Negotiating Justice: From Conflict to Agreement

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Received 25 April 2022; accepted 1 June 2022

Abstract

This special issue of International Negotiation explores how justice is, and may best be, negotiated when parties adhere to conflicting notions of what it means and requires. “Conflicting notions” refer to the endorsement of different principles or to conflicting interpretations of how the same justice principle is to be applied. It may also involve some party’s adhering to a justice principle, while its counterpart endorses criteria other than justice as the proper basis for the case at hand. A diversity of cases and methodological traditions is used to explore a set of analytical questions: Why do parties adhere to conflicting notions of justice in international negotiations? How do conflicting justice notions affect negotiation dynamics and what are different ways in which they can be handled? Are some ways of handling such notions better than others, in the sense of enhancing the chances of a durable agreement?

Keywords

justice – conflicting notions – negotiation – outcomes

International negotiations are often plagued by ineffectiveness: agreements, when possible to achieve, often take a long time to reach and/or are watered down by the time they are adopted; many are not well implemented; and others fall apart over time. At the same time, as international negotiations

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increasingly handle questions of global security and welfare, there are often no alternatives to negotiation from a collective viewpoint.

One factor which has been shown to boost effectiveness is justice. Adherence to justice principles by parties enhances the likelihood of arriving at an agreement (Albin & Druckman 2017), the legitimacy and acceptability of the negotiated outcome (Albin 2001, 2008), and its durability (Druckman & Albin 2011). Findings suggest that the negotiation context (the issue area, prevailing norms, the number of parties) determines what type of justice (process/procedural justice or distributive justice) contributes to more effective results. The choice of a particular justice principle also matters. The endorsement of forward-looking justice principles was found to boost agreement in a study of wide-ranging negotiation cases, while backward-looking ones had the opposite effect (Zartman & Kremenyuk 2005). In a study of civil war negotiations, parties’ endorsement of the principle of equality only was found to contribute to more durable agreements (Albin & Druckman 2012).

What is not examined at any length in these or other studies is the situation in which opposing justice notions are involved. How do parties to international negotiations handle such notions? What impact do they, and the manner in which they are addressed, have on the process and the outcome? Can justice still contribute to effective agreements, or any agreement at all, in this context? These are significant questions, for divergent views of justice are very common in practice.

For example, a key challenge in climate change negotiations from the outset has been opposing notions of who should undertake extensive greenhouse gas emission cuts – given inequalities in past, current and future projected emission levels – and at whose cost – given differences in responsibility for the problem, in resources and in gains to be had from emission abatement. Conflicting notions of procedural justice regarding agenda setting and representation/inclusion of parties have frequently become stumbling blocks in negotiations within the World Trade Organization (WTO); this has prevented or undermined effective agreement. And in negotiations under the Nuclear Non-Proliferation Treaty (NPT), nonnuclear states’ charges of lack of fairness and balance in nuclear states’ implementation of their treaty obligations are a recurrent theme which often causes stalemates.

This collection of articles explores in depth how justice is, and may best be, negotiated when parties adhere to conflicting notions of what it means and requires. “Conflicting notions” refer to the endorsement of different principles or to conflicting interpretations of how the same justice principle is to be applied and implemented. It may also involve some party’s adherence to a justice principle, while its counterpart endorses criteria other than justice as the
proper basis for the case at hand. The approach is cross-disciplinary and cross-cultural: a diversity of cases and methodological traditions are used to explore and illuminate common analytical questions that set the overall framework for our articles. The questions are:

a. Why do parties adhere to conflicting notions (principles, interpretations) of justice in international negotiations?
b. How do conflicting justice notions affect the negotiation dynamics, and what are different ways in which they are (can be) handled?
c. Are some ways of handling such notions in the negotiation processes “better” than others, in the sense of enhancing the chances that an effective and durable agreement can be reached?

This introductory article elaborates on each of these questions in the context of existing research and puts forward propositions which can be examined in the cases that follow. It is intended to help tease out what is relevant and important across a set of diverse and rich cases, and facilitate the drawing of conclusions as a whole. Before turning to this task, however, some different approaches to justice analysis are outlined.

Analyzing Conflicting Notions of Justice

Empirical social science research is generally remarkable in its underestimation of the role played by justice considerations in human behavior and relations (Welch 2014). Although still limited in volume, negotiation research is an exception and offers a generous collection of alternative approaches for analyzing the subject. The articles in this issue do not adopt a single approach, but instead bring in a diversity of well-founded approaches. In the articles that follow, contributors begin by laying out their approach (definitions and operationalizations of key concepts, method, and empirics) and the reasoning behind it, before proceeding with case analyses. To help situate these, this section sketches some of the larger terrain in which conflicting justice notions can be analyzed.

Different Criteria of Justice

At the most basic level, conflicting notions of justice arise in negotiations because of the absence of consensus on one overarching standard which defines its meaning. There are usually several alternate principles on which a negotiation process and an agreement can be based and still reasonably be considered just and fair. Although broad international acceptance of many criteria now exists, there is no consensus on priorities among recognized principles.
Moreover, almost any principle can be interpreted and applied in different ways. Negotiators may thus agree on the principle, but not on its requirements in a particular context. Interestingly, however, international negotiation practice today demonstrates a more coherent – or less fragmented – picture of what is to be taken as just and fair than do scholarly debates (Albin 2003).

An analysis of justice in negotiation usefully begins by clarifying what criteria are used. A basic division may be made between internal and external standards. Analyses using *internal criteria* focus on how parties themselves perceive what justice is in a particular situation. Such criteria define the meaning of justice inside the negotiation process without reference to external criteria, and usually accept prevailing power relations as a given. Just procedures and agreements are based on terms which the parties themselves have established and agreed to honor. One such criterion is mutual benefit (Gauthier 1986). This type of criterion focuses on what parties themselves define, accept, and act upon as justice – or at least say that they do – in concrete situations, which is valuable to understand motives and behavior in negotiations (Müller & Wunderlich 2013). A common critique, however, is that justice may be reduced to subjective, self-serving notions and that external criteria are needed to assess the seriousness of justice claims.

*External criteria* focus instead on how far parties adhere to justice principles whose general content is defined independently of any particular negotiation process or agreement to be judged. Their strengths include broad recognition and relative independence from the parties’ own interests and biases. But they may not capture fully how parties themselves define and experience justice in particular situations. Examples of such principles include equality, proportionality, compensation, and need (Albin 2001). Perhaps the best way to illustrate how external criteria differ from internal ones is the principle of impartiality: it indicates features that a negotiation process and outcome must have in order to be just, and limits interests to be pursued and the kind of power to be exercised. Inspired by Rawls’s theory of ‘justice as fairness’ (Rawls 1958, 1971), Barry’s notion of justice as impartiality separates justice from what can be seen as undue influences of self-interest, power, and coercion. The emphasis is on the voluntary acceptance by parties of whatever arrangements are proposed, and their acceptability from a general detached viewpoint (Barry 1995). What is just elicits consent without the use of threats or rewards, so there is no place for justice in negotiations which involve manipulation or coercion.

The justice criteria discussed above are relevant and widely used in different areas of international negotiation. There are also those which are more specific to a particular issue area – as, for example, the principles of ‘polluter pays’ and ‘no harm’ in environmental negotiations, the ‘unacceptability
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of indiscriminate harm’ in arms control/disarmament talks, and the ‘most-favored-nation’ and ‘national treatment’ clauses in multilateral trade talks. If an analysis seeks to capture all aspects of justice in a particular case, however, it is likely to need to use a combination of different criteria.

The first article in this collection approaches the definition of justice in this manner, by seeking a fit between two criteria, either of which could be advanced as a meaning for justice itself. David Welch links entitlement – justice as rights – and benefits – justice as receipts – in search for an appropriate balance or relationship between the two. Although the approach is offered as only one of several possibilities in the search for an understanding of justice, it focuses on aspects that are at the core of the negotiation encounter. A later article in this collection by Paul Meerts examines how the differing criteria are applied in training sessions for negotiators, even though they are not addressed specifically as an application of justice. Trainers do not teach justice as such, but notions of justice become salient as optimal solutions are found.

What Issues Give Rise to Conflicting Justice Notions?

A first set of items concern the overall structure and setup of the negotiations. These include the parties to be engaged in the negotiations (and not), their representation, and relations between them. Another set of items concern the issues to be placed on the agenda (or not), and how they are ordered or prioritized and linked. Negotiators naturally seek maximum coverage of issues of most interest to themselves, and promote ordering and linkages which can improve their bargaining position. In negotiations at the global level, agenda setting often raises heated disputes about justice along the North-South divide. Representatives of less developed countries (LDCs) hold that issues of vital importance to their survival and well-being are continuously neglected, while other issues of most benefit to richer states and the corporate world are prioritized on the international agenda.

Another set of items which may evoke conflicting justice notions is procedural (processual). It concerns the way parties relate to and interact with each other in the negotiation process, the features or mechanisms used to come to an agreement, and the way parties use them, whether in good faith and consistently. Like other types of justice, procedural justice is multifaceted and resists formulation in terms of a single criterion. What criteria are most important and relevant also depends on the context, but four principles are nonetheless well recognized as central components of procedural justice: transparency, representation, treatment and fair play, and voluntary agreement (Albin 2008).
Transparency refers to openness and accessibility, including easily available information about decision-making meetings, actions and outcomes, particularly for those directly affected. Fair representation refers to presence and participation in the decision-making process by parties expected to be affected or bound by the outcome, and of all key interests at stake (Thibaut & Walker 1975). Fair treatment and fair play refer primarily to two matters. The first is how participating parties are treated and interact in negotiations, for example, their opportunities to have an input, be heard, and influence the process. The second concerns consistency and impartiality in the overall conduct of the negotiations so that it is steered in the interest of all. Voluntary agreement means that all parties are free to accept or reject proposals without being subjected to heavy-handed threats or manipulation (Barry 1995). Proposed agreements should be reasonable enough to elicit voluntary consent, and there must be a possibility to reject deals that are too one-sided or exploitative.

Perhaps most common in international negotiations are conflicting justice notions with regard to outcome or benefits. One set of outcome issues concern the principles to guide the allocation of benefits and burdens in a negotiated agreement. Even if achieving justice is not the primary objective – as it rarely is – this question will arise as all agreements will involve gains and losses which somehow must be allocated between parties. Here, conflicting claims as to what justice means and requires often involve major distributive principles, such as equality or equivalence (identical or comparable allocation of benefits/burdens between parties); proportionality or equity (distribution of benefits/burdens in proportion to relevant inputs such as contributions); compensatory justice (distribution of resources to indemnify undue costs inflicted upon a party in the past or the present); and need (allocation of benefits/burdens to meet present needs or reach some basic level of well-being).

Conflicting notions of justice may also arise over the soundness of the entitlement or the terms of an agreement over time in view of new information, matters of implementation and compliance, and any violations or free-riding. One or more countries may not proceed with implementing the agreement, as planned. Among the reasons can be technical and legal difficulties, political obstacles such as influential domestic stakeholders who stand to lose from national compliance, or simply poor incentives to comply given the terms of the agreement or weak mechanisms for enforcement and punishment of violators (Spector 2003). Sometimes a party can avoid honoring an agreement and yet enjoy many of the same benefits as complying states. Finally, “spoilers” can undermine the justice and general soundness of agreements (whether part of these themselves or not). In sum, renewed negotiations may be needed to
adjust the original terms, to ensure that all parties honor their part of the bargain, and to combat free-riders and spoilers.

The second article in this collection, by I. William Zartman, examines the categories of justice as discussed here and uses them to analyze the process of bringing them into coincidence to produce an outcome. In a frequently followed process, parties begin with priority interpretations of justice that support their positions but then begin to search for a justice principle or formula that covers both sides’ interests (often redefined). Various notions of justice were used in the nine cases examined to arrive at outcomes that were accepted as just by the parties. The article also explores the methods used in answer to question c above, about how parties reached their outcome in terms of justice.

**Why Do Parties Adhere to Conflicting Notions (Principles and Interpretations) of Justice?**

A number of contextual factors lead negotiators to adhere to justice principles in the process of bargaining and formulating agreements, and to choose some principle(s) over others in particular situations. For example, justice adherence is more likely when talks take place in an environment or a forum emphasizing norms (as do multilateral environmental and trade negotiations). Procedural justice principles tend to be emphasized less in bilateral than in multilateral negotiations in which numerous parties, interests, and issues compete for attention and influence (Albin & Druckman 2017). Yet, thinking of negotiation in terms of justice is universal, whether one is at the beginning of the process, or in its midst, or at the conclusive (or inconclusive) end. And indeed, once the process has started, this thinking is aimed at reaching a common or at least complementary notion of justice to govern an outcome that allows one party to be satisfied so that the others can be satisfied as well.

So why do parties to international negotiations so often endorse conflicting justice notions? Understanding why such notions are brought to and pursued at the negotiating table is an important matter in attempting to manage them. While still a poorly explored topic, some reasons can be derived from existing knowledge and practice, as discussed in the following articles.

**Different Beliefs and Interests**

Notions of justice are embedded in broader belief systems and ethics. When the latter diverge among parties, the former easily clash. But a party’s justice notion is also naturally influenced by its own circumstances and typically overlaps to
some extent with its own interests. The extent to which self-interest can legitimately be included in a serious claim to justice is debated extensively in the academic literature, with notions ranging from the idea that justice must be defined separately from self-interest (Rawls 1971), to the notion that justice is entirely self-serving and legitimately so (Gauthier 1986).

A close observation of negotiation practice gives a much more nuanced and appropriate picture: a party’s own vital interests and concerns will influence what it regards as just and legitimate (and vice versa), what principle it will endorse, and how it will interpret and seek to implement it. In other words, genuine justice notions and notions of vital interests are interlinked and cannot be analyzed separately (Müller 2013). Moreover, parties’ endorsement of justice principles may be more self-interested in the early phases of negotiating than in the latter ones, when often conflicting principles need to be tackled and reconciled if an agreement is to be possible, as all the following articles illustrate (Albin 2001). The opposite behavior, in which parties may start negotiating with all-encompassing notions of justice but then turn inward and defensive of self-interested values when the endgame appears, do not seem to be brought out in practice, or at least in the following cases (Zartman 2019).

There is, thus, very little empirical evidence to suggest that parties will adhere to justice principles which entail sacrificing vital interests – not only because of lost gains, but because it is not seen as the right thing to do. But neither is justice used solely for tactical purposes and it does often constrain international negotiating behavior, including what parties can request and pursue with credibility and effectiveness. The common situation is rather that when several justice principles are applicable, parties endorse those which best fit their belief system and important interests in the negotiations. That may include consideration of interests and principles advocated by domestic constituencies, in line with insights from research on how domestic politics may influence and constrain international negotiators (Putnam 1988).

**Power Inequality**

Closely related to the discussion above is the matter of how power inequality between parties contributes to conflicting notions of justice. Weaker parties often resort to justice principles which may help to bolster their arguments and equalize their position against the stronger side (Zartman & Rubin 2005). Overall, they rely on justice principles more frequently than stronger parties, and frequently on the principle of equality (Zartman & Rubin 2005). Among cases demonstrating this are peace negotiations between Israel and the Palestinians, in which the former rarely evokes justice principles while the latter frequently does so, and the equality principle, in particular (Albin 1999).
Time Changes
Differences arise between parties when their reference points relate to different time periods or when a change in their relations is the result of major contextual shifts. Parties may have enjoyed an established relationship in the past that both accepted as just, but when events alter that relationship, old notions of justice may no longer be shared. One party bases its notion of justice on the past, the other on correcting that relation – now seen as unjust – in the future. Two of the following articles eloquently illustrate the situation: Valerie Rosoux’s depiction of the heated debate over Congolese parties’ demands for rectification of Belgium’s role in their country’s past and future, and Mark Anstey’s account of the evolving view of just land ownership in South Africa. Guy Olivier Faure’s presentation of Chinese worldviews in a negotiation context also shows how the Middle Kingdom aspires to recover its just position as the world’s center again, but also to achieve present recompense for unjust treatment in the past.

Cultural Differences
Notions of justice are embedded in and influenced by culture; different cultures stress different justice principles. Several types of cultures can filter into and affect negotiations at the international level. Research to date has identified aspects of ethnic-national culture which lead to different justice preferences. For example, negotiators from countries and cultures embracing individualism (for example, the United States, Great Britain, Australia), hierarchy (for example, Japan, Korea), and competition and productivity are more likely to define justice in terms of proportionality (rewards in proportion to relevant inputs, such as contributions or status). Those from backgrounds embracing collectivism, a less hierarchical order, and solidarity and cooperation (for example, Scandinavian countries, Canada) rather define justice with an emphasis on equality, particularly equality of outcomes (Sampson 1975; Carnevale & Leung 2002). Faure’s article on China brings out how cultural perceptions of justice affect behavior, and the two articles on Africa by Rosoux and Anstey also show the deep cultural basis of notions of justice.

So-called professional cultures, by contrast, tend to have a facilitating (coordinating) effect (Sjöstedt 2003). They may be triggered when high levels of technical or scientific expertise are required, as in trade and environmental negotiations, and when negotiations continue over a longer time period. As Tinsley (2010) puts it, the longer parties negotiate with each other, the more “negotiation sub-cultures” develop which reduce the influence of national-ethnic culture. The more large-scale (multilateral) a negotiation is, the more national-ethnic cultures are likely to be washed out in the process in favor of
other cultures concerned with, for example, a profession or organization (with the possible exception of the cultural identity of the chair, if exercising strong and effective leadership).

Ethnic-national cultures are triggered most of all when negotiations concern questions of identity, values, and symbols – such as human rights and territories of political or religious significance – and when they are smaller-scale (bilateral) and/or shorter-term. They are more prone to be a divisive and complicating factor in negotiations, are associated with different justice principles, and are therefore a focus of the articles in this issue.

**Tactical Uses of Justice**

Tactical use means that a party refers to and (appears to) adhere to a justice principle without truly believing that it is right, to help legitimize demanding bargaining positions and maximize its gains. Tactical uses of arguments about justice differ, but can be difficult to distinguish from the common situation described above, in which a party’s notion of justice is authentically held, but also influenced by its own vital interests.

References to justice principles are, in many instances, partly authentic and party tactical. For example, a party chooses to interpret or apply a justice principle which it genuinely believes to be right in an advantageous way. Or when more than one principle appears genuinely relevant and applicable, a party chooses to refer to the one that will leave it best off: “Unless only a single principle or set of principles is clearly applicable, each party tends to prefer the principle that favors its own cause” (Zartman et al. 1996, referring to Hamner & Baird 1978). Purely tactical references to justice often appear too self-serving and therefore fail to be taken seriously and gain acceptance.

Knowing how to distinguish what is tactical from what is “genuine” is particularly valuable when parties endorse conflicting justice notions and stall the process from moving forward. The motivations, interests, and preferences of parties – in relation to their justice claims and the consistency of these over time – need to be assessed at close range using multiple sources. Observations at close range can go a long way to separate authentic justice claims from tactical ones, in the absence of any possibility of getting inside the minds of negotiators (Albin 2016).

**The Management and Impact of Conflicting Justice Notions**

*From Shared to Conflicting Notions of Justice*

How conflicting notions of justice affect, and are (best) managed in, international negotiations are the main subject of this special issue. In the early
research literature on negotiation, justice is seen as a facilitating and coordinating referent for parties. They share the same or similar notion of a just and desirable outcome (and/or negotiation process to reach it), which helps to coordinate their expectations and the exchange of concessions, avoid confrontations and stalemates, and forge the terms of an agreement. The shared notion of justice can be a focal principle which emerges as obvious and desirable because of cultural norms, precedent, custom, analogy, or other factors (Schelling 1960; Schüssler 2019). It decreases competitive behavior, speeds up concession making, and makes a successful agreement more likely (Deutsch 1973; Bartos 1974).

Studies on US-Soviet arms control talks during the Cold War have singled out how justice referents, such as reciprocity, parity, and equality played a facilitating role: they helped to guide the bargaining process, as the superpowers moved toward a compromise agreement (Jensen 1983), and underlaid the terms of agreements on equal ceilings and percentage reductions in arms arsenals. Justice can still play this coordinating role, of course, particularly under two circumstances: when parties view themselves as roughly comparable in power (as measured by BATNAs, for example, in dependency on a negotiated agreement), and when the format is bilateral or small-scale negotiation. Divergent justice notions typically emerge between unequal parties, and among numerous parties of diverse backgrounds in multilateral talks. They cannot coordinate any talks, and instead become subject to negotiation themselves and can easily derail the talks if not well managed.

Whether conflicting justice notions are different – for example, more intransigent and more difficult to negotiate compared to other disagreements – and with what approach they are best tackled is explored in a diversity of cases and contexts in the articles that follow. It would supposedly depend in part on at least three factors: the reasons behind the conflict over justice (tactical claims to justice are easier to compromise upon than those rooted in, say, identity issues or a genuine sense of entitlement); the balance of power between and motivations of parties; and the negotiation approach used (for example, whether primarily distributive or integrative, as discussed below).

**Ways of Managing or Resolving Conflicting Justice Notions in Negotiations**

Negotiators need to somehow manage conflicting notions of justice if agreement is to be possible but, it is here argued, they do not necessarily need to arrive at a shared notion. There are several ways in which this can be done.

First, the parties may find an overarching principle of justice that covers – albeit differently if necessary – their dispute. In the Cuban, Namibian and Bosnian crises, covered in Zartman’s article, the disputed issues found their
place in a single principle of justice – 3 entities, 2-part federation, one state in regard to Bosnia; and mutual military withdrawal (forces, offensive weapons) in Namibia and Cuba/Turkey.

Second, parties may choose to balance and combine several of their conflicting justice principles in a settlement. The negotiating mode of compensation provides for the exchange of two different principles of justice to a degree deemed just to create a common outcome. A compound justice of two or more principles is being contemplated but not yet achieved in South African land disputes, presented in the Anstey article, and was the basis of an outcome deemed just in Iran, the Stockholm Conference on Disarmament in Europe (CDE), Colombia, and El Salvador as discussed in the Zartman article. Compensation or exchange is a very frequent way of notions combining principles of justice that leave the separate notions intact, and is also found in large multilateral negotiations, as will be discussed below.

Third, in the absence of agreement on the substance of a just solution, parties may agree to use some procedure viewed as just or fair for resolving the situation; for example, ‘divide-and-choose,’ arbitration, or some other third-party involvement (Zartman et al. 1996). The relatively simple divide-and-choose procedure was used successfully in the highly complex Law of the Sea negotiations to allocate mining sites in the deep seabed (Sebenius 1984). Procedural justice is shown to be the key in the South Africa land disputes, World Trade Organization (WTO) negotiations, and test-ban (CTBT) agreements in the articles by Anstey, Ahnlid, and Zartman.

Fourth, parties maybe go beyond their conflicting notions to seek a newly defined principle of justice that fits them both. Reframing or construction of an overarching principle reflects a more joint problem-solving (‘integrative,’ positive-sum) approach to negotiation. With this, parties go beneath stated positions to explore fundamental concerns on all sides and seek to find new options that reconcile or combine such concerns in a way which makes painful compromises unnecessary. Resolution of the Peru-Ecuador border dispute and the European Defense confrontation, as discussed in Zartman’s article, are eloquent cases of reframing to find agreement.

Fifth, parties may agree to set aside their justice concerns and base an agreement on other criteria, although it is very unlikely that such criteria will not contain a hidden justice principle. This way may reflect a more competitive (‘distributive,’ zero-sum) approach. In this, by contrast, parties bargain over stated positions and demands, each to secure as good a deal as it can for itself without much concern for the other side, and considerable compromising is often needed to reach agreement (Walton & McKersie 1965).

Whether a predominantly problem-solving or competitive approach is used depends on, among other factors, the relationship and level of trust between
parties (the former requires revelation of true interests and priorities to work) and their negotiation skills, although the involvement of a third party can help to compensate for deficiencies. The balance of power is also a factor (Albin 2015). The absence of sharp power inequalities enhances the motivation and need of parties to consider and act upon each others’ justice concerns, while their presence easily undermines the chance for the weaker party’s concern to be heard. In other words, a party far superior in bargaining power may not see the need to take others’ justice concerns into account or be concerned with such values at all. The long record of negotiations between the Palestinians and Israel, among other cases, vividly illustrates this. But when that imbalance shifts over time and the relation is open for reversal, a search for a common notion of justice becomes highly contentious, as the colonial cases in South Africa and Congo show; justice becomes retribution or at least readjustment, as the formerly disadvantaged party recovers its losses.

In larger-scale multilateral negotiations, power is typically multidimensional and dispersed. There is also an important element of power equality in shared dependency on a negotiated agreement to improve the situation, and in the veto power that every party has to leave the talks if they do not deliver. Particularly in this context, a decisive factor for producing agreement is frequently “the accommodation of competing standards of justice in a way that satisfies the demand for equity (fairness) on all sides” (Müller 2004). It is captured in the notion of compound justice that joins together different justice principles (Zartman et al. 1996). It may be viewed as a pragmatic method for arriving at a settlement in a situation in which parties endorse different principles, and no one has the strength to subordinate the other(s). As importantly, however, it may recognize the fact that a single justice criterion cannot always accommodate all pertinent factors and circumstances which should be taken into account: several principles are needed to reflect the full range of considerations (Young 1994). These may concern differences among parties in entitlement or contribution to a disputed issue, needs, ability to bear the costs of an agreement, and gains to be had from a joint settlement.

An illustrative example – leading to one of the world’s most successful environmental agreements to date – is the Montreal Protocol on Substances that Deplete the Ozone Layer. It balanced and combined several justice principles to take account of the varied conditions and concerns of signatory states, which increased joint gains: proportionality (the call for differentiated reductions in chlorofluorocarbon emissions proportional to levels of contribution to the ozone problem), equality (for example, North and South sharing regulation costs on an equal basis in the longer term), and compensation (financial and technical assistance to the South, and their exemption from emission reductions for the first 10 years for purposes of economic development). The
last-mentioned provision, in particular, was key to the Protocol’s effectiveness in terms of meeting emission reduction goals and securing universal ratification and compliance by states (Benedick 1991).

*Do Some Ways of Tackling Justice Conflicts in Negotiations Lead to Better Outcomes than Others?*

Through international negotiation, parties seek to reach an agreement which is mutually satisfactory (beneficial) and implemented (durable), relating in some way to the elements of benefits and entitlement laid out in Welch’s article. These are normally two basic criteria, even if the details of how a “good” or “better” outcome are defined vary across cases and areas. Of the five ways of handling the justice issue discussed above, the most frequently used is compensation or exchange of principles when one principle does not cover all (as is usually the case). Negotiation has been defined as giving something to get something, with the justice question appearing in the appropriateness of the exchange and then with the appropriateness of the amount of each item exchanged. Division of an item faces the same question: the ability to divide or share the effects of a principle and then the amount of benefits to be divided to each party. Cases where reframing is used so that the negotiation can be carried out under a new, mutually beneficial principle are rather rare.

While the incorporation of justice principles is now known to contribute to better agreements, the impact on the outcome of alternative ways of tackling conflicting justice notions has not been examined up until now. However, it is possible to derive some propositions from what is known about distributive and integrative negotiation. When conflicting justice notions are rooted in fundamental beliefs, cultural values, or other factors which are very difficult and costly to compromise upon, agreement – at least a “good” agreement – can usually be reached only through integrative and not distributive negotiation (Druckman & Zechmeister 1973). Moreover, integrative negotiation usually stands far better chances to foster good longer-term relations between parties, and agreements which are self-enforcing (in parties’ own interest to honor) by virtue of addressing core concerns, such as justice, and being mutually satisfactory. In distributive negotiation, parties take advantage of any power inequality, and thus the outcome may endure only as long as the imbalance exists. Mechanisms for monitoring compliance and any violations assume special importance in many security areas, and timeliness and effectiveness in the environmental area. Put briefly, deep-rooted justice concerns which are left unaddressed in the outcome are likely to affect implementation and durability negatively. Distributive negotiation tends to require less input (such as information sharing), skill, time, and trust from parties. It may be the only
realistic avenue in some cases – and may even be preferable if the issues at stake are minor.

Conclusion

It would take many more exhibits to draw general conclusions, but amassing some evidence for very different cases – with pieces of resemblance among them nonetheless – allows some answers to the initial questions, as the final article by Daniel Druckman and Lynn Wagner explore and even carry further. Parties adhere to conflicting notions, principles, and interpretations of justice in international negotiations because of their different interests, beliefs, and structural positions. The fact that their views of justice are frequently anchored in some incontrovertible referent makes for the difficulty in reconciling often very opposite values. The views and their differences are not arbitrary or capricious, and attempts to combine them must delve into their deeper sources. These attempts provide the negotiation dynamics as parties continuously weigh whether the outcome toward which they are heading is worth the cost to their opening ideas of justice. But there is an array of different ways in which these differences can be and are handled, involving the mobilization and manipulation of different forms of justice, taking advantage of the fact that justice comes in many forms, shapes, and sizes, and can be manipulated while keeping its own integrity. Some ways of handling such notions in the negotiation process are “better” than others, in the sense of enhancing the chances of an effective, durable agreement being reached. These ways are numerous and dependent on the situation, but can be grouped for more detailed application into modes of division, exchange, and reframing. Indeed, if there were only one meaning to justice these creative dynamics would not be possible.

References


