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0521793289 - Justice and Fairness in International Negotiation

Cecilia Albin

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Justice and Fairness in International Negotiation

International negotiations have become increasingly significant in international affairs, as the number of parties involved have grown, and regional and global decision-making fora have multiplied. Cecilia Albin examines the role of considerations of justice and fairness in these negotiations. She asks when and why parties act on such considerations, how they are defined and operationalised, and what impact they have upon actual decision-making. She argues that negotiators do not simply pursue their narrow interests or those of their countries, but regularly take principles of justice and fairness into account. These principles come into play at an early stage, as talks are structured and agendas set; in the bargaining process itself; and in the implementation of and compliance with agreements. The analysis is based on cases in four important areas: the environment (air pollution); international trade (the GATT/WTO); ethnic conflict (the Israeli–Palestinian conflict); and arms control (nuclear non-proliferation). Drawing on a mass of empirical data, including a large number of interviews, this book relates the abstract debate over international norms and ethics to the realities of international relations.

CECILIA ALBIN is Lecturer in Politics at the University of Reading, where she is also Director of the Centre for International Security and Non-Proliferation and Deputy Director of the Graduate School of European and International Studies. She was previously Deputy Director of the Global Security Programme at the University of Cambridge.

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PUBLISHED BY THE PRESS SYNDICATE OF THE UNIVERSITY OF CAMBRIDGE
The Pitt Building, Trumpington Street, Cambridge, United Kingdom

CAMBRIDGE UNIVERSITY PRESS
The Edinburgh Building, Cambridge CB2 2RU, UK www.cup.cam.ac.uk
40 West 20th Street, New York, NY 10011-4211, USA www.cup.org
10 Stamford Road, Oakleigh, Melbourne 3166, Australia
Ruiz de Alarcón 13, 28014 Madrid, Spain

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First published 2001

Printed in the United Kingdom at the University Press, Cambridge

Typeset in Palatino 10/12.5pt [CE]

A catalogue record for this book is available from the British Library

ISBN 0521 79328 9 hardback
ISBN 0521 79725 X paperback

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Preface and acknowledgments

Every staff member faces a roughly comparable pile of exam scripts each year in my department, irrespective of seniority and other responsibilities. Perfectly equal loads are not practical, but the 'burden' of marking is distributed as equally as is possible. A little further back cakes and ice cream bricks, seemingly all too rarely served, were divided between my siblings and myself according to the 'divide-and-choose' method in order to avoid argument. Of course, the idea of fairness operating in both cases can be disputed (after all, someone has to be head of department) and each method can be abused (there are ways to divide the cake to one's own advantage, as I discovered). The frequent use of these and many other methods exemplifies nonetheless the important role which equity considerations play in ordinary everyday life, in the distribution of resources and burdens. Procedures and allocations have to be seen as reasonably fair if they are to win respect and approval, and prevent conflict.

These sorts of ideas are well established in certain fields, notably in social-psychological research on interpersonal conflict and bargaining situations and in public policy research on 'fair division'. They are not new to anyone who has lived in a family, and should perhaps not be new to anyone who has worked in an academic department. They are, however, quite new to the way of thinking about and analysing international negotiations.

As this book sees daylight, I have many to thank for ending up with such an interesting project and for being able to complete it. The project began at the International Institute for Applied Systems Analysis (IIASA) in Austria, where I held a research post from 1991 to 1993. In the blissful surroundings of the Institute, there was no

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shortage of inspiration or time to work through diverse literatures on the role of justice and fairness in different areas of human affairs. I learnt particularly from studies by social psychologists on bargaining and conflict resolution in interpersonal and intrasocietal contexts, and was at the same time struck by the dearth of any comparable research in the area of international negotiation. When the analytical framework for a research project began to take shape (now in chapter 2 of this book), I benefited from interaction with scholars who regularly visited or worked at IIASA including Peyton Young, the late Jeffrey Z. Rubin, I. William Zartman and Bertram I. Spector. Lively representation of profoundly sceptical views about the role of justice and fairness in international affairs was not lacking either. In fact, an IIASA committee member threatened to resign if this project was allowed to proceed! The Institute being the home of world-class research on the science of air pollution, it was also here that I did the preliminary work on the case of the European acid rain negotiations (presented in chapter 3).

As the project moved with me to Cambridge University in 1993, it was more exposed to ideas from outside the negotiation field. Although this study is about the meaning and impact of justice and fairness considerations at the micro-level, in actual bargaining situations, my most useful and interesting discussions were with political theorists and philosophers. A generous grant over eighteen months from the United States Institute of Peace, Washington, DC (grant number USIP-109–96F) made it possible to complete the extensive research on the case studies. Among other things, the grant funded a research assistant, Liora Zion, to work on this project. I am very grateful for her exceptionally dedicated and professional assistance. The Global Security Fellows Initiative and Newnham College, Cambridge, financed sabbatical leaves to enable me to concentrate on this project, as well as some research expenses, including a field trip to Israel and the Palestinian territories. Anonymous referees enlisted by Cambridge University Press provided critical comments on draft chapters of the book, which challenged me to rethink the approach taken and improved the final product. I thank Richard Bellamy for helping out in refining that approach at a time when it made a real difference and the Department of Politics at Reading University, where I eventually wrote up the study, for a stimulating and congenial research environment.

The heart of this book draws on the insights and experiences of

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senior international negotiators. These remain poorly documented and analysed, despite the surge in writing on bargaining and conflict resolution over the past three decades. Detailed empirical research, particularly comparative research with coverage of several cases and issue areas, on what actually happens inside the international negotiating room and why, is still all too scarce. This work could therefore not have been done without access to a large number of practitioners. I am deeply grateful to all those (listed in the list of references at the end of the book) who agreed to be interviewed at length, and twice or more when required; who themselves or through colleagues provided additional information, documentation and advice on their respective areas of work; and who generally took much interest in the project. I especially wish to thank Lars Björkbom, the long-standing Chair of the acid rain talks within the UN Economic Commission for Europe (Geneva). Apart from agreeing to numerous interviews and responding scrupulously to the steady flow of questions over the years, he also commented in detail on several drafts of chapter 3. Richard Self, the chief US negotiator on services in the Uruguay Round of the GATT, provided extensive and valuable comments on chapter 4. Hannelore Hoppe, Chief of the Weapons of Mass Destruction Branch in the UN Department for Disarmament Affairs (New York), read and suggested improvements to chapter 6. As it is customary and important to point out, the author is responsible for any remaining flaws in these or other parts of the manuscript.

An earlier and briefer version of chapter 3 was published as a chapter entitled, 'Justice and Fairness in the Battle Against Acid Rain', in A. J. Coates (ed.), *International Justice* (Ashgate Publishers, London, 2000). An earlier version of chapter 5 was published as a journal article, entitled 'When the Weak Confront the Strong: Justice, Fairness, and Power in the Israel-PLO Interim Talks', in *International Negotiation* (Kluwer Law International), Vol. 4, No. 2, 1999, pp. 327–67. Expanded and updated versions of these published pieces are included here, with the permission of Ashgate and Kluwer Law.

Abbreviations

BAT	best available technology
BATNA	best alternative to a negotiated agreement
CAP	Common Agricultural Policy (of the EC/EU)
CTBT	Comprehensive Test Ban Treaty
DoP	Declaration of Principles on Interim Self-Government Arrangements (the Israel–PLO Accord of 13 September 1993 or the ‘Oslo Accords’)
EC	European Community
EU	European Union
FRG	Federal Republic of Germany
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
GNP	gross national product
IAEA	International Atomic Energy Agency
LDCs	less developed countries
LRTAP	Convention on Long-Range Transboundary Air Pollution
MFN	most-favoured nation
NAM	Non-Aligned movement
NGO	non-governmental organisation
NNWS	non-nuclear weapons states
NO _x	nitrogen oxides
NPT	Nuclear Non-Proliferation Treaty
NWS	nuclear weapons states
OECD	Organization for Economic Cooperation and Development
PLO	Palestine Liberation Organization
RAINS	Regional Acidification Information and Simulation (computer model)

List of abbreviations

SO ₂	sulphur dioxide
UNCED	United Nations Conference on Environment and Development
UN-ECE	United Nations Economic Commission for Europe
VAT	value added tax
VOCs	volatile organic compounds
WTO	World Trade Organization