires parties to contribute and concede as far as they are able rather than exactly to the same extent or in equal amounts (Albin, 2001).

Reciprocity and mutual advantage are notions defined in particular contexts, within a negotiation. After all, “adequate” reciprocity and mutual advantage are whatever the parties themselves define them to be. The next few principles here discussed have a basic meaning which is more external to and independent of specific situations.

The principle of “equality” calls for parties to receive identical or comparable treatment, rewards, and burdens. It poses the question of what exactly is to be equalized and how equality is to be achieved when, as is so often the case, the parties are unequal to begin with. For example, should we focus on equalizing opportunities and treatment, allocations and contributions; or should we aim to equalize the outcome in terms of the welfare and resources of parties? The notion of equality as “equal shares” advocates the uniform distribution of resources regardless of differences in needs, preferences, or other considerations (Pruitt 1981). It does not take into account the fact that parties often gain unequal utility from acquiring the same good in equal amounts. Some have argued for “equality in the weights attached to the welfare of all individuals” (Ng 2000, p. 141), while others advocate equalizing the opportunities that people have to create meaningful, decent lives for themselves (Arneson 1989; Cohen 1993; Dworkin 1981).

The principle of “proportionality”, by contrast, holds that resources, opportunities, benefits and costs should be allocated in proportion to relevant inputs. These inputs may be contributions in the form of actions

and efforts adding value to a collective or disputed good, or they may be assets such as skills, wealth, income, and status. The principle originates in Aristotle's proposition that equal treatment is just only if parties already are equal in ways relevant to the resource distribution; otherwise they should be treated unequally. Among many interpretations of the proportionality principle is that of "shared but differentiated responsibility", which entails that parties make concessions and accept burdens in proportion to their ability to do so (Kelley, Beckman, and Fisher 1967). Countries' contributions to the regular budget of the United Nations are based on ability to pay, as measured by and proportional to their gross national products.

An argument about proportionality also underpins entitlement approaches to justice. Some suggest a notion of acquired rights and entitlements (Goddard 1997) or merit (Van Parijs 1991, 1998; Dupuy 1992). Along these lines those who have made more effort to reduce pollution, for example, should be rewarded accordingly. This type of approach, and perceived violations of it, can be very contentious. When a global resource is a pure public good (such as the global climate), it provides many tempting opportunities for free-riding by some on the efforts undertaken by others (such as reductions in carbon dioxide emissions).

The principle of "compensatory justice" stipulates that resources should be distributed to indemnify undue costs inflicted on a party in the past or the present (Shue 1992). It is distinct from the principle of "needs", which aims to meet basic wants regardless of their origin and is based on some supposed universal standard to which all people or countries are entitled. A compensatory approach focuses on victims. A needs-driven approach would instead target the world's poorest people or countries, regardless of other considerations. A notion of compensatory justice is especially important when considering the growing number of transboundary threats to human security and health, including cross-border air and water pollution.

In addition to the internal and external principles discussed so far, there is a third set of so-called "impartial" principles. These concern notions of justice which parties would supposedly endorse if they were to assess a situation from a detached viewpoint. The theory of "justice as fairness" (Rawls, 1958, 1999) is based on such a notion. It holds that justice is what parties would select and agree on "behind a veil of ignorance"; that is, if they were ignorant of their own identity and position, and thus of how their decisions would affect their own situation. This procedure is meant to purge the process of all inequalities in resources and other advantages, including skills and power. Drawing on Rawls and Scanlon (1982), another theory

holds that justice is “what can freely be agreed on” by parties who are equally well-placed, notably in the sense of being able to reject and veto an agreement (Barry, 1995, p.51). Just decisions are reached without the need to use heavy-handed threats or rewards, or other forms of coercion or manipulation. They can be justified on impartial grounds. An outside detached observer could not reasonably reject them as unjust.

The scholarly debate on justice has generated a voluminous literature. Even the very limited and selective review provided here demonstrates that there are numerous principles and concepts, many of which are competing and controversial. If the question of what justice is and requires is traced back to Plato, the debate has already lasted well over 2000 years. This makes it all the more interesting to examine how parties to international negotiations have defined justice and fairness, and how they have managed and settled differences in perceptions.

Justice and fairness in practice

Interviews with senior participants in negotiations have revealed that notions of justice and fairness were not the primary driving force or objective behind their deliberations or decisions. Depending on the particular area, the main goals have instead been matters such as climate stability, clean air, disarmament, market access, financial stability, and economic development. Yet in structuring negotiations and formulating broadly acceptable agreements on cooperation to reach these objectives, justice and fairness have almost always been necessary to take into account. A long list of widely endorsed principles has thus emerged from past negotiations including nondiscrimination, “no harm”, polluter pays, shared but differentiated responsibility, the duty of compliance, and no free-riding (Albin, 2001). Many of these are variations on the principles of equality, proportionality, and impartiality discussed above.

But the most striking finding from these interviews, and from observations of recent negotiations over different global public goods, is that justice is effectively defined as a combination of and balance between several principles. Negotiators clearly believe that justice and fairness entail representing, protecting, and promoting the needs and concerns of all parties. They also recognize that as problems become more intricate and parties more unequal, a wider range of considerations need to be accommodated and this can rarely be done if relying on a single standard (Earle 1998; Tran 1998). Thus international agreements are often “package

deals” based on many criteria. This is seen as right and reasonable, and not only as required on pragmatic grounds. The 1987 Montreal Protocol on Substances That Deplete The Ozone Layer, one of the most successful environmental agreements ever negotiated, combined several norms to take account of the varied conditions and concerns of signatory states. The proportionality principle drove the Protocol’s call for reductions, beginning in 1993, in chlorofluorocarbon emissions in relation to each country’s emissions level in 1986. It thereby imposed a greater (unequal) cost of regulation on industrialized countries. Compensatory justice underlay the provision for financial and technical assistance to the South, and the principle of need their exemption from the stipulated emission reductions for the first ten years for purposes of economic development. Finally, the equality norm was expressed in the long-term goal of the North and the South sharing regulation costs on a basis of parity.

In practice, then, justice and fairness mean a balanced settlement of conflicting claims (Albin 2001). This approach takes into account the interests of parties but constrains the raw pursuit of self-interest. It allows for some power inequalities between parties but does not simply mirror the prevailing balance of forces. Thus it highlights the importance of the structural and process dimensions of negotiations. Although never a guarantee for a fair outcome, fairness in the negotiation structure and process does facilitate a more balanced result. Without it, parties are unlikely to accept the outcome as legitimate.

Getting to fairness: How to arrange and conduct negotiations

Negotiations include a structure and a bargaining process, including procedures that the parties use in working toward an agreement. All these three elements can be designed to reflect notions of justice.

To achieve a balanced settlement of conflicting claims, two issues among many others matter: ensuring as far as possible that all parties have an effective voice in representing their interests and concerns, and that all claims are considered fully in the negotiation process. How then can negotiations be organized and conducted to make this possible?

Creating a just and fair negotiating structure

The structural components of negotiations concern the issue-related as well as the social and physical constraints under which the talks unfold and participants operate (Rubin and Brown 1975). The structural elements are typically given that have been determined earlier, in preparatory consultations or by extraneous factors. Most remain constant throughout the bargaining - unlike the process issues, which may fluctuate. Among the important structural elements are agenda setting; parties, relations between them, and their participation; and the negotiation rules and venue.

Formulating a broad, inclusive agenda. What issues and priorities are placed on the agenda, and how they are ordered and linked, can affect subsequent deliberations and their eventual outcome significantly. Negotiators naturally seek to ensure maximum coverage of those issues that are of most interest to themselves, and favor linkages that may bolster their own bargaining position. The concept of justice as a balanced settlement of conflicting claims calls for a reasonably broad and balanced agenda that includes, orders, and links issues in a way that considers the essential interests and concerns of all parties.

The preparatory meetings for the International Conference on Financing for Development provide a successful example of inclusive agenda setting. They led to an agenda that incorporated concerns of industrial countries (such as enhanced resource mobilization and implementation of financial codes and standards in developing countries), priorities of the poorest countries (in terms of increased development assistance), and interests of advanced emerging markets (such as improved participation in international financial fora). The agenda also reflected concerns that international organizations brought to the table and issues of interest to nonstate actors.

Ensuring that all parties are represented. Offering all stakeholders a seat at the bargaining table as far as possible is another important element of justice, which helps to ensure that all interests are considered (Susskind and Cruikshank 1987). It also enhances the perceived legitimacy of the outcome, and facilitates implementation. Parties with a genuine opportunity to be represented and have an input into the negotiations are more likely to identify with the outcome, and to be motivated or feel obliged to ensure effective follow-up.

The international community, and intergovernmental organizations in particular, face at least two challenges on the question of representation in

negotiations.³ One is the issue of how far developing countries are adequately represented, and what can be done to tackle disadvantages effectively. The other is the issue of defining and agreeing on criteria and procedures for involving parties, state and nonstate, in deliberations (see also Albin 1995 and 1999; Helleiner 2000). Traditional criteria, such as statehood and sovereignty, are inadequate as negotiations over global public goods often concern more parties and interests than governments can fully or credibly represent alone. Yet *all* affected parties could rarely participate for practical reasons, one being that they are far too numerous.

Justice as a balanced settlement of conflicting claims therefore calls for a principled and consistent, yet cautious and incremental, expansion of the opportunities for concerned parties to participate in negotiations over global public goods. Participation should be based on criteria that relate directly to what the parties (whether state or nonstate) can contribute in terms of enhancing the representativeness, legitimacy and effectiveness of the process and outcome. During the turbulent WTO meeting in Seattle in 1999, US President Clinton pointed out that “the public must see and hear and, in a very real sense, actually join in the deliberations ... That’s the only way they can know the process is fair and know their concerns were at least considered”.⁴

Crafting clear, transparent rules. Negotiations are governed by rules for a range of matters including modes of communication and decisionmaking (e.g., rule of consensus, voting rules), any involvement of outside observers or interested parties, and the use of deadlines. Concerns about fairness will arise if, for example, some parties do not have a chance to take part in selecting the rules or are disadvantaged by them.

Rules are important in negotiations over global public goods, which so often are multilateral and large-scale. They help to organize the deliberations, coordinate expectations, and facilitate agreement. They can also enhance fairness in various respects. For example, the rule of decisionmaking by consensus in the WTO and the Conference on Disarmament gives every country a power of veto, which encourages taking a broad range of interests into account and convincing all needed parties. The

³ See further discussions in the chapters by Baira, Chasek and Rajamani, Edwards and Zadek, Griffith-Jones, Held, and Mendoza, in this volume.

⁴ Quoted in “Clinton calls for a more transparent WTO”, India Abroad News Service, 2 December 1999 (retrieved from <http://www.indiainfo.com/news/1999/12/2/us.html>).

chief U.S. negotiator on services in the Uruguay Round noted in an interview that the WTO consensus rule “gives all countries, big and small ... a fair degree of equality when it comes to things like decision-making ... All parties feel that they ... require reciprocity from other parties” (Self 1998). Informal decisionmaking procedures and understandings almost always emerge simultaneously in complex multilateral negotiations, partly as a means to overcome the complexity of the process and make an agreement possible. These may or may not compromise the formal agreed rules, and fairness. The US chair of the WTO meeting in Seattle decided to hold so-called “Green Room” meetings with a small number of delegations to resolve important issues. This forum became widely regarded as unrepresentative, however, and the WTO consensus rule enabled developing countries in particular to reject its recommended agenda for a new round of trade talks.

Choosing a neutral and accessible venue. The venue concerns the location and sponsoring organization of the negotiations. It has a bearing on fairness because it influences participation, performance and transparency (Rubin and Brown 1975; Susskind and Cruikshank 1987). For example, the venue affects the provision of services and facilities, and access for directly involved parties as well as interested observers including non-governmental organizations and the media. Therefore, the selection of a neutral site outside the home territory of either party or close allies may be appropriate. Alternatively, when negotiations continue over a period of time, they may be alternated between partisan sites. However, this can prove costly and undesirable especially for small delegations from developing countries (see Chasek and Rajamani, in this volume).

Ensuring a fair negotiation process

Process fairness here refers to how parties relate to and treat each other during negotiations. The process is governed in part by procedures, which reflect how the negotiators hope to arrive at an agreement (Young 1994). Some rules have often been established in earlier preparatory talks or agreements, or by the host organization. But the parties can also agree to adopt additional complementary or entirely new procedures for a specific negotiation. In assessing process fairness one needs to observe the nature of the rules themselves, the manner in which they were adopted (and changed, if applicable), and the extent to which parties honor them in the process of deliberation and bargaining.

Giving all parties a say in selecting procedures. Procedures concern a range of matters including the creation and use of negotiating or consultation groups (e.g., formal subcommittees, informal gatherings of certain parties selected by the chair); the assignment of issues and tasks to these; and the manner in which draft proposals will be discussed, concessions exchanged, and decisions adopted. They may be explicit and well established regulations, or more subtle guidelines or expectations for the parties to interpret and apply as they go along. Whatever the case, giving all parties an adequate chance to participate in selecting and defining them is essential from a fairness perspective. The way in which large-scale multilateral negotiations over global public goods is organized and handled through procedures is perhaps particularly important for smaller and poorly resourced delegations, which often struggle to keep up with the process. For example, they may be adversely affected if numerous meetings are conducted in parallel or in little time over technical issues which require mastery of extensive background documentation.

Giving all parties an effective voice. Every party should have a real chance to put forward its case and have an input into all stages of the negotiation process (Susskind 1994; Susskind and Cruikshank 1987). To have an effective voice, parties must be well informed and able to enjoy full access to relevant information about the issues under negotiation. This, again, requires trained staff and material resources. For this reason many developing countries, especially the very poorest with small delegations, have limited capacity to participate in the process fully even if formally given the chance to do so. One method used to help reduce the impact of such differences on the eventual outcome is a common negotiating text, prepared by the conference secretariat or a facilitator appointed from among the negotiating parties. It has been used in the International Conference on Financing for Development.⁵

Fair input and fair hearing are not just of intrinsic value; they are crucial to successful negotiations. Parties are unlikely to sign or implement agreements voluntarily if they were denied the chance to be heard and play a meaningful role. A full hearing of all concerns also brings out divergent interests and perspectives, including on justice and fairness. This can enhance the effectiveness of the outcome in a technical as well as political

⁵ See e.g. draft agreement prepared by a facilitator in this conference, at http://www.un.org/esa/ffd/aac257_25.htm.

way. Moreover, it can facilitate progress toward a final agreement by providing parties with opportunities to trade concessions on issues which they value differently. When the issues under consideration are very complex, outside expertise may have to be enlisted; e.g., epistemic communities and data generated by computer models (Blanchard, Criqui, Kitous, and Viguier, in this volume). This goes back to the point made earlier, that effective and fair negotiations require parties to be fully informed and knowledgeable.

Ensuring fair play. Fair negotiations are also about fair play, which requires compliance with agreed rules and procedures whether formally established or informally understood. Heavy-handed coercion and pressures should be avoided so that all parties, including weak ones, can freely accept or reject proposals for an agreement. All participants have, however, an underlying obligation to negotiate in good faith and work toward and contribute to an agreement. In other words, a party cannot in the name of fairness pursue its narrow self-interests in an uncompromising way. Parties ranging from India in the negotiation of the 1996 Comprehensive Test Ban Treaty to the US in recent climate change talks, have been accused of holding or attempting to hold all others and an entire process “hostage” by threatening to block an agreement unless their high demands were met.⁶

Some elements in the framework for fair negotiation practice here outlined may appear secondary to larger considerations of justice in the provision of global public goods. But so many cases have demonstrated by now that the real difficulties and challenges are found in the details. Fairness matters in all phases of negotiations, from setting the agenda to implementing and ensuring compliance with any agreement reached. If this is not recognized, the prospects may be limited for achieving outcomes which all needed parties will accept. In the case of global public goods, cooperation and provision are likely to suffer at the ultimate detriment of everyone.

⁶ See, for example, “A Stern Warning on Warming” (editorial, *The New York Times*, 8 June 2001) for reactions in different parts of the world to the Bush Administration’s withdrawal from the Kyoto Protocol.

Concluding note

What then can be done to encourage fair negotiation practice, along the lines here discussed? A number of possibilities emerge from the above discussion. We will here only mention two possibilities among many others.⁷

Agreeing in advance on standards for fair negotiation practice

Parties could discuss and agree on certain criteria for fair negotiation, to be observed when the actual talks are arranged and conducted. The framework set forth in this chapter provides such criteria which could serve as a starting point. Subsequent adherence to agreed standards could then be reviewed at critical junctures. A detached party, such as a committee of subject experts and representatives of the host organization, could help to undertake these reviews impartially. The observance of agreed criteria for fair negotiations could also be examined across issue areas at regular intervals. Organizations sponsoring negotiations on global public goods would be well placed to institute such a procedure. In the United Nations, it could be done by the General Assembly. Such broader reviews might reveal patterns and trends that would not, within a single issue area, be apparent or seem serious enough to evoke concern and action. For example, from a fairness perspective, it would be important to examine whether or the extent to which the interests and priorities of weaker parties (such as poor developing countries) are neglected.

Linking issues to enhance fairness

In the absence of shared and agreed priorities among countries, many global resources are valued divergently and thereby provide a basis for trading. This allows a party to exchange concessions on its lower-priority issues, if these are more important to another party, in return for concessions on other matters which it values more. Linkage can also be used to promote fairness, as defined in this chapter, when negotiations are planned and conducted.

⁷ For a more in-depth discussion of these and other proposals see Albin (forthcoming) and, in this volume, the chapters by Chasek and Rajamani as well as Edwards and Zadek.

Indeed, weak parties to negotiations over global public goods have used this method effectively on a number of occasions to secure a more balanced agenda and terms of agreement than they otherwise would have been able to achieve. An example is the United Nations Special Session on HIV/AIDS in 2001. In exchange for a greater commitment to fight their high infection rates, developing countries secured financial transfers and concessions on intellectual property rights which industrial countries had for long resisted.⁸ Given that AIDS cannot be fought successfully without the collaboration of developing countries, their call for a better balance between intellectual property rights and the rights of people to good health and proper medical care was influential.

These are only two of several strategies available to enhance fairness in the negotiation and provision of global public goods. The degree of interdependence and need for cooperation between parties in these processes are almost always considerable. This means that such strategies should be possible to use far more extensively than they have been to date, to everyone's ultimate benefit.

Is the framework here proposed likely to appeal to those who feel dissatisfied with today's international negotiation practice and agreements? It might, because fair negotiations are more inclusive and offer better prospects for balanced outcomes. But it can at best facilitate, and not provide a substitute for, various policy choices which have to be made. This chapter has pointed to a major one: the issue of whether or how far international negotiators and their host organizations should begin to address justice and fairness considerations more systematically, rather than continue to do so on an ad hoc and case-by-case basis only. If this choice is made, justice and fairness in the provision of global public goods is an excellent place to start given their importance and great potential for mutual gains.

⁸ United Nations Special Session on HIV/AIDS. 2001. "Declaration of Commitment on HIV/AIDS." New York, 2 August. [Retrieved from http://www.unaids.org/whatsnew/others/un_special/Declaration020801_en.htm].

Box Principles of justice

Internal (contextual) criteria

- Reciprocity Parties should respond to each other's concessions
- Mutual advantage Agreements should have positive net benefits for all

External criteria

- Equality Parties should receive identical or comparable treatment, rewards, and burdens
- Proportionality Opportunities, benefits, and costs should be allocated in proportion to relevant inputs such as contributions (actions and efforts adding value to a collective or disputed good) or assets (skills, wealth, income, status)
- Compensatory justice Resources should be distributed to indemnify undue costs inflicted on a party in the past or present
- Needs Resources should be allocated relative to the strength of need, so that those in most need receive the greatest share
- Entitlement Justice is secured when benefits are distributed in line with entitlements acquired; for example, through a purchase, gift, bequest, discovery, achievement, or cooperative effort

Impartial criteria

- Justice as fairness Principles of justice are those that parties would adopt if they were ignorant of their own identity and position or, put differently, if they were to decide from a detached viewpoint
- Voluntary acceptance Decisions must be reached without the use of heavy-handed coercion or manipulation if they are to be considered just

Figure A framework for fair negotiation practice

FAIR STRUCTURE:

- All parties represented (as far as possible)
- Inclusive and balanced agenda-setting
- Clear, transparent rules agreed by all
- Neutral venue

FAIR PROCESS:

Fair hearing:

- Needed information and expertise available to all
- Negotiating procedures selected or agreed by all
- All parties have a say and an input into the process
- All interests and concerns are fully considered

Fair play:

- Adherence to agreed rules and procedures
- Preparedness to reciprocate, compromise and contribute to an agreement
- Avoidance of force and coercion

ENHANCES:

FAIR OUTCOME:

- Voluntary agreement (obligations entered into freely)
- Balanced settlement of conflicting claims (with a balance of net benefits for all)
- Implementation and compliance by all parties
- Accepted as legitimate and balanced by parties and outside observers

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