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Working Paper

Fairness Issues in Negotiation: Structure, Process, Procedures and Outcome

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WP-92-88
December 1992

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Preface

One of the objectives of IIASA's Project on the Processes of International Negotiation (PIN) is to examine how fair and mutually beneficial agreements on transboundary environmental problems can be reached, especially between parties who each wish to satisfy their own interests and their own criteria of fairness and equity which may not coincide. Scientifically reasoned solutions to transboundary problems -- the type that IIASA models often generate -- may represent ideal answers, but are practical only if they satisfy the disputants' principles of justice and fairness.

Thus, a critically important dimension of negotiation analysis must be to identify these basic principles and assess the opportunities for convergence in fairness beliefs among disputants. If this can be accomplished, the scientific tools used to explore alternate scenarios and strategies can be more sharply honed to reflect the realities of national interests and acceptability by framing the problem and reasonable solutions in a practical light.

This paper reviews the literature and develops a framework for conceptualizing the role played by fairness in international negotiation. It is planned that applications of this framework will be performed concerning transboundary environmental conflicts. A prime candidate for application will be the case of long-range transboundary air pollution in Europe, where PIN Project staff can collaborate with analysts working on IIASA's Regional Acidification Information and Simulation (RAINS) model.

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FAIRNESS ISSUES IN NEGOTIATION: STRUCTURE, PROCESS, PROCEDURES, AND OUTCOME

Cecilia Albin

1. INTRODUCTION

What--if any--role do notions of fairness play in negotiations? Most of the literature on conflict resolution to date would lead the scholar to conclude that "rational" attempts to maximize individual gains is the only, or only predominant, force explaining the course and outcome of negotiation processes. In this competitive context, fairness arguments are supposedly used as a cover only, to couch the pursuit of self-interests at the expense of the other side. The conclusion of a particular agreement reflects the outcome of such a contest, and not the judgment that it is "fair." Reasoning along these lines--and the daunting task of initiating research on such a slippery concept, of which there is not at this point even a preliminary base of knowledge on which to stand--certainly explain to a large extent the scarcity of studies on the subject.

Yet the actual practice of negotiation--including in areas of global significance, such as the environment--suggests that concepts of fairness often is an influential factor in many respects. Fairness notions influence the "give-and-take" in the bargaining process and help parties forge agreement. They determine extensively whether a particular outcome (agreement) will be accepted and implemented, and the extent to which parties will view it as satisfactory and thus honor it in the long run. Concepts of fairness may create a motivation to resolve a particular problem through negotiation in the first place, and will have an impact on the positions and the expectations which parties bring to the table. A limited body of research on negotiation, particularly experimental findings in social psychology discussed below, support most of these propositions.

One may, however, legitimately question the universal (cross-cultural) significance of fairness in negotiations: Is it a predominantly Western, perhaps even American, concept? Social psychological research strongly supports the proposition that the importance attached to fairness in dispute resolution spans across cultures, including non-Western ones (see Lind&Tyler, 1988), although different cultures and countries appear to stress different fairness principles. The applicability of these findings, most of which are based on laboratory

experiments, to real negotiating situations, particularly in the international arena, remains to be explored.

Fairness is undoubtedly used by parties in many negotiations as a means to justify and bolster their positions, and legitimize particular procedures or outcomes favoring their interests. In situations in which more than one fairness norm seems applicable, each party will often choose the particular principle--and interpretation of it--which best favor its interests. Such tactical uses of fairness, frequently stressed by those skeptical of the concept, have been little researched and go beyond the scope of this paper. In most negotiations, however, genuine fairness notions must also play a role--for intrinsic (ethical) reasons, as well as practical ones spurred by self-interest. On the latter point, experimental findings demonstrate that parties frequently rely on fairness notions to distinguish between and evaluate alternatives for a solution; to coordinate expectations and forge consensus regarding an agreement; to ensure a stable agreement; and to foster good relations with the other side for future dealings. If for no other reason than to avoid constant confrontations and stalemates in negotiations--and the possibility that the other side opts for another avenue to serve its interests--each party must moderate its inclination to claim as large a share of the resources as possible and consider what the other side would regard as a fair and acceptable bargain. Like unfounded threats and promises, fairness would also lose its tactical value if parties did not attach a genuine substantive worth to the concept as well.

The role of fairness notions will, of course, be more signficant or more prominent in some types of negotiations than in others, and the characteristics of such negotiations is yet another subject which remains unexplored in the research literature. Intuitively, one would think that fairness issues are particularly important in negotiations which continue over a period of time and thus build up expectations about "fair" behavior and the shape of a fair agreement (Young, 1992), as in environmental negotiations, arms control talks, and marriages; and in negotiations involving highly valued, scarce goods or ethical (e.g., life-and-death) issues. Fairness issues would also tend to be particularly manifest in situations in which benefits and costs are not easily distributed among parties--as in negotiations over many transnational environmental issues, and more specifically in the siting of hazardous waste storage facilities. Nevertheless, in most cases fairness will be at least one factor, among others, which explains the progression and dynamics of the negotiation process, the outcome, and its durability.

Notions of justice and fairness, as they relate to negotiation, are truly interdisciplinary. Insights have been drawn notably from philosophy (e.g., Rawls, 1971), social psychology (e.g.,

Deutsch, 1973, 1985), mathematics (Steinhaus, 1948, 1950; see also Raiffa, 1982), and economics (e.g., Homans, 1961; Foley, 1967; see also Baumol, 1987). To the extent that the literature has discussed these specifically in the context of negotiations, the focus has almost exclusively been on the outcome--on different principles which may underlie negotiated agreements, or so-called "distributive justice". The prevailing point of departure in this literature, although rarely specified, is a distributive negotiation over a limited amount of divisible resources, and thus fairness has been examined as a distributive concept.

Much less or no attention has been devoted to process and procedural fairness, particularly in predominantly integrative negotiations; outcome fairness in conflicts involving indivisibles (e.g., indivisible public goods, or benefits and burdens); the role of fairness notions in explaining the onset (or absence) of negotiations, as well as post-agreement negotiations; and relationships between types of fairness, such as procedural and outcome fairness. Most importantly, the limited literature on the subject to date has singled out a particular aspect of negotiations--usually the outcome--on which fairness notions have an impact, as if it were the only one.

The present study attempts to begin outlining a "map" or framework for understanding the multiple roles which notions of fairness play in negotiations--in the structure, process, procedures, and outcome of negotiations. The few research findings available on the subject to date make it necessary to take a very broad, preliminary approach. At the same time, however, some important aspects of the major issues raised are examined in detail. These aspects include the different roles which fairness notions play in distributive and integrative negotiations, fair procedures in such negotiations, and possibilities of arriving at an agreement when parties remain committed to opposing norms and are unable to agree on a joint principle of outcome fairness (or a joint interpretation of it).

2. DEFINING "JUSTICE" AND "FAIRNESS"

The literature generally makes no systematic distinctions between the concepts of "justice" and "fairness." Work on negotiation, in particular, uses the terms interchangeably, sometimes as synonyms and sometimes with different meanings which remain unclear. Thus it may be useful to point to some distinctions here.

"Justice" can be thought of as a macro-concept which refers to general principles for the distribution of resources and obligations (costs, risks) in society as a whole. The focus is

typically on the outcome (the details of the final distribution) rather than the process or procedures whereby it is produced--hence the term "distributive justice." A key characteristic distinguishing justice norms from fairness concepts is that justice norms have been established prior to and independently of any specific phenomenon to be judged--although the specific interpretation or application of these general norms at the micro-level is often far from obvious.

Concepts of "fairness," by contrast, are more contextual and specific. These are individual (psychological) notions relating to a specific situation--a particular conflict, a particular negotiation, and/or a particular outcome. Fairness notions include views of how to apply any broader principle of justice regarded as pertinent in a particular context. In conflict and negotiation, views of the legitimacy and importance of one's own vs. the other side's claims to the disputed resources become another important element of fairness notions. Naturally, negotiators tend to view and refer to their own concepts of fairness as "justice"--that is, as critera reflecting some higher ethics which go beyond partisan perceptions and interests, and situational factors.

Fairness issues, of course, raise the fundamental question, "Fair to whom?": fair to a particular party, fair to all parties, fair in the eyes of the world community, fair to future generations, or to whom? In most cases, not at least to make agreement practically possible, the primary challenge is to get a process under way and produce an outcome as fair as possible for the group of parties involved as a whole and at the same time for the individual party--and to strike a "fair balance" between the two objectives when they are conflicting.

Fair processes and fair outcomes are not necessarily acceptable overall, efficient, or even logical. Rather, fairness is an element of acceptability. Other factors which commonly determine whether a particular agreement will be regarded as acceptable include provisions for guaranteeing and monitoring its implementation, likelihood of enduring, possibilities of selling it politically to home constituencies, and built-in mechanisms for revision due to changed circumstances. Depending on the case, fairness may--or may not--stand in direct contrast to efficiency. Much has been written about the need for and problems of trade-offs between fairness and efficiency, particularly in public policy disputes such as the siting of hazardous waste storage facilities. It should be noted that some understandings of outcome fairness include efficiency considerations, and others, such as the "opportunities" norm (Pruitt, 1981), even equalize fairness with efficiency. These notions are further discussed below.

Concepts of fairness--including interpretations of any applicable justice principle--are ultimately what will be important in negotiations, and this study will therefore focus on examining these. Specifically, we will distinguish between and analyze the role of four types of fairness in negotiation: *structural fairness, process fairness, procedural fairness, and outcome fairness.* In any one case, all these types will not be significant or even present. Outcome fairness is commonly thought to be a predominant concern in most situations. Yet, sometimes no outcome can be quite fair--as in the allocation of a single indivisible good or burden for which there is no adequate compensation, such as a death mission or a child in a custody dispute. Parties may then agree to use a particular procedure for settling the issue and to accept whatever (unfair) solution it produces. Under these circumstances, procedural fairness becomes extraordinarily important. Similarly, when a negotiation cannot be fair in important respects (e.g., permit participation by all parties or be open to public scrutiny for security reasons), greater demands will often be advanced regarding the fairness of its outcome.

While analytically useful, the four categories are not distinct even conceptually. An outcome viewed as fair may in effect be a fair procedure (e.g., for allocating a scarce resource on a continuous basis). Elements of structural fairness (or unfairness), such as the grouping of issues and distribution of power between parties, influence elements of procedural and outcome fairness; notions of outcome fairness, and the negotiation process itself, influence the choice of "fair" procedures; and the use of particular procedures will in turn have an impact on the nature of the outcome. Some procedures (e.g., problem-solving techniques) may contribute to "neutralizing" structural variables such as power asymmetry, and others may be part of the structure themselves. Many of these, and other, relationships between the four types of fairness issues will be discussed further.

3. STRUCTURAL ISSUES OF FAIRNESS

We commonly think of fairness as relating only to the outcome, and perhaps also the process, of negotiations. Yet *an important class of fairness issues concerns the overarching structure of the negotiation process,* which in turn reflects more or less the structure of the dispute and overall relations between parties.

The components of the structure concern the conditions--the physical, social, and issue "constraints"--within which the negotiation process unfolds and within which the negotiators operate (Rubin&Brown, 1975; Faure&Rubin, forthcoming; Zartman, 1991). These structural

components involve central fairness issues, for they have a considerable impact on the progression of the negotiations (e.g., the pattern of concession-making), the nature of the outcome, and judgments of the fairness of the outcome. For example, if the structure is viewed as weighing heavily against a particular party, this party is unlikely to regard the product of the negotiation as fair. Structural issues should be distinguished analytically from process fairness issues. At the onset of negotiations, the structural elements are typically the "givens" determined earlier in preparatory discussions or by extraneous factors. Most of them remain constant throughout the negotiation process, and influence the process in ways which may be difficult to discern but are nevertheless significant.

3.1 Parties

A major set of structural components concerns the parties to the negotiations, including any third parties: their identity; number; attributes, such as interests and amount of resources; representation; and relations, including the distribution of resources between them.

Who are the actors in the dispute that ought (have a right) to be included in the talks? The importance of this question is illustrated by the old battle over whether Jordan, the PLO, or the Palestinians in the occupied territories is the party to negotiate a settlement on the West Bank and Gaza with Israel. The significance of number is exemplified by Arab states' long-time insistence that the future of the Israeli-occupied territories be determined in a multilateral forum rather than in separate bilateral talks, as the former would provide a means to enhance their structural power position vis-a-vis the Jewish state.

The idea that every (major) party to the conflict should be represented in the negotiations, or at least be given a genuine opportunity to be so, is regarded as a key element of fairness (Susskind&Cruikshank, 1987)--different from, for instance, the inclusion of actors in the process for their ability to otherwise veto an agreement. In negotiations over the siting of unwanted facilities, such as hazardous waste treatment plants and prisons, the participation in the process by neighborhood residents and other groups most directly affected by the decision is widely recognized as a fairness issue, which has shown to influence significantly public perceptions of the legitimacy and fairness of the outcome and the chances of its implementation. The representation of non-governmental organizations in environmental negotiations permits groups directly affected by the outcome to take part in the process, and helps to raise the public's awareness of the issues involved so that it can in turn become more more active in that process.

In some cases, however, it may not be practically possible to have all parties at the negotiating table, such as the larger public and future generations; and it may indeed be unfair to insist that others be at the table, such as children in divorce settlements. Then their interests are still to be represented somehow, even if only indirectly. Regarding the representation of future generations in international environmental negotiations, the issue today is not whether their interests are to be accounted for, but *how* can their interests be measured and *who* can represent them fairly (by states as is the case today or, for instance, by a formal transnational representative).

The right of every party to freely choose its own representatives to the talks is another structural fairness element, for limitations on this right typically serve to influence the course of the negotiations and the substance of the outcome in a particular direction. Examples are provided by the Middle East peace process resumed in late 1991: The condition that Palestinians form a joint delegation with Jordan, and the ban on full participation by East Jerusalemites and members of the PLO in this delegation, have served the objectives, supported by Israel and the United States, of leaving the issues of Palestinian statehood and the sovereignty over Jerusalem off the negotiating table.

The presence and involvement of mediators and other third parties--a common occurrence in ethnic conflict--also raise fairness issues. Outside actors may serve to reinforce the existing structure--e.g., prevailing power relations between parties, and fair norms and rules agreed upon by parties to be followed in the negotiations--or to determine it initially--e.g., issues to be discussed and the site of the talks. However, outside actors can also change the fundamental structure of the negotiating process by adding their own interests and resources, and by altering the distribution of power in supporting one side to the conflict more than the other. In order for the process and outcome to be viewed as fair, the outside actor is then expected to use its special relationship with the favored side to move it toward an agreement. A third party can notably change an asymmetrical power structure into a more symmetrical one by "shifting weight" (Touval&Zartman, 1985)--for instance, by supplying the weaker party with information and expertise or with economic and military resources.

Experimental findings suggest that parties which view themselves as roughly equal in power (defined as ability to move the other side through a range of outcomes) are more likely to negotiate effectively and arrive at an agreement than unequal parties (Rubin&Brown, 1975). It is reasonable to expect more specifically that under conditions of symmetry in resources, parties are more likely to negotiate in a way, and arrive at an agreement, viewed as fair, and

third parties can thus be constructive in contributing to the establishment of such a structure. A central difficulty in the international environmental area is to get serious negotiations under way and arrive at agreements regarded as fair, in view of the fundamentally asymmetrical positions of the industrialized and developing countries in many regards: responsibility for the problems at hand, costs of living with the problems vs. costs likely to result from regulatory agreements (i.e., need for agreement and motivation to negotiate at all), and resources available to reduce or eliminate the problems (including ability to bear the costs of regulatory agreements) (see, for example, Young&Wolf, 1992). A case in point is the negotiations between the United States and Canada over acid rain control (Schroeer, 1990).

3.2 Issues

A second group of structural elements concern the issues to be negotiated--their number and grouping as placed on the agenda (written or unwritten) when negotiations begin; their complexity and "sums" (degree to which they are, or are perceived as, zero-sum or positive-sum); and relationships between them (e.g., degree to which they are separate or intertwined). Often the grouping (packaging) of issues will be a "given" to a certain extent: Some issues, as in environmental negotiations and ethnic conflicts, are simply so closely intertwined that they can be usefully discussed only together (e.g. Azar, 1983). However, there is always room for some choice as to adding related--or unrelated--issues.

Such linkages raise important fairness issues. By grouping certain issues together on the negotiating agenda, the assumption and expectation are that legitimate trade-offs can be made between them. Further, linkages can be used to mobilize one side's power and leverage over the other side on some issue: Party A's willingness to make the necessary concessions and come to an agreement on a particular issue can be linked to party B's readiness to move and cut a deal on some other issue added to the negotiating agenda. Certain proposals for Jerusalem bring in the issue of a Palestinian state in the West Bank and Gaza as a "concession," to elicit Palestinian acceptance of some form of permanent autonomy in the city under Israeli sovereignty. Critics hold that such a linkage is unfair: Jerusalem is of great importance to Arabs (Muslims and Christians) worldwide, and thus cannot be fairly exchanged for concessions on a predominantly Israeli-Palestinian issue; and the West Bank and Gaza is Palestinian land, whose legitimate return to Palestinian hands cannot be traded for another Palestinian-Arab area which is East Jerusalem.

3.3 Rules

Yet another category of elements is the rules and codes of conduct to govern the negotiations, and ways in which these are established. They include agenda-setting (e.g., issues to be negotiated, their order on the agenda, time allowed for each issue), communication procedures between parties and with the outside world (e.g., use of press conferences to report on progress or deadlocks), voting procedures, and the use of deadlines and other time limits. A common notion of fairness is that parties, whether equal or not in power, should have an equal chance to determine the agenda, equal control over the use of deadlines, and so forth.

3.4 Physical Features of the Negotiations

Finally, a major set of structural elements involving fairness issues concern the physical features of the negotiations: the location, the presence and degree of access of various audiences to the negotiations (e.g., the media, non-governmental organizations, the general public), the availability of communication channels between parties, and access to information and technical support.

The site at which negotiations take place is known to influence parties' control over physical arrangements, and their psychological mood and assertiveness in the talks (Rubin& Brown, 1975). Thus the selection of a neutral site (outside the home territory of either party or any close allies) or, if the negotiations are to continue over a period of time, alternation between partisan sites, is an important element of structural fairness. Openness of the site and the negotiation process to public scrutiny is widely viewed as another key component of fairness (Susskind&Cruikshank, 1987)--although such openness in many cases makes parties adopt more intransigent positions, impedes concession-making, and thus makes more difficult the conclusion of negotiated agreements (Faure&Rubin, forthcoming), including fair agreements.

4. PROCESS FAIRNESS

Processual fairness as defined in this study concerns two broad issues: the extent to which parties in the process of negotiating relate to and treat each other "fairly"; and how parties' notions of (outcome) fairness influence the dynamics of the negotiation process, including their choice of procedures for arriving at an agreement. After reviewing the first issue, we will examine the second subject at some length.

4.1 Process Fairness as "Fair Behavior"

"Fair behavior" in negotiations can be defined as the extent to which parties actually honor agreements reached on many *structural issues* before the process began, and the degree to which they use *procedures* without bluffing or deception in the effort to find a solution.

Use of the first criterion to assess "fair behavior" leads to questions such as the following:
Is every actor recognized as a party to the negotiation actually given an adequate chance to be heard and to have an input into the process at each stage, or is it discreetly marginalized in some way (e.g., by a mediator, by the physical arrangements at a location in the opponent's home country, by failures to share or communicate critical information correctly or in time)? Extensive research demonstrates that the ability of affected groups to actually have a voice in the negotiations is a central, if not the most important, element determining whether the process will be perceived as fair (Earley&Lind, 1987; Lind&Tyler, 1988).

In negotiations over the siting of nuclear waste treatment facilities, for example, are representatives of affected communities really given the chance to be fully involved throughout the process--from identifying the problem and inventing alternative solutions, to assessing risks and making the final siting decision (e.g. Susskind, 1990)? In international environmental negotiations, fair treatment of future generations is viewed as requiring that their interests, however defined, are taken equally into account and are not subordinated to those of the present generation (Harvard Law Review, 1991). More broadly, fair behavior requires that the interests of parties which cannot take part directly and/or are not represented in the negotiations are consciously kept in mind, and that those present do not fall for the temptation of settling the problem at the former's expense (Lax&Sebenius, 1986).

Further, are the rules of the game initially agreed upon actually followed (unless parties agree to change them)--e.g., regarding the use of deadlines, the time allotted to the discussion of each issue, and contacts with the media? Does any third party involved respect its mandate (e.g., as a fact-finder), or go beyond it (e.g., by attempting to enforce proposals of its own or demanding greater concessions from one side than the other)? Does the third party fulfill expectations about impartiality, or about using any special relationship with one side to move it toward agreement? The centerpiece of 'fair behavior' by a third party is indeed to ensure that the process is fair in accounting as far as possible for the interests of all parties involved (Susskind&Cruikshank, 1987), and that every party is able to freely accept or reject its suggestions.

Finally, are linkages (implicit or explicit) to new issues made in the course of negotiating to elicit concessions, in "unfair" ways? In negotiations over the siting of hazardous waste storage facilities and compensation to affected (host) comunities, it is commonly argued that demanding these communities to make trade-offs between safety/health concerns and economic considerations is unethical and unfair (Susskind, 1990). Some observers argue that the U.S. linkage of $10 billion in American loan guarantees to a freeze on Israel's settlement activity in the occupied territories in the spring of 1992 was unfair, in politicizing and threating to cut supposedly humanitarian aid to Soviet immigrants in the country.

Fair behavior also concerns the use of deceptive and coercive tactics. Many established procedures for reaching outcomes viewed as fair provide ample opportunities for using such tactics, to gain extra unilateral advantages at the expense of the other side. This is true about predominantly integrative as well as distributive procedures, as discussed below. When persistently and successfully employed, such tactics in effect lead to unfair agreements without the knowledge of the exploited party (or no agreement is reached at all). These tactics include bluffing about real payoffs (e.g., in efforts to reach a Nash solution); the adoption of highly inflated positions with the expectation that “the difference" will then be split, unless parties' positions are knowingly inflated to the same extent; and exaggeration of the suffering or costs involved in any one concession (e.g., in relying on the norm of "equal sacrifices" to reach agreement) or of one's true needs (in relying on the norm of mutual responsiveness). In the use of a range of integrative problem-solving techniques, the centerpiece of fair behavior could be described as a will to give truthful information, as required, about concerns and priorities; and to attempt to redefine the problem and invent options which may serve the interests of *both* sides.

Is it *always* unfair to use deceptive and coercive tactics? One of the rare answers to this question makes a distinction between lying and misrepresentation with respect to one's interests and alternatives, as opposed to the substance of the items being negotiated. According to one criterion it is fair to use threats, misrepresent values, and so forth with regard to the former, but more rarely the latter, when all parties know and accept, explicitly or implicity, that such tactics are part of the rules of the game (Lax&Sebenius, 1986). When it is obvious from the seller's outrageous initial offer or subsequent readiness to drastically lower the price of a rug that he is misrepresenting his values, it is thus fair for the potential buyer to say that he has only $50 in the pocket when in fact he has much more, or to lie about his knowledge of other sellers with better prices. But it is unfair for the seller to withhold information that in fact it is not an authentic Persian rug and that it is slightly moth-eaten.

Other suggested criteria concern larger implications of everyone using the particular tactic, the availability of other tactics which are less problematic ethically, and discomfort experienced if it became widely known that one had used the tactic or if the same tactic was used against oneself (Lax&Sebenius, 1986). Evidently, in many real situations it is very difficult to operationalize these standards. Yet these are useful distinctions which at least begin to spell out possible conditions under which commonly unfair tactics can indeed be fair.

4.2 The Influence of Fairness Notions on the Negotiation Process: Distributive vs. Integrative Bargaining

What role do fairness notions play in the process of negotiating? As discussed below, they will influence the choice of particular procedures for exchanging concessions or inventing new alternatives for an agreement. But more generally, do fairness concepts serve as instrumental "focal points" which coordinate expectations and concessions, and help parties forge an agreement worth honoring and implementing (Young, 1991b; Lax&Sebenius, 1986; Schelling, 1960)? Or are they themselves, like "formulas" (Zartman&Berman, 1982), subject to bargaining and negotiation? Do they facilitate, or complicate, negotiation and agreement?

This section suggests a number of propositions regarding the impact of fairness notions on the dynamics of the negotiation process under different conditions. There are two essential arguments: A distinction must be made between predominantly distributive and integrative approaches in examining the role of fairness; and *fairness applies to integrative, as well as distributive, negotiations.* In the limited research completed on the subject to date, fairness is examined only in distributive contexts with a focus on evaluations of the outcome--i.e., as arising only in situations in which the task of negotiation is to divide a limited bundle of resources between parties. The literature remains largely silent on the role of fairness notions in the process of integrative bargaining--sometimes with the explicit assumption that they are irrelevant in such negotiations. Although the creative and diffuse nature of the integrative approach make the fairness issues involved much less manifest and difficult to analyze, they play as much of a role, although a different one, in that approach compared to distributive negotiations.

From a number of significant works emerges the importance of distinguishing between integrative and distributive approaches in examining how other factors--e.g., power, interests, and the nature and number of the issues at stake--affect and explain the progression and outcome of negotiations (Walton&McKersie, 1965; Lax&Sebenius, 1986; Raiffa, 1982; Nierenberg, 1973). In practice, most negotiations, while either predominantly distributive or integrative, will include elements of the other approach; and some negotiations, such as labor negotiations, will include a good amount of both. As recognized in a few negotiation models, even the most integrative negotiation must be concluded by distributing the joint gains created in the process of deliberation--a typically competitive phase in which each party attempts to reap last-minute unilateral advantages (Lax&Sebenius, 1986; Zartman&Berman, 1982; see also Andes, 1992). Conceptually, however, the two approaches are fundamentally different in their outlook on the nature and function of the negotiation process. In the literature the integrative and distributive approaches remain described in brief within the parameters of the study undertaken. Thus in this section we first define them more precisely, and then contrast them.[1] For analytic purposes, they are examined in their "pure" form.

4.2.1 Fairness in Distributive Negotiations

In the distributive approach, the essential function of negotiation is to *allocate a fixed (limited) amount of disputed items (benefits and/or burdens)* between parties by narrowing the gap between their respective positions. The process is typically considered a one-time encounter to settle a *single issue*. In a linear fashion, parties move toward a compromise agreement by exchanging concessions *on basis of or in reference to fixed, identifiable positions*. Like the opening demands, values and interests remain *unchanged* in the process of negotiating. Only the bids, each suggesting a certain division of the total resources, change. There is no special focus on joint analysis of underlying concerns motivating these positions.

Beyond the shared interest in reaping benefits from agreement, parties' stakes in the process are viewed as conflicting: One party's loss (e.g., a concession regarding some unit of the disputed good) is the other's gain. Thus parties pursue competitive strategies to maximize their private share of the total resources available within given constraints--e.g., the need or

[1] Parts of the following discussion of the integrative and distributive approaches build upon or are directly taken from Albin (forthcoming), chapter l, "Approaching the Problem of Indivisibles: From Distributive to Integrative Negotiation."

desire to consider issues of fairness. The range of possible outcomes and their respective payoffs are known to parties at the onset of the negotiation, and any one bid is evaluated and responded to on basis of the initial positions. Overall, the approach is *deterministic* in predicting the type of movement toward agreement, the range of possible outcomes based on payoff structures, and the final outcome as a point between parties' initial positions (e.g., Bartos, 1974, 1978; Cross, 1969; Walton& McKersie, 1965). The disputed goods are usually assumed to be divisible and possible to distribute without losing value, or at least to conceptualize in parts corresponding to the concessions made in the movement toward agreement.

The *concession-convergence model* is the classic, and perhaps clearest, embodiment of the distributive approach. This is a linear notion of the negotiation process in which an overriding factor determines the progression of moves from the initial positions to the agreement. Each party's move or choice of tactic is a response to the other's previous step. In the work of Cross (1969), learning--that is, the way in which parties coordinate their expectations about their respective concession rates--is the key factor determining these moves and the nature of the settlement. In the famous concept of Nash (1950), parties in the process of negotiating tend to strive for a "fair" outcome in which the product of their utilities is maximized; i.e., any redistribution of the resources would decrease one party's gains more than it would increase the other party's gains. This is an outcome frequently reached in experimental negotiations, according to several studies (e.g., Bartos, 1974).

Fairness notions affect and express themselves in distributive negotiations in a number of ways. First, together with other factors (e.g., interests, calculations of power, and the other's likely concessions), they influence each party's concept of its "bottom line"--the minimum for which it will settle in negotiations--which in turn influences its opening position and the degree to which this position is viewed as possible to compromise.

Second, as each party presents its opening demands and considers those of the other side, a point of agreement viewed as desirable and fair often emerges somewhere in between the two positions. In the model of Bartos (1974), which more than any other model articulates what is usually left implicit about the role of fairness notions in distributive negotiations, this particular point is a split-the-difference solution exactly at the midpoint between parties' opening positions. Experimental findings suggest that this is indeed a commonly accepted notion of outcome fairness (e.g, Benton&Druckman, 1973), for it demands equal concessions from both sides and thus is relatively easy to justify and sell to home constituencies.

If and when such a joint concept of a salient outcome emerges, it determines what parties view as fair concessions. In the movement toward the preconceived point of agreement, it guides the actual scope (size) and rate (number) of their concessions. Specifically in the model of Bartos, and in any negotiation in which specifically an equal-split solution is viewed as fair and desirable, parties strive for maintaining a midpoint between their original positions and subsequent offers. Thus, *in distributive negotiations in which a joint notion of outcome fairness exists, it serves as an instrumental coordinator of expectations about concessions and the point of agreement.* In these cases, unlike the case of integrative bargaining, fairness notions are not part of the negotiations but rather guide these negotiations (the essence of which is the exchange of concessions) toward the recognized point of convergence.

Related conclusions supporting this proposition are found in a number of works (e.g., Pruitt, 1981; Young, 1991b), many of them based on experimental findings (Schelling, 1960; Bartos, 1974, 1978; Benton&Druckman, 1973). Schelling's 'focal points' specifically are points of agreement which appear unambiguously as salient solutions to parties in predominantly distributive negotiations, often (but not always) by virtue of their perceived fairness. Typical focal points are relatively simple principles of fair division--e.g., split-the-difference, equal shares, and proportionality. They emerge as obvious and relevant because of precedent, analogy, custom, prevailing norms and cultural values, and/or some other factor which make them qualitatively distinguishable from other possible points of agreement. Apart from any inherent value attached to them, parties often settle at such focal points because an attempt to forge agreement at some other point within the bargaining range is expected to involve greater costs of some kind than gains (Schelling, 1960; Lax&Sebenius, 1986; cf. also the idea of time costs and concession rates in Cross, 1969). For example, among workers who have jointly earned a sum of money, it would frequently appear natural and fair that the earnings be allocated proportionally to the number of hours worked.

Further, a number of studies propose, based on experimental findings, that the presence of a joint salient notion of outcome fairness weakens zero-sum (win-lose) perceptions, speeds up concession-making, makes agreement more likely (at the prominent alternative), and decreases the impact of other factors on the dynamics of the bargaining process (Joseph&Willis, 1963; Benton& Druckman, 1973; see also Pruitt, 1981). These effects may be partly explained by the idea that a joint notion of outcome fairness helps to overcome the problem of "partisan biases"--the tendency of parties to overvalue their own concessions and underestimate those of the other side (Fisher&Brown, 1988).

Although rarely accounted for in the pertinent literature, there are certainly cases in which parties will not recognize an obvious point of convergence early on in the negotiations. They may even prove unable altogether to agree on the shape of a fair outcome--for example, because different cultures with different fairness norms, or great power asymmetries, are involved. Or parties may agree on a common principle of outcome fairness--such as equality or proportionality--but not agree on a specific interpretation or the applicability of it--for instance, what is to be treated equally or what are the relevant contributions.

Obviously, in these cases, notions of outcome fairness cannot serve as instrumental or coordinating focal points. However, *inability to agree on a joint principle of outcome fairness, or a joint interpretation of it, does not necessarily mean that agreement will be impossible.* Parties may instead agree to:
--use some (in their eyes) *fair procedure* for arriving at an agreement--e.g., reciprocation of comparable concessions or divide-and-choose (see the discussion of "procedural fairness" below);
--somehow strike a balance ("split the difference") between their competing principles of outcome fairness (e.g., Young, 1991a);
--base the outcome on the fairness notion of one of them (e.g., as a result of successful persuasive tactics by this party, the lesser importance attached by the other party to its fairness principles, and/or a weaker party's need or will to forgo its fairness norms due to its great dependency on an agreement);
--conclude and honor an agreement for other reasons than the particular fairness norms it does or does not incorporate;
--move to an integrative mode of negotiation, in which divergent notions of fairness may be overcome by redefining the problem, or may provide terms of trade and even facilitate an agreement (see the discussion of the integrative approach below).

Regarding the last-mentioned avenue, it is reasonable to expect that divergent fairness notions, which are derived from fundamental values viewed as impossible to compromise, will make negotiation virtually impossible--if distributive in outlook and based on positions. Experimental findings suggest that opposing interests rooted in core values make positions inflexible and agreement very difficult (Druckman&Zechmeister, 1973). Under these circumstances, the ability to reach an agreement at all would require a shift to a more problem-solving process away from the formal negotiating table. When parties do not share the same fairness notions, the advocated approach of "principled negotiation"--aiming at

using negotiating procedures and reaching outcomes which are 'objectively' fair (Fisher&Ury, 1981)--will be constructive only in such an integrative context, as discussed below.

So far we have discusssed the role of *notions* of fairness--"fair" concessions and "fair" outcomes--in distributive negotiations. One may legitimately question the extent to which there is anything inherently fair about these notions--both conceptually and in real cases. Clearly, the opening positions are of crucial importance in distributive contexts, in influencing or determining what will be viewed as a fair agreement and fair concessions (Bartos, 1978:20). Typically the approach does not adequately question the justice of the initial positions taken--or any differences between parties, such as in need or in entitlements to the disputed resources--as noted in a small number of works (Iklé, 1964; Schelling, 1960; Druckman&Harris, 1990). For the concessions and the final agreement to be genuinely fair, one of the assumptions is that parties' initial positions are equally "reasonable" or equally inflated (or minimalist), given their respective payoffs.

One suspects that in many cases, as concluded by Schelling (1960:72-73) on basis of his relatively simple experiments with individuals, the prominence of a particular fairness notion comes less from any innate moral force, and more from its known appeal and power to coordinate expectations, to forge agreement in ambiguous situations of multiple alternatives, and then to legitimize the outcome before important constituencies. This is particularly true for simple notions of fairness, such as split-the-difference and equal shares, which are taken at face value for "impartial justice." Clearly, fairness notions have played these important functions in some negotiations. They include territorial boundary disputes, as well as arms control talks (see, for example, Druckman&Harris, 1990). In SALT I and SALT II, various notions of equality clearly marked the progression and outcome of the deliberations (Zartman et al., forthcoming; Talbott, 1980).

However, one may question the extent to which these roles of fairness typically depicted in the distributive model actually apply to many other types of negotiations--those involving, for example, central ethical issues, multiple and complex issues, many parties, and disparate conditions, including resource inequalities. Examples of such negotiations concern global environmental issues and ethnic conflict. In these cases, parties and their constituencies often seem not to accept ready-made concepts of fairness, or they regard their divergent fairness principles as "indivisible" in that a compromise cannot be struck between them.

Thus parties are led into a search for a unique integration of and balance between a number of principles and norms, which take into account their respective conditions and circumstances. The only coordinating force is the joint interest in producing a fair solution, in the broadest sense. The resulting agreement, if successfully concluded, involves a complex formula which, in the beginning and throughout the negotiations, is all but obvious or prominent--but at the very core of the negotiations themselves. This was the case of the negotiations leading to the adoption of the Montreal Protocol on Substances That Deplete the Ozone Layer. A similar process of combining several fairness norms has been proposed for negotiating successfully a global warming agreement (Young&Wolf, 1992) and an agreement on the political status of Jerusalem (see discussion below). This brings us to the issue of fairness in more integrative contexts.

4.2.2 Fairness in Integrative Negotiations

How do fairness concepts relate to integrative negotiations, the essence of which is the creation of "win-win" solutions which supposedly eliminate the need for compromises? How do the roles they play differ from the roles of fairness notions in distributive bargaining? Before addressing these questions, we must first define and articulate the integrative approach.

Integrative models view the essence of negotiation as *creating or discovering new--i.e., hitherto unknown or not considered--options which combine (divergent) interests into an agreement by redefining or modifying them. Two or more issues,* or sub-issues, are under contention; interests are partly overlapping, partly opposing; and the overall process is *positive or varying sum* in that one party's gain does not entail an equally great (or any) loss for the other. Contrary to the idea of bargaining as a competitive process of give-and-take, parties jointly explore concerns at stake, the perceptions and evaluations of which are *flexible*. Possible options for a solution are generated through such tools as brainstorming or formula construction, and then analyzed and compared. In this process, parties reassess and modify notions of their concerns--including notions of fairness--and ways of meeting them. The integrative approach does not necessarily assume that the disputed resources are divisible.

Concessions are made in reference to a particular option or formula for a solution rather than established positions, and only once such a joint referent point has been accepted by parties based on their individual security points. The possibilities of gains from agreement are not considered inherent in the nature of the issues under consideration or otherwise

predetermined. Being explored in the negotiation process, these possibilities depend extensively on parties' own problem-solving efforts and skills (e.g., Zartman&Berman, 1982; Lax&Sebenius, 1986).

Unlike the linear movement foreseen in distributive models, parties may move back and forth in the negotiating process as they explore options and influence each other in different directions. The negotiation is not treated as a one-time encounter: There already exists sufficient trust to reveal interests and priorities, and strengthening parties' relationship for future dealings may be an objective of the dialogue in itself. While structural factors, such as power (a)symmetry and time costs, may give a sense of the range of likely outcomes, the integrative approach is essentially *nondeterministic:* The dynamics of each negotiation are unique, and its outcome is an unpredictable creation reflecting a combination of new values.

Integrative strategies produce agreements with high joint gains, provided that parties do not yield excessively but maintain high aspirations (moderately high security points) regarding major concerns (Follett, 1942; Pruitt&Lewis, 1975). Such agreements permit all parties to go home with the feeling that they "won" on important matters, although not necessarily to the same extent. Technically, integrative and distributive solutions may look the same: They become integrative by virtue of, *in parties' eyes,* combining their fundamental concerns.

In the pioneering work of Follett (1942), one of the most frequently quoted examples of integration captures well, in all its simplicity, a basic concept of the approach. A visitor to a library wants the window open, while another wants it closed. Further discussion reveals that one wants it open for ventilation, while the other wants it closed to avoid a draft. The concerns of both individuals are fully met not by keeping the window half-open or open some of the time, but by opening a window in the next room. This episode portrays the important message that solutions may be invented which eliminate conflict altogether. This became the definition of "integrative" for Follett and her followers: Beneath apparently opposing positions, often reinforced by misperceptions of the other's goals and intentions, may lie fully combinable interests (see also Fisher&Ury, 1981; Pruitt&Rubin, 1986).

When perfectly integrative solutions meeting all demands and interests can indeed be found, fairness judgments and issues are more seldom invoked simply because parties got everything they wanted. Still, such solutions, which Follett's story of the library window exemplifies, could be viewed as fair in two respects. First, they achieve a kind of equality between parties and treat them fairly by fully meeting the concerns of each (based on individual values and

utilities). Second, the creation of such solutions frequently relies on the use of "fair" integrative techniques, discussed below.

Perfect integration is in reality seldom possible, as noted in a small number of subsequent studies, but most agreements are at best "partially integrative".[2] The approach rather entails that parties'*core* concerns are met, but concessions and compromising are still necessary on less essential matters. In this process, as distributive negotiations focus on methods of division, the integrative approach relies extensively on the concept of *exchange:* Parties value, or can be brought to value, the same item differently so that each party may, to their mutual gain, trade concessions on its less-valued items for concessions on items it values more. A major task of negotiation is indeed viewed as bringing into the open or creating such different evaluations of disputed resources, to make trading possible. Exchange strategies (discussed below) build upon the classic theorem of sociologist Homans: "[t]he more the items at stake can be divided into goods valued more by one party than they cost to the other and goods valued more by the other party than they cost to the first, the greater the chances of successful outcomes" (Homans, 1961). They are reminiscent of the law of comparative advantage in economic exchange, according to which parties trade to their mutual advantage as long as their combinations of tastes and endowments differ.

Apart from the norms of fair behavior discussed earlier (e.g., use of creative skills for the benefit of all parties, supply of truthful information about interests and priorities), fairness concepts enter the process of integrative negotiation at two critical stages. First, they play a role in the joint exploration and identification of possible trades for mutual benefit. In this process, parties do not only ask themselves if a particular trade is mutually beneficial. *Each party also asks itself if a particular trade is "fair" in what it asks the party to give up and what it offers to give that party in return for the sacrifice.* The resources being traded are valued differently, and attempts to objectively determine whether the exchanged bundles of goods are equivalent become irrelevant. However, each party must feel that the total of what it receives in the exchange justifies what it is asked to give away (based on its own evaluations). Ideally, each party also feels more generally (based on its own evaluations and what it knows about those of the other side) that the other party contributed about as much to the exchange, and that they gained about equally from the agreement. Outcomes tend to be viewed as unfair if they leave one party far better off than the other, despite the teaching that a

[2] Yet the development of partially integrative agreements is often referred to as a separate strategy--e.g., "bridging" (Pruitt, 1981; Pruitt&Rubin, 1986).

party's own alternative to an agreement is the proper basis for measuring how well it did in a negotiation.

We commonly think that a joint notion of fairness is required for arriving at a negotiated agreement. In integrative negotiations, however, parties do not value things in the same way and thus have divergent notions of what constitutes fair trades--what is fair compensation for a particular sacrifice. Indeed, at the heart of the approach is the exploitation of *any* "...differences among negotiating parties---in what they have and under what conditions they have it, in what they want and when they want it, in what they think is likely and unlikely, in what they are capable of doing, and so forth" (Lax&Sebenius, 1986:105). These differences may concern interests; priorities among issues, possessions (resources), and capabilities (skills); attitudes toward the passage of time and risk-taking; and expectations or beliefs, including probability assessments (Lax&Sebenius, 1986; Raiffa, 1982; Fisher&Ury, 1981).

It is an intriguing proposition that specifically *divergent concepts of fairness,* like other differences between parties, *could provide terms of trade and facilitate agreement* in predominantly integrative negotiations. This idea has only been alluded to before (Sebenius, 1984; Lax&Sebenius, 1986). It will be discussed and exemplied below in the context of integrative procedures, but deserves much more development and testing on actual cases. For now we only mention in passing one case in which the terms of trade, or a larger formula, for an agreement incorporated more than one notion of fairness, and indeed divergent concepts of fairness, which increased joint gains. This is the case of the Montreal Protocol on Substances That Deplete the Ozone Layer. For the developing countries, a fair solution must not penalize them for a problem caused essentially by the industrialized world. Indeed, at the heart of their notion of a fair agreement was the principle of need--of compensating them through technical and financial assistance and other special provisions for accepting regulation of emissions which, foremost among the costs involved, could hamper their development. At the core of the North's notion of fairness was equity--expressed in the proposed reductions in emissions proportionally to each country's current level, and the foreseen final regime accepting and preserving the North's much higher emission levels and keeping those of the South low.

Thus, parties do not enter integrative negotiations with fixed positions or detailed notions of a desirable outcome which, in the distributive version, so often provide from the outset a salient solution at which to aim. Indeed, it is *the absence (real or perceived) of a single, salient solution viewed as fair* which motivate parties to engage in integrative negotiations in the first place. This *makes the task of jointly determining what fairness norm(s) are to underlie*

an agreement part of the negotiations themselves--and sometimes a significant part. Even if parties initially have some tentative concepts of what a fair outcome should look like, these notions are modified and sharpened in the process of reframing the problem and exploring new options.

As noted by Schelling (1960:69), the "obvious" or salient outcome, including the fairness notion(s) on which it is based, depends greatly on how the problem is formulated, and what precedents and norms that definition brings to mind. In distributive negotiations, the problem is already defined by the time formal talks get under way. By contrast, redefinitions and reformulations of the problem are at the core of integrative bargaining, which give rise to new sets of possible trades, new prominent alternatives, and new definitions or measurements of fairness which cannot be predicted beforehand.

The terms of trade, and the particular fairness notion(s) they are to incorporate, are often at the core of negotiations over a larger formula to define the problem and the guidelines for its solution. This has been the case in many Middle East and environmental negotiations (see Zartman&Berman, 1982; Zartman, 1992). The formula agreed upon then serves at once as a mechanism for arriving at an agreement, and as a framework for the substance of a fair solution. In addition, by virtue of reconciling divergent interests and providing criteria of fairness, the formula is a procedure for both increasing joint gains and allocating them fairly. The formula may incorporate a joint notion of outcome fairness (e.g., equity, equality, or need), a combination of or compromise between different fairness principles, or even divergent principles which then provide the terms of trade.[3]

Fairness issues also enter into the process when the general terms of trade agreed upon are to be practiced or implemented in detail. Thus, each party asks itself for each element of the accord: Is this a fair interpretation of the terms? Is the substance of the concessions I am demanded to make fair considering the outcome we have in mind? This is the "detail phase" foreseen in the formula-detail model (Zartman&Berman, 1982). More generally, one may view this phase as concerned with allocating between parties the joint gains created in the inventing, or formula, phase. *Each party will ask itself if, based on its own evaluations of*

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[3] A common and important element of a formula is fairness. However, a formula also needs to be realistic, effective or relevant, comprehensive, verifiable, and so forth. In some cases a formula can be accepted and successfully implemented without incorporating any fairness principle(s) or on grounds other than fairness--for example, because the political or other costs of non-agreement are very high (Spector, 1992).

the resources, it receives a "fair share" of the jointly created benefits. At this last stage of the negotiations, the terms of trade serve as a *coordinator of expectations and concessions,* as notions of outcome fairness do in the distributive approach. However, the core of integrative negotiations remains the elaboration of these terms in the first place.

4.2.3 Why Be Concerned with Fairnes Issues in Integrative Negotiations?

If we accept the proposition that fairness issues are as important, although different in nature and less manifest, in integrative negotiation, we may still question the worth of learning more about the theory and practice of the integrative approach in the first place.

Many analysts have stressed the relevance of the distributive approach in describing the concession-making that occurs in, for example, labor-management negotiations over work hours and wages, and in international disarmament talks (Walton&McKersie, 1965; Jensen, 1963)--that is, over divisible resources. Clearly, in some disputes only distributive tactics may be possible--for example, if they involve a single issue with no possibility of linking it to others or breaking it into sub-issues. Further, compared to the integrative approach, distributive negotiation typically involves lower costs--for example, in the form of effort, time, and risks regarding the sharing of information about true interests and priorities. Therefore, in conflicts involving high time costs, divisible resources, little trust, and/or poor communication between parties, a distributive approach may be preferable and may even yield a Pareto-optimal solution maximizing joint gains.

Yet more mutually satisfactory and stable agreements tend to result when parties move from distributive to integrative negotiations, as noted by several scholars (e.g., Pruitt, 1981; Pruitt &Rubin, 1986; Zartman, 1991). Particularly under any or a combination of the following conditions, integrative negotiation is more likely to result in an agreement, and in an agreement of high joint benefit: Highly valued resources (or burdens) are involved which cannot be compromised, or cannot be distributed easily or at all between parties, as is the case in many environmental and ethnic disputes (Albin, 1991; Burton, 1986; Azar, 1983); time costs are relatively low and aspirations high, and the conflict is long-lived and deeply rooted (e.g., Pruitt&Lewis, 1975); the necessary will and skill exist to use integrative techniques, including a preparedness to reveal any required information about interests and priorites; and parties value or expect to depend on cooperative interaction with each other in the future--integrative negotiation tends to reduce the sense of conflicting interests, and strengthen parties' relationship (Ben-Yoav&Pruitt, 1984).

The research literature has applied integrative analysis chiefly to disputes in the areas of *labor-management, business, and public administration* (e.g., Follett, 1942; Walton& McKersie, 1965; Lax&Sebenius, 1986; Susskind&Cruikshank, 1987), and *interpersonal and family conflicts* (e.g., Mnookin&Kornhauser, 1979; Pruitt&Rubin, 1986). These are areas in which parties are already bonded in long-term, valued relationships, and thus have incentives to accept the extra efforts and other costs involved in integrative negotiations until the process (if successful) has started to pay off. A small body of work has begun to apply the approach to *international and transnational conflicts* --e.g., ethnic, environmental, and economic disputes in which parties depend on each other for achieving recognition, dealing with environmental pollution, and receiving essential commercial goods (Sebenius, 1984; Zartman, 1986; Raiffa, 1982; Burton, 1984, 1986; Azar, 1986).

Nevertheless, the study and practice of integrative bargaining in the international sphere remain neglected. There is no body of knowledge comparable to the experimental and empirical research completed on conditions, processes, and tactics relevant to the creation of integrative solutions in interpersonal and business-related conflicts (see particularly Pruitt, 1981; Pruitt&Lewis, 1975; Walton&McKersie, 1965; Froman&Cohen, 1970; Ben-Yoav&Pruitt, 1984). The absence or existence of integrative potential has tended to be viewed as inherent (unchangeable) in a particular situation--notably in the nature and number of items under contention, the compatibility or opposition of parties' objectives and their orientation or attitude toward the negotiation, and the availability of information. Thus distributive bargaining has been described as the natural course resulting from a win-lose orientation in parties, lack of information about genuine needs, "issues" rather than "problems" being on the agenda, and a fixed-sum payoff structure (Walton&McKersie, 1965). In this vein, mistrust, lack of problem-solving attitudes or skills, large and cumbersome delegations, and states' continuous efforts to become less dependent on each other, even at considerable cost, provide some explanations for which integrative negotiation is not practiced more internationally.

A number of recent studies have stress how distributive situations can be transformed into integrative ones to enhance the prospects of successful negotiations, including in the international arena. Methods drawing on concepts of exchange, resource expansion, and confidence building are described to demonstrate how redefinitions of issues and/or changes in attitudes necessary for such transitions can be brought about, including with the help of third parties (Touval&Zartman, 1985; Susskind&Cruikshank, 1987; Zartman&Berman, 1982; Fisher&Ury, 1981). Here, the virtues of the options under consideration, more than any innate

properties of the parties or interests involved, determine the extent to which a situation is zero-sum or positive-sum. The fundamental message is that many situations carry more integrative potential than may be immediately apparent or commonly assumed. This is particularly true for many international negotiations in view of the complexity, large number, and maneuverability of the issues involved (e.g., Sebenius, 1984).[4]

Fairness issues figure prominently in environmental, ethnic, and other transnational disputes, the management and resolution of which will depend extensively on successful negotiation in the coming years. In most of these disputes, parties will not enter negotiations with a joint, salient notion of outcome fairness which can guide them to a solution through the exchange of incremental concessions. Rather, these are conflicts in which parties are bound to remain entrenched in divergent notions of fairness--and in which attempts to produce a common notion of fairness, to strike a compromise between competing norms, or to reach agreement without basing it on fairness principles may prove futile. Successful negotiation in many of these cases may depend largely on the use of integrative techniques: on redefining the problem and/or constructing formulas which balance divergent fairness principles and thus accept or even exploit differences.

Herein lies the significance of further developing the integrative approach, examining more thoroughly how fairness issues figure into that approach, and researching how elements of it can be practiced more deliberately and more widely in international negotiation.

5. PROCEDURAL FAIRNESS

This type of fairness concerns the specific mechanisms used for arriving at an agreement.[5] Being employed in the negotiation process and directly influencing its dynamics, these procedures could be viewed as raising a subset of process fairness issues rather than separate ones. The essential and useful distinction is that procedural fairness concerns the features of

[4] When lack of trust or other factors inhibit parties from sharing information about needs and priorities, integrative outcomes can still be achieved--e.g., through resource expansion, compensation provided by a conceding party itself, linkage of issues, and the use of "trial-and-error" approaches in choosing among known integrative alternatives (see Pruitt&Rubin, 1986 and Pruitt&Lewis, 1975).

[5] This is a more narrow definition than that typically found in the literature, which uses the terms "procedural" and "process" fairness interchangeably to refer to the (perceived) fairness of the negotiating process generally (including, for example, whether concessions are reciprocated and whether every party has a voice in the process).

the mechanisms themselves, while process fairness (also) refers to the larger issues already discussed, such as how parties actually use these mechanisms (e.g., if in good faith without bluffing) and the substance of their respective concessions.

Procedures are considered fair by virtue of some intrinsic value (e.g., they give parties an equal chance to "win" or demand equal concessions from parties), by virtue of tending to produce fair outcomes, or by both. They may be more diffuse and difficult to observe, such as reciprocation, or more clearly defined and manifest, such as tossing a coin and divide-and-choose. In some cases procedures have been determined prior to the talks, and can be considered part of the established "rules of the game" and the overall structure of the negotiations. For example, the reciprocity norm is incorporated in the General Agreement on Tariffs and Trade (GATT), which provides much of the structure for negotiations over trade liberalization. It permits protectionist measures (e.g., countervailing import duties) against countries which subsidize their exports or engage in other trade practices deemed unfair. Further, in such trade negotiations an explicit rule is that a cut in the import tariffs of any one country (increasing its imports) should be balanced fairly with equivalent foreign tariff cuts, allowing for a roughly equal increase in its exports (Lindert&Kindleberger, 1982).

In this section we distinguish between two categories of procedures: distributive procedures and integrative procedures. The nature and role of the two types of mechanisms are quite divergent. Yet in many negotiations, and particularly in complex ones involving multiple issues and parties, procedures of both kinds are used.[6]

5.1 Distributive Procedures

5.1.1 Reciprocity

As suggested in the earlier discussion of the nature and purpose of distributive negotiations, many procedures are mechanisms governing the exchange of concessions to arrive at a division of a limited bundle of goods. A major category of distributive procedures are variations of the principle of reciprocity; that is, mutual responsiveness to the other's concessions or position (e.g., Cross, 1978; Walton&McKersie, 1965). Many procedures based on reciprocity tend to be used when parties view themselves as equal in power, recognize a

[6] An example is the Law of the Sea negotiations (see Sebenius, 1984).

mutually prominent solution to their dispute, and/or specifically foresee an agreement based on equality.

These include *equal concessions,* whereby parties exchange comparable concessions in reference to their initial positions (e.g., Bartos, 1978); *equal sacrifices,* whereby parties make concessions causing them to suffer equally from their respective (subjective) points of view (Pruitt, 1981, 1972; Kelley, Beckman&Fisher, 1967); and *matching or tit-for-tat,* whereby each party responds to the other's last move by matching it in substance and scope, thus responding to toughness or softness with the same amount and kind of toughness or softness (Pruitt, 1981). According to the procedure *responsiveness to trend,* each party makes concessions based on its evaluation of a series of moves by the other side (Snyder&Diesing, 1977), whereas in the case of *comparative responsiveness* each party acts based on a comparison of its own and the other's tendencies to concede (Druckman& Bonoma, 1976; Druckman&Harris, 1990). In the case of *asymmetrical concessions,* a presumably weaker party responds to a stronger party's concessions with relatively larger concessions.

Studies based on laboratory experiments with individuals demonstrate that these procedures--the equal concessions norm in particular (e.g., Benton&Druckman, 1973)--are common patterns of concession-making in negotiation. In a study unusual in evaluating models of reciprocity in six actual cases of international negotiations--five arms control talks and one base rights negotiation--the comparative responsiveness norm corresponded best to parties' moves (Druckman&Harris, 1990). More generally, these studies contribute further evidence that negotiators have a strong desire for fairness in the negotiation process.

Reciprocity procedures are commonly perceived as fair because their use is expected to lead to a particular, preconceived outcome viewed as fair. For example, experimental findings show that when a split-the-difference agreement (based on initial positions) is foreseen, the procedure of exchanging equal concessions tends to be used. But even in the absence of agreement on a particular outcome, *the reciprocity norm is widely regarded as intrinsically fair* (e.g., Iklé, 1964; Zartman, 1991; Gouldner, 1960)--and even as "one of the universal 'principal components' of moral codes" (Gouldner, 1960). *Yet, it is not necessarily the impartial procedure it is so often portrayed to be.* This is particularly true about reciprocity interpreted as equality, which thus demands equal concessions (sacrifices) from parties. As noted earlier, the exchange of equal concessions will lead to a fair (equal-split) outcome only when parties' initial positions are equally far from their respective security points, and the problem of "partisan biases" is avoided.

5.1.2 'Fair-Chance' Procedures

Another major category of distributive procedures could be termed "fair-chance" procedures: They grant parties a supposedly fair (and often, but not always, equal) chance to "win" the negotiation--that is, to get all or a good part of the disputed resource, or be relieved of it in the case of a burden. In contrast to unstructured negotiations, these procedures are typically games with clearly defined rules, highly codified interaction, and a fixed set of possible, known outcomes.[7] They do not involve negotiation in the sense that concessions are being exchanged or divergent interests reconciled: The outcome will typically consist of a winner and a loser as in, for example, arbitration procedures. After the fact, even if recognizing that its chance to win was fair, the losing party will rarely feel that the outcome is fair. Thus an implementation of the outcome will often depend on enforcement mechanisms.

These relatively mechanical, straightforward procedures would often be used when there is no salient, fair solution and parties cannot agree on the nature of a fair solution; when the situation is too complex to determine what a fair agreement would be (e.g., Hopmann, 1991); when a solution is needed quickly; and/or when the stakes are relatively low (i.e., it is not worth using a complex, time-consuming procedure). They are also recommended and actually used when the stakes are so high that full-fledged bargaining and negotiation would seem inappropriate or unethical, or involve too many pressures and pain; when the greater ambiguity and manipulability of most other procedures are to be avoided; and when no outcome can be quite fair no matter how sophisticated and successful the negotiation (e.g., the allocation of a mission involving very high risks of death).

Some procedures are *random methods*--e.g., tossing a die, flipping a coin, or arranging a lottery. They usually reflect fairness understood specifically as equality: Initial equal entitlements to the resources and no (or equal) information about the other's evaluations are assumed, and parties are given an equal chance to win. However, in using some of the methods the odds of winning can be construed to reflect divergent initial rights and other fairness norms--such as proportionality and need.

While perhaps appearing at first as too simple and crude to apply but to more trivial disputes, they are recommended and actually used in a range of significant political and social contexts

[7] See further Brams (1990), Prasnikar&Roth (1992), and Raiffa (1982) regarding game theoretical notions of fair procedures and propositions regarding the role of fairness in negotiations.

involving conflict of interests (see Elster, 1989). Indeed, random procedures are often viewed as fair when "...the outcome is either of very *small* or very *great* importance to the recipients" (Eckhoff, 1974, as quoted in Elster, 1989) and/or the disputed items, whether a desired resource or a burden (e.g., high risks), are indivisible. As a means to ensure fairness with regard to risk sharing and the siting of hazardous waste storage facilities, for example, lottery systems have been recommended to decide which sites among qualified candidates are to be exempted from further consideration (Kasperson, Derr&Kates, 1983). Lotteries are further used for distributing dangerous tasks in, for example, the military. Serious arguments have been advanced for employing lotteries or tossing a coin to settle indeterminate child-custody disputes fairly, to avoid the emotional harm to children of lengthy litigation and negotiation (Elster, 1989).

In cases of divergent evaluations and unequal initial entitlements to the resources, random procedures are often inefficient in letting parties end up with what they value the most or with something that roughly corresponds to their initial entitlements. Nor do such winner-takes-all solutions foster long-term, good relations between parties, particularly not when they value the goods highly. Raiffa (1982) notes, however, that randomization can be used to establish initial ownership, and then be followed by bargaining which may reduce or even eliminate such negative side effects.

Another procedure is to arrange an *auction* to determine which party values the disputed resources the most (see Young, 1992). The resources would be given to the highest bidder, with the possibility of compensating the other party in some form. While perhaps appearing at first as a dynamic translation of the principle of equity (proportionality), the procedure is not always a good means to compare parties' evaluations. Uneven knowledge between parties of their respective values opens the possibility of strategic bidding. Further, auctions really measure both the ability and willingness to pay. Thus the procedure cannot assess fairly the worth attached to a particular good when parties differ in their capacity to pay what they are actually willing to pay. Yet a type of auction procedure has been used successfully in the siting of hazardous waste facilities among volunteer communities: Interested neighborhoods have bidded against each other, based on their respective arguments and proposals for "fair" compensation packages for hosting a facility (Susskind, 1990).

Still another procedure is *divide-and-choose*. It refers to the old custom of how to deal with two children fighting over a cake (or some other divisible good) which they both want. They agree (or their parents decide) that they will divide it by having one of them cut the cake, and

then letting the other choose the first piece. Thus the child cutting the cake will be induced to do so fairly, otherwise the other child will choose the larger piece. This mechanism was used successfully in the complex Law of the Sea negotiations to determine the allocation of mining sites in the deep seabed (Fisher&Ury, 1981; Sebenius, 1984).

The procedure normally assumes that the resources at stake are perfectly divisible and similarly valued; or, if valued differently, that parties have no information about each other's preferences. If valuations are divergent and the party doing the cutting knows the other's preferences (and acts rationally to maximize self-interests), it will often be able to divide in a way that gives itself the larger share: The divider creates one part which the chooser values just slightly more than the other part, which the divider values much more and thus assures for itself.[8] Like other distributive procedures, divide-and-choose may solve the problem of fair division, and it could also be a means to achieve the state of "superfairness" discussed below. However, it does not by itself (other than by chance) exploit any differences in parties' preferences to their mutual benefit, in the sense of giving them the shares they value the most.

A suggested variation on the divide-and-choose procedure is to have parties negotiate a division arrangement before knowing or deciding which part or role each will have (e.g., Fisher&Ury, 1981)--a notion of procedural fairness which goes back to Rawls (1971). It is inadequate in measuring interests and particularly divergences among interests, and will often fail to produce a satisfactory solution of high joint gains in the many instances in which parties value things differently. The so-called theory of intergenerational equity endorses it as a tool for determining the rights and obligations of current vs. future generations in the environmental area (Weiss, 1989). Yet it does not account for the fact that the value which future generations will place on important resources may not be the same as the worth they have to current generations, due to technological developments (Harvard Law Review, 1991).

One type of negotiation for which this variant of divide-and-choose is recommended is divorce negotiations. In divorce cases, parents' preferences regarding the trade-offs between child-rearing responsibilities and money-related issues vary frequently so as to permit mutually beneficial linkages. Thus, no parent may be ready to trade child custody for visitation rights alone; nor will any parent normally give up custody opportunities fully or below a minimum

[8] There are ways to neutralize the advantages of being the divider and thus make the procedure as a whole fairer (see Young, 1991b). Divide-and-choose could also be used to allocate indivisible goods, if a sufficient amount of divisible resources are added (see Crawford& Heller, 1979).

level for *anything*. However, as long as enjoying "enough" custody or the particular custody tasks he or she values the most, one parent will often be ready to exchange *some* custodial responsibilities for concessions on other issues in the divorce settlement--e.g. matters of alimony, marital property, and child support (Mnookin&Kornhauser, 1979; Mnookin, 1985). Such integrative solutions not only increase parents' gains from agreement; they also greatly benefit the children involved. Unlike fair-chance procedures which are not followed by negotiation, they also give parties a self-interest in honoring the agreement and thus depend less on enforcement mechanisms.

In combination with an "additive scoring system" accounting for divergent preferences, however, the divide-and-chose procedure may yield solutions which not only are fair but also give *each* party more than half of the original value of the cake. This is shown by Hopmann (1991) with regard to multi-issue international negotiations such as arms reduction talks.

5.2 Integrative Procedures

The previous discussion has already touched upon some procedures used in predominantly integrative negotiations. The fairness issues raised by these procedures, as by the integrative approach generally, are by nature subtle and difficult to define precisely. Yet there are two basic reasons for which many integrative procedures can be called and viewed as fair. First, they have an intrinstic value of fairness in seeking to elicit balanced and truthful information about core concerns underlying parties' stated demands and positions, and/or in identifying new options which can better meet all parties' essential concerns. Second, when used successfully, integrative procedures tend to produce outcomes viewed as fair by virtue of satisfying the vital interests of both (all) sides, although parties do not necessarily gain to the same extent from the agreement.

A classic work on negotiation stresses how the criteria whereby negotiators evaluate what demands are "reasonable," what kinds of trades are "equitable," and what compromises are "fair" are but perceptions and beliefs which are "continually modified by the bargaining process.---[I]t is the negotiation that develops and changes them" (Iklé, 1964:167). In many, if not most, conflicts and negotiations, parties' stated principles of fairness are opposing and apparently irreconcilable. Integrative procedures purposefully aim at making parties reframe their definition of the conflict--including their notions of the fairness issues at stake--in a way that it becomes conducive to a mutually acceptable and gainful solution. In this sense, parties' notions of fairness become an integral, and often central, part of the negotiations themselves.

Research to date has developed essentially two groups of integrative procedures. Very few procedures in either category are designed to address fairness issues specifically, but they are clearly applicable and constructive in this regard. The first group consists of more or less structured approaches for improving communication and trust between parties, changing their zero-sum perceptions of each other's objectives and the nature of their conflict, and building confidence in the possibility of finding mutually satisfactory solutions. Examples are "controlled communication" (Burton, 1969) and "problem-solving workshops" (e.g., Burton, 1986; Doob, 1970; Kelman, 1972, 1987), "diagnosis" and the creation or identification of "ripe moments" (Zartman&Berman, 1982; Zartman, 1986, 1989), and the development of "superordinate goals" and "functional cooperation" (Sherif, 1958).

The second group consists of specific techniques for reframing conflict situations and creating new, integrative solutions. They include "expanding the pie" (Pruitt&Rubin, 1986; Pruitt, 1981; Walton& McKersie, 1965), that is, adding more of the same goods that are disputed in conflicts derived from resource shortage; "logrolling" or linkage of issues (Pruitt&Rubin, 1986; Pruitt, 1981; Sebenius, 1984); "functional strategies" (Albin, 1991); "dovetailing" (Fisher&Ury, 1981); "trial-and-error"approaches and formula construction (Zartman&Berman, 1982; Zartman, 1992); "mutual responsiveness" whereby the solution to a problem favors the party whose needs are most strongly felt or affected by it (Pruitt, 1981); and cost cutting and other forms of compensation, related and unrelated (Pruitt&Rubin, 1986; Pruitt, 1981).[9]

What can be done when parties remain deeply committed to opposing, apparently irreconcilable notions of a fair solution? How can such fairness notions be negotiated? These are key questions which have received virtually no attention in the research literature. Therefore the applicability of one particular integrative approach is examined here in more

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[9] Raiffa (1985) gives an example of how compensation can be used as an integrative strategy in negotiations over the siting of hazardous waste facilities--particularly to deal with the unfair concentration of risks and costs imposed on host communities compared to the widespread distribution of the benefits involved: When already very high safety standards exist for the facilities, compensation in the form of improving the communities' health and safety conditions in other areas will often leave them far better off in net health and safety, and at a lower cost for society at large, than attempting to increase the safety precautions regarding the facilities even more at an exorbitant expense.

detail.[10] It is specifically designed to include ethnic conflicts, in which fairness issues are ultimately linked to fundamental human needs, but it also applies to purely interest-based disputes. For illustration we will refer to the Israeli-Palestinian dispute over Jerusalem--a microcosm of an ethnic conflict which like few others illustrates the challenges of dealing with divergent fairness notions and constructing solutions viewed as fair in negotiations.

5.2.1 Case Study: Positions-Interests-Needs Analysis and Integrative Techniques[11]

One integrative method urges parties to begin by analyzing their stakes in the conflict at different levels of importance: *positions*, *interests*, and *needs* (Albin, 1990).[12] From the positions on the "surface" and the interests they incorporate, to the psychological needs at the foundation of the structure, these can be viewed as a hierarchy of stakes in a conflict which include notions of fairness at different levels or "depths."

Positions are the set of official demands which parties in conflict bring to the negotiating table. They include stances on the nature of a fair solution--the partial or substantive notions of fairness by which most negotiations begin (Zartman&Berman, 1982:103), and which in predominantly distributive negotiations set the parameters or even determine the subsequent give-and-take. Positions are claims which include important interests and vital needs, as well as high aspirations, bargaining chips, and items aimed at influencing and garnering support from constituencies at home and on the other side. They rarely reveal what are fundamental concerns or priorities, as distinct from what parties hope to get under the best of circumstances. Indeed, conventional wisdom holds that good negotiators adopt rigid positions which remain ambiguous regarding what items can be compromised, at least until a negotiation process is well under way.

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[10] We will recall that in the context of integration, "negotiation" refers to redefining and combining fundamental concerns to bring about more stable and gainful solutions. It stands in contrast to distributive negotiations, in which concessions are exchanged and compromises made based on stated positions.

[11] The following discussion draws on Albin (1990).

[12] "Positions" have been distinguished from "interests" previously by Fisher&Ury (1981), and "interests" from underlying interests or "needs" by Pruitt (1981), Pruitt&Rubin (1986), and Burton (1984). See also Rothman (1991).

Ultimately motivating the positions and the fairness notions they incorporate are basic human *needs*--e.g., identity, security, recognition, and control (Burton, 1984, 1986; Azar, 1983, 1986) and/or social and cultural *values*. The fulfillment of such concerns is typically viewed as impossible to compromise. On the other hand, these intangibles may be possible to meet in a number of ways, and the fulfillment of one party's needs or values does not have to impede upon, but may even enhance, that of another. Yet, parties in conflict typically view their needs as mutually exclusive and rule out the option of negotiation--a zero-sum perception which is at the root of many current ethnic conflicts in the Middle East, Southeast Asia, and Europe.

Between positions and needs are *interests* which parties seek to achieve or preserve; for example, self-determination and control over territory, use of vital resources, maintenance of political stability, demographic superiority, economic development, and strategic strength. Sometimes interests are pursued as an end in themselves. In deeply rooted (e.g., ethnic) conflicts, by contrast, interests become viewed as institutional options or methods for serving the needs which ultimately underlie the dispute. Yet at this level, ethnic disputes often appear merely as conflicts over the fair distribution of tangible physical resources, such as land and economic assets.

Below is an example of how a positions-interests-needs framework can be applied to mainstream Palestinian and Israeli claims and concerns regarding Jerusalem. *Moving up the hierarcy toward the positions, notions of fairness* and other stakes in the conflict *become more institutional-political and tangible, rigid, and often too exclusive to serve as the basis for a negotiated agreement. By contrast, moving down the hierarchy toward the needs, concepts of fairness and other concerns become more psychological and abstract, and more flexible as to how they can be fulfilled.* Thus, at the level of interests, and even more at the level of needs, there is more room to create fairness.

The analysis positions, interests, and needs permits the use of a range of integrative techniques for combining fundamental concerns in a conflict, including apparently opposing fairness notions; elaborating new alternatives for a solution; and evaluating the extent to which these

THE CONFLICT OVER JERUSALEM

ISRAELI		PALESTINIAN
	POSITIONS	
Yerushalayim (all of Jerusalem) is the eternal capital of Israel		*Al-Quds* (East Jerusalem) is the capital of the Palestinian state
	INTERESTS	
Maintain self-determination		Achieve self-determination (including in Arab/East Jerusalem)
Keep the city physically united		
Keep sovereignty over, secure free access to Jewish holy sites		Gain sovereignty and secure total freedom of access to and worship at Muslim and Christian holy sites
Preserve (enhance) Jewish character of Jerusalem, including maintaining/ increasing its Jewish majority		Prevent further (gain political control over/dismantle) Jewish settlements in East Jerusalem
Ensure security, control over, expand Jewish neighborhoods in and around East Jerusalem		Preserve Arab character of Jerusalem: Bolster Arab institutions, maintain/ increase size of city's Arab population
Ensure order, safety, freedom of movement and residence, and maintain sense of normalcy, in entire city		Keep city divided along 1967 Green Line to protest status quo; undivided in the context of negotiated settlement
Attract and facilitate absorption of new immigrants		Ensure right of return for all Palestinians, including to Jerusalem
Promote cultural autonomy and co-existence under Israeli sovereignty		Promote coexistence and cooperation between Israeli and Palestinian residents of the city only in context of negotiated solution involving divided or shared sovereignty
Increase tourism		
Secure international recognition of city as Israel's capital		Secure international recognition of city as dual, binational capital
	NEEDS	
Security,Identity Control, Recognition		Recognition,Control Equality, Identity

FIGURE: An application of a positions-interests-needs framework to Palestinian and Israeli claims and concerns regarding Jerusalem. (From Albin, 1990:12-13.)

address identified concerns. Albin (1990, 1991, forthcoming) identifies three types of such integrative strategies:[13]

Through *resource expansion* techniques, parties enlarge the amount of existing resources (e.g., expand the borders of Jerusalem to facilitate the creation of dual municipalities and/or capitals in the city); add new kinds of resources (e.g., offers of economic aid to elicit concessions); or expand the usage of existing resources (e.g., redefine concepts of sovereignty, capital, and statehood to facilitate reconciliation of competing claims to the same city). *Exchange* strategies, which include various forms of compensation and linkage of issues, permit parties to trade concessions based on differences in evaluations and priorities among interests (e.g., Palestinian acceptance of Israeli control over the Jewish settlements in East Jerusalem in exchange for a right to build a corresponding number of Palestinian neighborhoods on the Western side of an enlarged Jerusalem). *Functional* strategies focus on how interests which are too similarly and highly valued to be exchanged may be integrated through arrangements involving sharing, division, or delegation (e.g., of sovereign or municipal functions, or of access to valued resources).

In applying this approach, parties would in an informal, private, and nonbinding context share information and detailed explanations regarding interests and needs underpinning their official stances in the conflict. By defining a number of concerns which are much less exclusive than the positions they underlie, and which are often either shared or valued and prioritized differently, parties obtain more and more compatible pieces to work with. Through the use of resource expansion, exchanges, and functional options parties jointly design new possibilities for more integrative solutions.

This analysis is directly applicable to the common situation in which parties cannot make progress in a negotiation, or will not come to the negotiating table at all, because they are entrenched in apparently opposing and irreconcilable positions regarding what a "fair" solution would be. In the Jerusalem conflict, Israel's deeply held notion of a fair solution at the positional level is based on *equity* (proportionality)[14]: The sovereignty over all of Jerusalem, Israel's eternal capital, must remain in its sole hands, but there is room for municipal powers and greater administrative-cultural autonomy for the city's substantial

[13] These concepts and strategies have been used in a model for pre-negotiation in ethnic conflict, as described in Rothman's work (e.g., Rothman, 1991).

[14] See the discussion of this principle in later section.

Palestinian minority. Concerns about keeping the city united, with guaranteed free access to the holy sites, and safeguarding the Jewish presence in the city overall, are important underlying motivations. The perceived fairness of this position is greatly reinforced, if not determined, by two factors: the experience of the 1948-1967 period, when divided sovereignty entailed a physically divided city in which Jews were denied access to the eastern part (under Jordanian rule) and many of their holy sites there were desecrated or destroyed; and the notion that Jerusalem is by far most important to the Jewish people, as their historical and only spiritual and political center, whereas Arabs and Muslims have two other holy cities in Mecca and Medina and an array of political capitals throughout the region.

The Palestinian mainstream notion of a fair solution, as strongly felt, is based on absolute *equality* between the two sides and their claims to the city. Because Jerusalem is as important historically, politically, and spiritually to Palestinians and Arabs as it is to Israelis, the sovereignty of the city should be divided between East Jerusalem as the capital of a Palestinian state and West Jerusalem as Israel's capital. The most immediate motivating concerns on the Palestinian side are the achievement of self-determination, complete control over the Muslim and Christian holy sites, and preservation of the Arab presence in and character of the city.

Evidently, these notions of a fair solution are very far apart; they are viewed as irreconcilable because "splitting the difference" between the competing notions would require too costly concessions for both sides. However, an application of the discussed integrative techniques to key interests underlying these notions could give rise to a range of new, more integrative options. At once exploiting the fact that some concerns motivating the Israeli and Palestinian fairness notions are differently prioritized and valued (see chart), and recognizing the many shared interests involved (e.g., concerns about self-determination, control over and access to the holy sites, preservation of the Jewish and Arab character of Jerusalem), these options could, in effect, redefine and meet central concerns about fairness on both sides.

For example, at the center of the Palestinain notion is the claim to the right of independent political control per se and a secured existence in Jerusalem, while concessions on issues such as exact borders, the unity of the city, and freedom of movement within it are viewed as much less costly. At the core of the Israeli fairness stance is the concern about maintaining self-determination, and securing the unity of and freedom of access within Jerusalem (particularly to the Jewish areas, including the holy sites). Thus one could foresee arrangements--elaborated in a few recent plans for Jerusalem--whereby Israel agrees to some form of

Palestinian "supra-autonomy" or limited sovereign rule over densely populated Arab areas of the city, in exchange for a Palestinian commitment to restoring and maintaining its physical and functional unity.

More specifically, in exchange for a Palestinian mini-state in the West Bank and Gaza, with sovereignty over the Arab areas of East Jerusalem and the right to build new neighborhoods on the western side of an expanded municipal area, Palestinians may accept Israeli rule over West Jerusalem and the Jewish settlements in the eastern part, and an expansion of the municipal border into today's West Bank. Functionally, municipal powers and services could be at once shared, within a joint supra-municipal body ruling a Greater Jerusalem; and divided, between Arab and Israeli municipalities in the city. An additional objective would be to expand the municipal borders, and control new settlement in the city, in such a way that the size of the Palestinian population increases and reaches parity with that of the Israeli population, thus eliminating the historical struggle over Jerusalem by demographic means. At the same time, because of the expanded city boundaries, Israel would exercise sovereignty over at least as much territory as it does today within the current borders (Albin, forthcoming; Albin, Amirav& Siniora, forthcoming). Such a scheme would in effect integrate elements of the principles of equality, equity, and compensatory justice, and be quite distinct from a solution which simply "splits the difference" or strikes a compromise between competing fairness principles.[15]

In sum, a positions-interests-needs analysis and integrative strategies can help parties overcome intransigent stances on fairness, and lead to solutions viewed as fair by both. *The approach calls for parties to move from insisting on their respective narrow definitions of the conflict, and their narrow concepts of a "fair" solution, to examining more fundamental concerns and broader principles underlying these.* In exploring new ways of meeting the concerns and principles, these are redefined or reinterpreted, and the fairness arguments at the positional level changed. As shown in the case of Jerusalem, divergent fairness notions consist of concerns which can provide terms of trade and facilitate agreement.

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[15] An example of an outcome of the latter type would involve Israeli sovereignty and municipal powers over West Jerusalem and the Jewish areas of East Jerusalem, and Palestinian sovereign and municipal powers over the Arab areas of East Jerusalem. A solution of this nature would indeed compromise many of the concerns underlying both the Israeli and Palestinian notions of a fair solution, and is far less likely to win the support of either side.

Overall, as in most integrative approaches, fairness notions become a part, and often a central part, of the negotiations themselves.

6. OUTCOME FAIRNESS

This term refers to two major issues:

--the fairness principle(s) underlying the allocation (exchange or division) of benefits and/or burdens in a negotiated agreement, whether predominantly integrative or distributive;

and, at least as importantly,

--the extent to which the agreement is considered fair expost in actually fulfilling the expectations about the allocation of gains and costs which parties harbored at its conclusion.

6.1 Fairness Principles Underlying Negotiated Agreements

The first issue, unlike the many aspects of fairness discussed so far, has been the focus of considerable research, social-psychological and experimental in particular, in a broader context. This research has examined principles of fairness regarding the distribution of resources at the societal and interpersonal levels in general, termed "distributive justice" (e.g., Deutsch, 1985, 1975). Yet these principles are clearly applicable to negotiations specifically (Deutsch, 1973; Zartman&Berman, 1982:102-109). As there is already a considerable literature available on the subject, different norms of outcome fairness are reviewed relatively briefly here. Illustrative references are made to proposals for managing or resolving ethnic disputes through negotiation--a type of conflict in which outcome (or any) fairness issues have been little studied yet figure so prominently.[16]

Specifically, we focus on three major principles--identified by Deutsch (1975), Leventhal (1976) and Pruitt (1981)--of which many norms of outcome fairness can be considered variations: equity, equality, and need.

6.1.1 Equity

The essence of the equity principle is twofold: Resources (rewards) should be distributed proportionally to relevant contributions (inputs), and fairness is achieved when each party's

[16] For a discussion of the applicability of many of these principles to issues of outcome fairness in radioactive waste management, for example, see Kasperson, ed. (1983), chapter 15, in particular.

ratio of inputs to rewards is the same. Thus injustice is experienced in relation to these ratios rather than others' rewards in absolute terms. Relevant contributions may be either qualities and endowments (e.g., status, power, skills, wealth, intelligence) or actions and efforts (e.g., hours worked, tasks completed, leadership exercised).

Originating in Aristotle's notion of justice as rooted in "balance" and "proportion," the concept was subsequently developed by a number of scholars. Sociologist Homans elaborated a quasi-economic notion, which later became the foundation of "equity theory". According to this notion, fair division is accomplished when net rewards (gains minus costs) are allocated in direct proportion to investments made, so that the ratio of profit to investment is the same for everyone. Rewards are the goods received in an exchange relationship, e.g., money and education, for other goods given up; costs are opportunity costs, i.e., rewards forgone in alternative exchange relationships; and investments are contributions made to the exchange, e.g., time spent, risks taken, and skills contributed (Homans, 1958, 1961). Similar concepts of equity are found in Adams (1965), which explicitly includes negative "rewards" or returns as well (e.g., stress suffered in the completion of a job assignment), and Walster, Walster& Berscheid (1978), which stresses the importance of perceptions (i.e., ultimately equity is established only if and when every party sees that the ratio of net gains to inputs remains constant for everyone).

Two important norms can be viewed as variations of the equity principle: *opportunities,* according to which each party should receive resources proportionally to how well it can use or benefit from them (Pruitt, 1972, 1981), thus equalizing fairness with a form of efficiency; and *the priority principle* according to which the "winner," while determined proportionally (e.g., through a lottery or voting), gets more than a proportional share of the resources.

Equity is by far the most widely discussed principle of justice and fairness in the pertinent literature, and is frequently applied in negotiated agreements. It has even been termed *the* norm of distributive justice (Pruitt, 1972). Yet equity is probably the most ambiguous of all fairness principles, and tends to give rise to an array of conflicting interpretations in any one situation. Not only must the nature of relevant inputs and the means to measure their relative value be agreed upon, but the worth of the resources to be distributed and the proper proportionality between inputs and rewards must also be determined.

The principle of equity as proportionality is at the center of many schemes for alleviating, managing, or resolving ethnic conflicts in the political, economic, and sociocultural spheres. It

is widely recognized as an *obvious standard of fair distribution in ethnic conflict* (Lijphart, 1990), and has been identified as a *key instrument in regulating such conflict* successfully (Nordlinger, 1972). In these schemes, control over and access to valued resources are allocated between different ethnic groups roughly in proportion to their size (number of members). They include the sharing of governmental powers within the same state based on proportional political representation according to fixed ratios or census (as in Lebanon); forms of territorial and cultural autonomy; and quotas for access to educational opportunities, allocation of high offices and other public service appointments, and sharing of public funds based on ethnic criteria. Thus attempts are made to achieve fairness among communal groups in a society, rather than between individuals (Esman, 1973).

Powersharing specifically often has the greatest prospects of producing a fair and effective solution when the ethnic groups are scattered geograpically and an equitable partition of territory and national resources, if at all possible, would involve great costs--i.e., in terms of economic sustainability or the need for extensive population exchanges (Lijphart, 1990).
With regard to autonomy, the equity principle underlies arrangements whereby ethnic minorities are granted cultural-administrative autonomy, or "super-autonomy" which includes some limited sovereign functions, under the overall sovereignty of an ethnic majority. Such arrangements have been proposed for the Palestinian population as a solution to the issue of the Israeli-occupied territories, including East Jerusalem. They are distinct from the so-called "control-model" illustrated by the case of the Arabs within pre-1967 Israel, in which a dominant ethnic majority controls most ruling powers and resources, and grants some, but by no means proportional or equal, benefits to the subordinate ethnic minority (Lustick, 1979; McRae, 1990).

6.1.2 Equality

The principle of equality, also termed "impartial justice," holds that parties should receive the same (comparable) rewards irrespective of their contributions or needs. The norm finds its origins in the Enlightenment and the philosophy of Jean-Jacques Rousseau: Differences among individuals (including in their ability to make contributions, so decisive in equity theory) were regarded as environmental products. The natural and preferred type of human relationships were to be based on equal treatment of all people, and thus the ideal state of nature would return.

The widespread reliance on the equality principle in negotiations is commonly explained in terms of the intrinsic appeal of the norm--the grounds on which the equality rule is applied

tend to be much less questioned than, for example, those of equity--and in terms of its relative lack of ambiguity. Yet in many situations the principle poses the basic problems of determining what exactly is to be treated equally (see Young, 199lb, for further discussion and examples); how it is to be applied to a particular bundle of goods which may not be uniform or divisible; and how to assure that the outcome indeed is one of equality when parties are very unequal in some respect.

Partly in response to these operational problems, a number of specific interpretations of the equality principle have been put forward. A common interpretation of the norm is *equal shares;* that is, a solution which divides resources in equal amounts between parties. Another version is *compromise "in the middle"* or *split-the-difference* in reference to parties' initial positions, yielding a different outcome than equal shares unless opening positions are identical. This is typically the notion of a just solution in distributive models of negotiation, as discussed earlier. A third application of the equality principle is *equal excess,* whereby each party receives resources corresponding to the value of its best alternative to a negotiated agreement, plus half of the remaining resources (Pruitt, 198l; Komorita&Kravitz, l979). In cases in which a burden is to be allocated, the *equal sacrifice* norm holds that parties' concessions should make them suffer equally (Pruitt, 198l). *Subtractive justice* or null-possession solutions, whereby every party to the conflict is denied possession of the disputed resources, could be viewed as a special case of the equal sacrifice principle.

In powersharing arrangements based on proportionality and consensus, an important element of equality is introduced into the system when an ethnic minority can rely on a veto power to protect its essential (or even other) interests against a ruling by the majority. But the ultimate illustration of equality as outcome fairness in ethnic conflict is the division of sovereignty and territory, in the sense that both or all groups achieve statehood, with the control over vital functions and resources that it entails, irrespective of their size or other considerations. Within such a solution--e.g., a federation or confederation--important powers can still be shared on a basis of equality. Of course, the overall division of the land per se and other resources between the groups can still be made according to some other principle (or no fairness criterion at all)--as is the case of many proposed two-state solutions to the Israeli-Palestinian conflict.

6.1.3 Need

A third major principle of outcome fairness is need, also termed compensatory or redistributive justice. It stipulates that resources should be allocated proportionally to the

strength of need alone, so that the least endowed party or parties get(s) the greatest share. In other words, the norm sees no fairness in a preservation of the status quo--the proportional balance between contributions and gains, which rewards the already well-endowed--but regards a solution just only if it contributes to the redistribution of resources and establishment of a new order based on equality. Similarly, according to Rawls (1971) resources--notably important means of achieving welfare, such as liberty, education, and financial resources--should be distributed in a way that the well-being of the weakest or poorest is maximized.

While in practice posing challenges of identifying, measuring, and comparing relevant wants, and determining the extent to which they should be met, the needs principle is often less ambiguous than the equity principle: The range of needs potentially relevant to the disputed goods is usually more limited than the great variety of attributes which could be considered pertinent contributions. Although applied relatively rarely in the international arena, the needs standard formed the basis of the United Nations negotiations on a New Economic Order and the EEC talks on the Common Agricultural Policy.

With respect to ethnic disputes, conventional wisdom holds that economic growth and enhanced economic opportunities make an effective tool of conflict management: The resulting increase in material resources can supposedly satisfy many of the demands for a better life and greater justice at the root of such disputes. More sophisticated analyses have stressed that unregulated economic growth (and decline) tend to reinforce intergroup disparities so typical in ethnic conflict, and that it is rather a wise and conscious *distribution* of economic benefits which can make a difference. Thus one proposed avenue involves (re)distributing assets and opportunities such as wealth, income, and employment disproportionally in favor of the disadvantaged ethnic community. The long-term objective would be to establish intergroup equality and greater harmony. Such schemes of compensatory justice could be effective in alleviating ethnic disputes (at least their economic causes) particularly at an early stage when demands for partition or sharing of central powers are not yet made, or in reinforcing political attempts at dispute resolution and any political agreements reached (Esman, 1990). Since the 1969 ethnic riots in Malaysia, an important cause of which was economic hardship and increased communal disparities, the Malay government has pursued an economic policy of compensatory justice with some success (Stubbs, 1990).

6.1.4 "Superfairness" and Other Principles

Another principle of outcome fairness includes *precedent,* whereby a previous comparable case or decision serves as the rule for determining allocations in the outcome. Thus it encourages parties not to "go below" what has been agreed to date, as in, for example, labor-management negotiations over wages (Lewicki&Litterer, 1985). The norm of *retribution* holds that a party guilty of violating some rule in the past is punished by getting less. An unusual principle which takes into account parties' preferences to the disputed resources is the *"no-envy"* or *"superfairness"* principle (Foley, 1967; Baumol, 1987; Young, 1992). It holds that a certain allocation is fair if, and only if, no party prefers the other's share of resources to its own. In most negotiations, "the other's share" would refer to that party's share of the particular goods which are disputed rather than the totality of its endowments.

6.1.5 Some Factors Influencing the Choice of Outcome Fairness Principle

What forces are important in influencing or determining which principle(s) of outcome fairness will be favored or chosen in negotiations?

Considerable social-psychological research has been conducted on how factors such as age, status, gender, type of relationship between parties, goals of parties, culture, and the type of issue(s) at stake, influence perceptions of what is "fair" and the choice of particular fairness principles in the settlement of distributive issues. According to Piaget (1948), as young children grow and develop morally, they move through the stages of endorsing first strict equity (accounting for inputs only), then strict equality (disregarding inputs), and last "mature equity" (accounting for the circumstances as well as the inputs of the individual). Several studies suggest that a relatively strong or successful party favors equity while the weaker prefers equality, and that women and men tend to endorse equality and equity, respectively (see Sampson, 1975).

Further, it has been proposed that need is the predominant standard of outcome fairness in intimate relationships or interpersonal negotiations when individual welfare is the common goal; equality, when solidarity or the promotion or maintenance of good, long-term relations is a shared interest of parties; and equity, in cooperative relationships when economic productivity is the primary concern (Deutsch, 1975). Still others have noted that cultures placing primary value on competition and productivity (e.g., the United States) tend to endorse equity norms, while cultures stressing solidarity and cooperation (e.g., social-democratic countries) prefer equality (Sampson, 1975). One could indeed identify particular

groups and areas of negotiation having a common culture or set of norms which influence the choice of fairness principle. Thus, in labor-management negotiations precedent tends to be a prevailing norm.

Factors such as status, parties' relationship and goals, and culture in all likelihood also influence the specific *interpretation* and *application* of any preferred fairness norm, as well as the value attached to different types of fairness (e.g., process vs. outcome fairness). A key question remains unanswered, however, as to the relative importance of each factor--for example, which norm prevails when the negotiators are American women.

6.1.6 Outcome Fairness as a Balance Between Competing Principles

The normative principles reviewed often pose questions of interpretation (e.g., what are relevant contributions) and operationalization (e.g., how to base an agreement over a single indivisible good on equal shares, or how to implement a "superfairness" division when eliminating envy requires impeding upon a party's entitlement to the resources). Indeed, many negotiations revolve around the task of reaching agreement on the interpretation and application, as much as on the choice, of the principle(s) to guide the allocation of resources.

Recent research has further pointed to how *outcome fairness in many contexts must involve a balance between a combination of principles,* all of which may appear equally applicable, *which takes into account a wider range of factors and circumstances than any single norm can possibly do.* Many cases suggest that the more complex the situation--e.g., in terms of involving high stakes, such as human lives and/or highly valued and scarce goods; needs or contributions of parties which are very different and difficult to compare; and wide differences in dependency on agreement among parties--the greater the number of applicable principles to be included and weighed carefully against each other. For example, the U.S. national formula for distributing kidneys among transplant patients involves a mixture of and balance between the principles of efficiency (likelihood of the transplant succeeding), need (urgency of a transplant) and compensation for disadvantages (medical ability to accept only a small number of kidneys), and seniority (amount of time waited to get a transplant) (Young, 1992).

With regard to environmental negotiations, the Montreal Protocol on Substances That Deplete the Ozone Layer was based on a combination of fairness standards so as to account for the varied conditions and needs of the signatory states. Equity was the underlying principle for the call for reductions in CFCs proportional to each country's 1986 emission level beginning in 1993, thus imposing a greater (unequal) cost of regulation on the industrialized

states. Compensatory justice was the underlying principle for the provision for financial and technical assistance to the South, and their exemption from the stipulated emission reductions during the first ten years for development purposes. Finally, the equality norm was expressed in the long-term goal of the North and the South sharing the cost burden of regulation on a basis of parity, and in the freeze on all countries' emissions at the 1986 levels for the first few years (1989-1993).

A proposed scheme for a global warming agreement strikes a balance between the status quo and absolute equality during a transitional period: Rather than imposing the same ceilings on all countries, irrespective of their current emissions, or accepting the (unequal) emission levels of today, the proposal stipulates reductions in greenhouse-gas emissions which impose about an equal degree of hardship from adjustment on the developed and developing countries, with the long-term objective of establishing an egalitarian regime. Further, compensatory justice is reflected in the suggestion for technological and financial aid to developing countries to facilitate their adjustment to the regime (Young&Wolf, 1992). Thus the proposal balances a number of considerations--including differences in responsibility for the global warming problem, in current emission levels, in ability to bear the costs of regulation, and in need.

In the search for solutions to ethnic disputes as well, the need for imaginative formulas which combine a number of principles rather than rely on a single norm is obvious. In the Israeli-Arab conflict over Jerusalem, apart from the proposal already discussed, the plan of Jerusalem Mayor Teddy Kollek illustrates such a formula to some extent: At the municipal level, Jerusalem Palestinians are urged to vote and run for office in the city council on a basis of equality with Israeli residents. In order to compensate for past neglect and their greater needs, some of the city's public goods and services should be distributed disproportionally in favor of the Palestinian residents. Under the overall umbrella of Israeli rule, some lesser "functional" elements of sovereignty can be granted to the Palestinian minority (Kollek, 1981, 1988/89).

6.2 Fairness after the Agreement

Agreements viewed as fair and legitimate at their conclusion no doubt have greater chances of being implemented and enduring than outcomes resulting from a mere confrontation of skill and power in negotiations. Yet the norms (or the particular interpretations of them) incorporated in an agreement do not necessarily represent an "end-state" form of fairness or the final product of the talks: The provisions of an agreement may no longer be considered

fair expost, but require renegotiation and adjustment. A major aspect of outcome fairness thus concerns the extent to which an agreement, in both the short run and the long term, is considered legitimate in actually fulfilling expectations of fairness harbored at its conclusion. This evaluation will directly affect the prospects of the agreement being ratified and implemented by signatory parties; any post-agreement negotiations undertaken to adjust or complement it; and its stability and long-livedness.

A large number of factors may influence parties' evaluations of the fairness of an agreement after its conclusion, and we can here only refer to some of them briefly. Domestic constituencies, non-governmental organizations, or other bodies less directly involved in the negotiations may provide a larger and/or more long-term perspective on an accord, which makes its provisions appear unfair in some respect--for example, the allocation of benefits and costs between present vs. future generations; or a failure to cover any uncertainties about costs through contingent agreements or to allocate the costs of any violations of the agreement fairly among parties (e.g., avoid a situation in which one party can defect without great losses, while the other's compliance is impossible or extremely costly to reverse). The availability of objective, effective criteria and mechanisms for monitoring parties' adherence to the agreement and dealing with any violations, and the openness of the operation of the agreement (including information about any new costs or risks involved) to public scrutiny are other concerns which often arise in evaluations of the fairness of an agreement after its conclusion.

More commonly, however, an agreement may be considered unfair expost because of unforeseen developments or changed conditions which transform its distribution of benefits and costs among parties (real or perceived). A party's interests, needs, or alternatives may change in such a way that the costs involved in honoring the agreement become unreasonable. An unexpected relevation that a party "cheated" in the process of negotiating--for example, provided false information about real interests or intentions to shape the outcome in its favor--may lead the other parties to judge the agreement illegitimate and repudiate it. They may demand renegotiation or refuse any further dealings with the party altogether (Lax&Sebenius, 1986). Further, an agreement may be viewed as unfair expost, wholly or in part, because one or several parties fail to actually comply with it in good faith. The use of non-tariff barriers to trade--such as import quotas, export subsidies, and tax rebates to domestic industry--is widely recognized as leading to unfair competition and violating principles of free ("fair") trade under GATT. In response to the greatly increased use of such barriers concurrently with cuts being

made in explicit tariff barriers, new negotiations have been undertaken to attempt to reduce and eventually eliminate them.

Outside actors, which are not parties to a particular agreement, can sometimes render it unfair expost. Many environmental agreements, including on global climate change and air pollution, pose the problem of "free rider" states (states which do not sign the agreements to avoid the burdens involved, but which at the same time cannot be prevented from enjoying the same benefits as participating countries). In some cases, the costs of regulation may be so disproportionally paid by a few to the benefit of many others that the long-term durability of the agreement depends extensively on reducing the free rider phenomenon, for example, through international and domestic political pressures. In other instances, noncooperative actors can make agreements--including international ones on the management of the Global Commons, such as the protection of endangered species--ineffective and unfair by impeding the achievement of their stated goals and imposing costs not only on participating parties but on the entire world community (Harvard Law Review, 1991).

New scientific information and technological advances are other factors which may render an agreement unfair after its conclusion, and make post-agreement negotiations necessary to restore fairness. In environmental agreements being negotiated today, the burdens and benefits accorded to future generations can be calculated only on the basis of existing technologies and preferences; yet, the interests of future generations, and the advantages and disadvantages they will experience from today's regulations, may change drastically with scientific and technological advances.

For any or a combination of these reasons, an agreement judged fair at its conclusion may become considered unfair after the fact, and require renegotiation in order not to collapse. New actors may have to be included in the process, the allocation of benefits and burdens between parties may have to be adjusted, and more flexibility may have to be built into the agreement to maintain its fairness over time with changing conditions--for example, through contingent agreements. As a result of this post-agreement negotiation process, the principles underlying an accord may be reinterpreted or applied in new ways to better serve their purposes or replaced by other norms deemed more appropriate.

7. CONCLUDING COMMENTS

This paper has identified four classes of fairness issues in negotiations, and analyzed ways in which they affect the negotiation process under different conditions. It has proposed that when a common notion of outcome fairness (the shape of a fair solution) exists at an early stage in negotiations, that notion will tend to coordinate concessions and facilitate agreement. When parties remain entrenched in opposing fairness notions, there are still ways in which a solution can be reached. Specifically in integrative negotiations, divergent concepts of fairness become part of the 'bargaining' itself and could provide terms of trade. A fair outcome in many real-world situations cannot rely on a single norm, but must involve a combination of and balance between a number of competing principles. After the conclusion of an agreement, new and unforeseen circumstances may render it unfair in fact and thus call for renegotiation.

Many relationships between types of fairness have also been discussed. For example, most procedures will be considered fair only as they are related to specific situations--notably specific outcomes which parties have in mind. Thus, the exchange of equal concessions tends to be viewed as fair when an outcome based on equality is foreseen. In many cases, however, the problem is exactly the lack of agreement on the substance of a fair solution. Parties may then resort to a process and to procedures considered intrinsically fair in some respect, in view of the nature of the disputed resources and cultural norms. For example, lotteries may be useful in the United States to help determine sites for hazardous waste storage facilities fairly, but few Israelis or Arabs would agree to toss a coin to settle once and for all the issue of Jerusalem's status.

The fairness of a particular outcome is frequently equalized with the fairness of the process by which it was produced (e.g., Susskind&Cruikshank, 1987). We have here noted, however, that fair processes and procedures do not always lead to solutions viewed as fair anymore than outcome fairness is necessarily the result of process fairness. Indeed, when parties can agree upon a particular fair solution, a case may be made for employing a process which best guarantees its achievement rather than satisfies criteria of fairness (e.g., openness of the process to public scrutiny or participation). In short, process and procedural fairness is normally only one determinant of outcome fairness. Others include cultural factors and structural elements (e.g., a weaker or more needy party may tend to regard the norm of compensatory justice as fair).

We must beware of single-factor models and explanations of negotiation processes and outcomes. Negotiations are not driven by requests for fairness alone. Nor is there, for sure, a single universal concept--or application--of fairness which will reflect itself in negotiations. Fairness notions are, as we have seen, extremely diverse and vary with the context. But in response to the introductory question, 'What--if any--role do notions of fairness play in negotiations?', we must minimally conclude that the issue is not whether, but in which ways and under which conditions they have an impact.

Numerous angles of the subject remain to be explored--among them, fairness in relation to other factors which affect negotiation such as power and culture, tactical uses of fairness, fairness in post-agreement negotiations, and any differences in the stability of outcomes which are based on different fairness principles. A number of experimental findings on other aspects remain to be tested on actual cases. Research along these lines promises to yield new insights which will help us to better understand the science and the art called negotiation and, foremost, many ongoing and upcoming negotiations of global significance.

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