

Negotiating international cooperation: global public goods and fairness

CECILIA ALBIN*

Abstract. Global public goods (GPGs) are vital to human welfare and security worldwide. Yet often they suffer from under-provision and free-riding, and are not accessible or beneficial to everyone. They illustrate starkly problems of collective action. This article examines multilateral negotiations in which countries seek agreement on the terms for collaboration in providing GPGs. It argues that common obstacles to an effective agreement concern justice and fairness issues, which arise from the earliest phase when the agenda is set to the final stage of securing implementation and compliance. Drawing on recent negotiation practice, it proposes a framework and a set of strategies for how such issues could be tackled.

Why do countries so often fail to cooperate sufficiently on peace and security issues, even when the consequences are known to harm everyone in the long term? Any observer of world affairs will have noticed the steady proliferation of problems which defy unilateral solutions. The 11 September 2001 terrorist attacks in the United States drew worldwide attention to the urgency of increased collaboration on a global scale in combating terrorism and its underlying causes. They underscored once more the significance of preventing nuclear, biological and chemical weapons from falling into the ‘wrong hands’ through more effective arms control and disarmament measures. Moreover, there is a host of other issues where, although not publicised with the horror and drama that terrorist events create, the worldwide repercussions of states and other players failing to act together are grave. Resource depletion and environmental hazards such as climate change, poverty and its links to trade and the finance of economic development, violent conflict and human rights abuses, and the spread of infectious diseases such as HIV, are among these.

Despite progress and continued efforts, international cooperation to date has been inadequate to tackle many such problems. Are political leaders blind to the mutual gains to be reaped, and the dangers to be avoided, through collaboration? Do they fear exploitation and ‘free riding’, that other parties cannot be trusted? Or cannot government representatives be expected to look beyond shorter-term domestic considerations, such as the next election?

When and why international cooperation takes place is among the most fundamental questions addressed in the political science and international relations

* The author gratefully acknowledges funding from the Office of Development Studies of the United Nations Development Programme (New York) for the preparation of this article, and helpful comments from anonymous referees.

literature.¹ Approaches moving beyond the traditional notion of state behaviour in an anarchical world also raise issues about who collaborates, for what purpose, and for whose benefit.² Yet the voluminous literature on cooperation largely ignores a basic reality: the terms of international cooperation – the principles and objectives, the distribution of benefits (privileges) and burdens (obligations), and the rules – are worked out in negotiations.³ When global problems are on the table, these negotiations are mostly large-scale multilateral talks of great complexity. They determine to a large extent whether effective cooperative agreements are formulated, honoured by the parties, and implemented. How an agreement was negotiated and designed can go a long way to explain later setbacks regarding participation, implementation, and compliance.

This article explores how obstacles which arise in multilateral talks may undermine collaboration. The focus is, firstly, on *global public goods* (GPGs).⁴ Because of their publicness, GPGs often suffer from under-provision and encourage free riding. They illustrate starkly the problems of collective action. Yet such goods are vitally significant for security broadly defined, particularly human security and global stability. They provide, in fact, much scope for mutually beneficial cooperation toward goals which countries and peoples cannot achieve alone. They also tend to be largely non-excludable and non-rivalrous in consumption. Once such a good exists everyone should, in principle, be able to enjoy it fully.

¹ On motivations for collaboration, see K. Waltz, *Theory of International Politics* (Reading, MA: Addison-Wesley, 1979); R. Axelrod and R. O. Keohane, 'Achieving Cooperation under Anarchy: Strategies and Institutions', *World Politics*, 38 (1985), pp. 226–54; L. Gruber, 'Rationalist Approaches to International Cooperation: A Call for Theoretical Reorientation', Working Paper Series, no. 99.14 (Chicago, IL: Irving B. Harris Graduate School of Public Policy Studies, University of Chicago, August 1999); and L. Gruber, *Ruling the World: Power Politics and the Rise of Supranational Institutions* (Princeton, NJ: Princeton University Press, 2000). On problems of free riding and 'cheating' on contractual obligations, see J. M. Grieco, 'Anarchy and the Limits of Cooperation' and 'Understanding the Problem of International Cooperation', in D. Baldwin (ed.), *Neorealism and Neoliberalism: The Contemporary Debate* (New York: Columbia University Press, 1993). On ways to encourage compliance and secure long-term benefits of cooperation through international institutions and regimes, see O. Young (ed.), *The Effectiveness of International Environmental Regimes* (Cambridge, MA: MIT Press, 1999); O. Young, *International Cooperation: Building Regimes for Natural Resources and the Environment* (Ithaca, NY: Cornell University Press, 1989); S. Krasner (ed.), *International Regimes* (Ithaca, NY: Cornell University Press, 1983); V. Rittberger (ed.), *Regime Theory and International Relations* (Oxford: Clarendon Press, 1993); and D. Victor, K. Raustiala, and E. Skolnikoff (eds.), *The Implementation and Effectiveness of International Environmental Commitments* (Cambridge, MA: MIT Press, and IIASA, Laxenburg, Austria, 1998).

² See I. Kaul, I. Grunberg and M. Sten (eds.), *Global Public Goods: International Cooperation in the 21st Century* (New York: Oxford University Press, 1999).

³ Some literature on international multilateral negotiation does link longer-term cooperative outcomes to the negotiation process, often using a single case study or issue area. See, for example, B. Spector, G. Sjöstedt and I. W. Zartman (eds.), *Negotiating International Regimes: Lessons Learned from UNCED* (Laxenburg, Austria: International Institute for Applied Systems Analysis, 1994); N. Gallagher, *The Politics of Verification* (Baltimore, MD: Johns Hopkins University Press, 1999); J. Odell, *Negotiating the World Economy* (Ithaca, NY: Cornell University Press, 2000); and J. Sebenius, *Negotiating the Law of the Sea* (Cambridge, MA: Harvard University Press, 1984).

⁴ 'Global public goods' here refers to goods (tangible or intangible) which benefit everyone, or at least more than one group of countries and people. Their benefits are non-rival in consumption and often non-excludable. 'Pure' (perfectly) global public goods as here defined are rare; that is, goods whose benefits are at once universally accessible or beneficial, non-rival in consumption, and non-excludable. Other definitions stress, in addition, publicness (understood as broad or representative participation) in decision-making and publicness (understood as equity) in the distribution of their benefits (see I. Kaul, I. Grunberg and M. Stein, 'Defining Global Public Goods', in Kaul et al., *Global Public Goods*).

Private goods – houses, shoes, pillows, milk, train tickets, weapons and so on – are traded in markets as they have clearly defined owners, are mostly rival in consumption, and can usually be denied to those who lack a right to use or benefit from them. By contrast, global public goods – such as clean air, a stable climate, good health and freedom from infectious diseases, the non-proliferation of weapons of mass destruction, and international financial stability – do not have exclusive owners and are seldom zero-sum in consumption. Their widespread benefits cross national boundaries, population groups and even generations, and can rarely be denied those who decide not to contribute to the supply of the goods themselves. There is then the problem of motivating collaboration. At the same time, there is collective dependence on cooperation to ensure adequate provision and management of GPGs: in most cases they can be created and supplied only through coordinated action between numerous states and other actors. Negotiations are required to bring all needed parties into the process.

The obstacles to cooperation which arise at the bargaining table concern disputes over, among other matters, agenda-setting, negotiation and consultation procedures, the allocation of the costs and benefits of GPG provision, and the prospect of ‘free riders’. They all involve essential issues of *justice* and *fairness* which is the article’s second focus.⁵ They must be tackled if strong cooperative agreements are to result. A few powerful states can, for example, dominate the negotiation of such agreements. If this marginalises the interests of other parties, collaboration can have unbalanced and even negative welfare consequences for these. When the beneficiaries do not depend much on the active involvement of the losers, and the losers will incur even greater costs if they fail to collaborate altogether, some cooperation may still take place, largely on the beneficiaries’ terms.⁶ In other words, the losing parties may still sign and abide by relevant agreements, as long as they lack better alternatives. Nonetheless, the expectation or experience of cooperation delivering few benefits or even losses to some and plentiful gains to others always threatens to erode it. To be durable, international collaboration has to be mutually beneficial *and* seen as reasonably fair by all participants.

How do justice and fairness intervene in deliberations over GPGs? Such concepts can have many effects upon international negotiations: they may guide the bargaining dynamics – proposals put forward, the exchange and evaluation of concessions, and the formulation of agreements – and thereby facilitate cooperation. And they may become subject to negotiation themselves, and cause deadlocks and stalemates which bring the process to the brink of collapse.⁷ In the case of GPGs, as discussed below, a stock of relevant principles now exists which enjoy broad recognition. However, their exact meaning and application in specific contexts, and priorities

⁵ ‘Justice’ here refers to general standards for allocating collective benefits, opportunities and burdens among the members of a community. They exist prior to and independently of any situation to be judged, but their exact meaning in specific contexts is often ambiguous. While justice can be thought of as a macro-concept, ‘fairness’ exists at the micro-level: It consists of individual notions of what is reasonable under the circumstances, often in reference to how a principle of justice regarded as pertinent should be applied. C. Albin, ‘The Role of Fairness in Negotiation’, *Negotiation Journal*, 9: 3 (1993), pp. 223–44.

⁶ Gruber, ‘Rationalist Approaches’; Gruber, *Ruling the World*.

⁷ C. Albin, *Justice and Fairness in International Negotiation* (Cambridge: Cambridge University Press, 2001).

among different principles, are often hotly disputed. This helps to explain why justice and fairness issues remain so controversial and all too often threaten a successful cooperative outcome.

We will begin by over-viewing why justice and fairness matter in negotiations over GPGs. The article then moves on to ask what specific justice and fairness issues arise in negotiations, and suggests criteria for fair negotiation practice: what is fair agenda setting? How can we recognise a fair negotiation process? What is required of a just outcome and to what extent do fair agenda setting and fair bargaining contribute to it? Ongoing debates over many global resources are filled with the language of ethics. These are not merely rhetorical references, for justice and fairness genuinely matter. Yet all too often, the meaning attached to these concepts is never specified. The analysis here hopes to contribute to a debate which can never be resolved until it is lifted above the multitude of vague demands or assurances about justice and fairness. The concluding section discusses possibilities for enhancing fairness in negotiations over GPGs, along the lines here discussed, and argues that doing so is ultimately in the interest of all parties. All too often, fairness is presented in an altruistic light which contradicts considerations of self-interest and political reality.

Examples will be drawn from multilateral talks over trade and, to a lesser extent, reform of the global financial system, nuclear non-proliferation, the global climate, and air pollution. Unlike so many other GPGs, the international trade regime is significant in that the vast majority of countries (developed and developing) recognise it as a top priority concern.⁸

Negotiating global public goods: why fairness matters

Fairness matters in international negotiations generally, for a number of reasons (see Table 1). But negotiations over GPGs raise particularly stark justice and fairness issues which are automatically brought to the table. Firstly, the recognition of their public nature and global significance suggests that everyone has some right of access or ownership: they are there for everyone to share and are, in many cases, vital to the well-being of people worldwide. Too selfish or too irresponsible behaviour by some parties which impinges upon the entitlement of others to enjoy their share of benefits from these resources will evoke resentment and moral condemnation. Not surprisingly, George W. Bush, as newly elected president of a rich country emitting most greenhouse gas emissions in the world, was widely criticised across the international community for failing to support the 1997 Kyoto Protocol.

Secondly, GPGs entail interdependence and a need for voluntary cooperation to ensure adequate supply, management and distribution. Each of these goals raises

⁸ The international trade regime possesses qualities which here define it as a GPG (see note 4 above), although like most GPGs it is an 'imperfect' and not a 'pure' one. On the 'club model' of decision-making in the trade regime, see R. Keohane and J. Nye, 'The Club Model of Multilateral Cooperation and the World Trade Organization: Problems of Democratic Legitimacy', unpublished paper prepared for 'Efficiency, Equity and Legitimacy: The Multilateral Trading System at the Millennium' (Cambridge, MA: John F. Kennedy School of Government, Harvard University, 1–2 June 2000).

Table 1. *Why fairness?*

Some major points concerning the significance and functions of fairness
<ul style="list-style-type: none"> • To bring all needed parties to the negotiating table, and keep them there • To evaluate alternative proposals for an agreement (their terms and prospects) • To overcome conflicting interests and claims, and reach agreement • To legitimise the outcome before important constituencies (at home and internationally) • To help secure the implementation of and compliance with agreements • To establish and maintain successful cooperation in the long term

difficult fairness issues: the incentives to overconsume and to ‘free ride’ are strong, as the use of GPGs cannot easily be portioned out nor be denied those who fail to contribute; the costs of their supply can be very high; and the fair way of distributing the benefits of GPGs among parties with different needs and requirements is rarely obvious and always disputed. In other words, there are serious disagreements over *the terms of international cooperation*. Yet, as GPGs cannot be produced unilaterally, negotiations must bring all parties to the table and to an agreement on collaboration, and ensure implementation of it. This can rarely be achieved without resort to principles of fairness and the expectation of mutual net gains.

Finally, negotiations over many GPGs are conducted in the shadow of broadly accepted principles – both substantive ones concerned with outcomes (for example, ‘equitable utilisation of shared resources’, ‘sustainable development’), and processual or procedural ones concerned with conduct (such as duties concerning exchange of information and cooperation). They have often been endorsed in earlier multilateral framework agreements, and provide a broad normative context within which specific obligations are later negotiated and general standards which negotiators are expected to observe. Such principles are too vague to stipulate specific measures, so negotiation is still needed to reach agreement on their proper meaning and implementation. Fairness issues arise as parties consider conflicting ways in which the same principles can be applied and the impact of each on their own interests.

The international trade regime is a case in point. At its heart lie principles of free and fair trade specified in the GATT treaties, which inform negotiations within the World Trade Organization (WTO). Parties have repeatedly expressed their support for these. The serious disputes concern their implementation and real effects to date. For example, poor countries may suffer net losses when asked to liberalise and compete with economically far more advanced states. Many industrialised countries have retained protectionist barriers in their own markets. These issues evoked powerful resentments about unfairness already in the Uruguay Round of the GATT (1986–1993).⁹ In its aftermath, the World Bank identified Africa as a net loser as its costs of food imports would rise and prices of its exports fall.¹⁰ The street battles

⁹ Detailed accounts of the Uruguay Round of trade talks and the agreements which resulted from it can be found in T. Stewart (ed.), *The GATT Uruguay Round: A Negotiating History (1986–1992)*, Volumes I and II (Deventer, The Netherlands: Kluwer Law and Taxation Publishers, 1993).

¹⁰ B. Moon, *Dilemmas of International Trade* (Oxford: Westview Press, 2000).

surrounding the 1999 WTO meeting in Seattle again drew worldwide attention to the reality that the existing trade regime produces both winners and losers, and fails to spread the income and wealth it generates adequately at all levels from the local to the global.

Coping with moral ambiguity: the practice of negotiation today

Moral ambiguity plagues negotiations over GPGs. We lack one overarching standard which defines justice and fairness in concrete situations. Moreover, there is no consensus on priorities among recognised principles. There are usually several conflicting principles on which a cooperative agreement can be based and still reasonably be considered just and fair. Negotiators, like scholars, thus frequently dispute what justice and fairness require. Moreover, their perspectives may differ greatly from what domestic or local constituencies perceive as fair and legitimate. Although broad international acceptance of many criteria now exists, consensus on which principles or interpretation of them should rule in specific instances is thus rare.

In order to situate the approach taken here, we will overview current concepts of justice and fairness and sum up where the practice of these stands today in actual negotiations. Interestingly, this practice demonstrates a more coherent picture of what is to be taken as just and fair than do scholarly debates at present.

Competing criteria

Current concepts of justice and fairness fall into several categories. There are those which assign a particular substantive content to these values and procedural principles which do not. Approaches can also be distinguished based on their use of external, internal or impartial criteria. *Substantive principles* are often specific to particular issue areas.¹¹ *Procedural principles*, by contrast, are more generally applicable and rarely unique to a particular sector. A major one is ‘reciprocity’; that is, mutual responsiveness to each other’s concessions. The pertinent literature endorses this principle as intrinsically just or fair,¹² and as instrumental in achieving cooperation.¹³ Others, further discussed below, include ‘impartiality’, ‘mutual benefit’ and representative forms of decision-making such as voting and decision by consensus.

¹¹ Two exceptions are the principle of differentiating obligations in accordance with economic ability, and the obligation to comply with freely negotiated agreements, which are more broadly applicable (see discussion below).

¹² A. Gouldner, ‘The Norm of Reciprocity: A Preliminary Statement’, *American Sociological Review*, 25: 2 (1960); O. Bartos, *Process and Outcome of Negotiations* (New York: Columbia University Press, 1974); A. Gibbard, *Wise Choices, Apt Feelings: A Theory of Normative Judgment* (Oxford: Clarendon Press, 1990).

¹³ F. Iklé, *How Nations Negotiate* (New York: Praeger Publishers, 1964); R. Axelrod, *The Evolution of Cooperation* (New York: Basic Books, 1984).

Table 2. *Examples of substantive principles, by select areas.*

International trade regime	1. 'Most favoured nation'	Equal treatment of trading partners: obligation to extend any trade concession or favour given to one country to all other WTO members.
	2. 'National treatment'	Equal conditions of competition for foreign and domestic products and services: states may not in their domestic markets alter those conditions to favour domestic providers.
Environment	1. 'No harm'	The obligation to avoid harming the environment of others and compensate fully those countries suffering unprovoked damage.
	2. 'Polluter pays'	The obligation of polluters to pay themselves for clean-up efforts (such as abatement measures to cut pollution at source, or remedies to alleviate damage already caused by pollution).
	3. 'The common heritage of mankind'	The notion of certain environmental resources being vital to and held in common by the entire international community, thus to be shared on an equitable and sustainable basis.
Arms control	1. 'The unacceptability of indiscriminate and massive harm'	Bans or limits the use of inhumane or excessively harmful weapons such as landmines, laser and nuclear weapons.

Current concepts of justice also rely on *external principles*. These are well-recognised distributive criteria whose general content is independent of any particular allocation to be judged. Examples are the principles of 'equality' (parties should receive identical or comparable treatment, rewards, and burdens), 'proportionality' (benefits and costs should be distributed in proportion to relevant inputs, such as contributions or assets), 'compensatory justice' (resources should be distributed to indemnify undue costs inflicted on a party in the past or present), and 'need' (resources should be allocated relative to strength of need, so that those in most need receive the greatest share). While relatively clear in concept, all principles pose problems of application. For example, interpretations of equality vary from 'equal shares', the uniform distribution of resources regardless of differences in preferences, needs or other considerations,¹⁴ to equality of utility, welfare or 'func-

¹⁴ D. Pruitt, *Negotiation Behavior* (New York: Academic Press, 1981).

Table 3. *Examples of procedural principles.*

External	
1. 'Equality'	Requires parties to receive identical or comparable rewards and burdens.
2. 'Proportionality'	Holds that resources should be allocated in proportion to relevant inputs – for example, assets (skills, wealth, income, status) and contributions (actions and efforts adding value to the goods).
Internal or contextual	
3. 'Mutual advantage'	Arrangements are just if based on terms which parties themselves have agreed to honour. They must be mutually beneficial, since parties strive to maximise their own gains.
4. 'Reciprocity'	Mutual responsiveness to each other's concessions. 'Specific reciprocity' entails equal concessions or sacrifices. 'Diffuse reciprocity' involves concessions leading to an agreement which is considered sufficiently balanced and fair overall.
Impartial	
5. 'Justice as fairness'	Principles of justice are those which parties would select and agree upon if they were in a 'fair choosing situation'; that is, ignorant of their own identity and position.

tioning capabilities' which requires measuring and comparing individual experiences of using particular goods.¹⁵

Internal or contextual criteria define the meaning of justice or fairness inside the negotiation process without reference to external guidelines. The theory of justice as 'mutual advantage' holds that arrangements are just if based on terms which parties themselves have established and agreed to honour.¹⁶ They must be mutually beneficial, since parties strive to maximise their own gains. So there is justice (and rationality) only in mutually beneficial cooperation: justice cannot involve a pure redistribution of resources, nor parties unable to contribute to the joint gains. Finally, *impartial standards* limit what interests may be pursued and what power may be exercised. Their purest expression is found in John Rawls's well-known theory of 'justice as fairness.'¹⁷ By holding that principles of justice are those which parties would select if ignorant of their own identity and position, it removes the influence of any power or resource inequalities (advantages) on the choice of principle. Drawing on Rawls, Brian Barry's theory holds that justice is 'what can freely be agreed on' by parties who are equally well-placed, notably in the sense of being able to reject and veto an agreement.¹⁸ Just arrangements win voluntary acceptance, can

¹⁵ A. Sen, *Inequality Reexamined* (Oxford: Oxford University Press, 1992).

¹⁶ D. Gauthier, *Morals by Agreement* (Oxford: Clarendon Press, 1986).

¹⁷ J. Rawls, 'Justice as fairness', *Philosophical Review*, 67 (1958), pp. 164–94; J. Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971).

¹⁸ B. Barry, *Justice as Impartiality* (Oxford: Clarendon Press, 1995), p. 51.

be justified on impartial grounds, and cannot reasonably be rejected from a detached viewpoint. Negotiations which take place in a coercive or manipulative context, and agreements held in place by force, are clearly illegitimate.

Widely recognised principles

Negotiation practice today portrays greater agreement on the meaning of justice and fairness than does the scholarly literature. A stock of principles has been generated, which enjoy broad support and are frequently applied. They reflect the experience of what negotiators have repeatedly found to be reasonable, even-handed and broadly acceptable ways forward.

Firstly, justice and fairness are rarely taken to mean identical (equal) treatment or allocations. These values require *proportionality*: that parties' circumstances be taken into account. In negotiations over GPGs ranging from environmental resources to free trade, the differentiation of obligations in accordance with economic ability is commonplace. It often conflicts with the 'polluter pays' rule; yet, one participant in negotiations on air pollution in Europe recalls that there was 'hardly any debate' about basing emission reductions on this principle: '... the differentiation was indeed considered an issue of justice and fairness'.¹⁹ In international trade talks, the poorest nations are usually asked to remove trade barriers in accordance with level of development.²⁰

Secondly, fairness is associated with *reciprocity* and *net benefits* for all parties: 'The purpose of any negotiation is to produce . . . reciprocal benefits . . . All parties feel that they need a balance of concessions...that is, they require reciprocity from other parties'.²¹ 'Appropriate', not identical, commitments are sought from parties in light of their different circumstances, to arrive at an agreement considered balanced overall.²² It means that other principles, such as 'no harm' and 'polluter pays' in the environmental area, are acted upon only as far as it is consistent with the overriding concern about joint net benefits. Thus, rich countries victimised by air pollution, such as Sweden and Finland, have paid for the adoption of clean technologies in the poorer countries which are the source of much of this pollution, such as the Baltic States and Poland, and have gained more from this than undertaking clean-up efforts at home.²³ Notions of justice requiring unilateral resource transfers without

¹⁹ Personal communication with Volkert Keiser, head of the Dutch delegation (since 1992) in the UN Economic Commission for Europe Executive Body and the Working Group on Abatement Strategies, in writing on 1 October 1997.

²⁰ Personal communication with Karl Falkenberg, First Secretary of the delegation of the European Community (EC) to the Uruguay Round of the GATT and then Head of the EC unit in charge of the negotiations on trade in services, on 27 April 1998.

²¹ Personal communication with Ambassador Richard Self, chief US negotiator on services in the Uruguay Round, on 29 April 1998.

²² Personal communication with David Hawes, Permanent Representative of Australia to the GATT and Acting Chair of the Group of Negotiations on Services in the Uruguay Round of the GATT, on 26 March 1998.

²³ R. Löfstedt, 'What factors determine the provision of environmental aid to Eastern Europe: the case of Sweden'. Paper presented at a conference on 'Risk and Fairness' at the International Institute for Applied Systems Analysis (IIASA) (Laxenburg, Austria: IIASA, 20–22 June 1993).

return benefits – for example, aid to peoples affected by extreme poverty, natural disasters, and epidemics – rarely survive political negotiations.

Thirdly, practitioners associate justice and fairness with *impartiality*. Voluntary acceptance and the absence of coercion are important. However, to them impartiality also entails *balancing different principles and interests*.²⁴ A number of principles, reflecting a wider range of considerations and concerns of parties than a single criterion can capture, must guide a balanced solution. As noted earlier, several competing principles can be invoked credibly in most complex international talks. So balancing different principles is seen as a reasonable way to overcome conflicting considerations, particularly when none emerges as superior and salient, and formulate an agreement which all can accept as evenhanded and fair.

Finally, international negotiators widely support the *obligation to comply with freely negotiated agreements*. This is a well-established principle of morality and international law, although views and regulations differ on circumstances which justify breaking an agreement. The indivisibility of GPGs makes over-consumption and under-supply tempting, so the main point here is about intentional ‘free riding’: some parties can benefit from others complying with an agreement on GPG provision, while avoiding compliance themselves and maximising their gains. Yet, in the international community today, adherence to voluntary agreements is expected and certainly associated with justice.

This stock of principles can be captured in an overarching concept of justice as *the balanced settlement of conflicting claims*.²⁵ It recognises that the meaning of justice and fairness is a complex matter in real international encounters, and that it is frequently contested for good reasons. A notion of what is right and reasonable in these common situations of moral ambiguity is therefore essential. In order to

Table 4. *What do justice and fairness require?*

Some broadly recognised and applied principles
<p><i>Different types of criteria:</i></p> <ul style="list-style-type: none"> • Substantive vs. procedural • External, internal, and impartial <p><i>Examples:</i></p> <ul style="list-style-type: none"> • Impartiality (for instance, no coercion, balancing different interests and criteria) • Reciprocity • Unequal (differential) treatment of unequal parties • Representative decision-making • Net gains from cooperation • Compliance with freely negotiated agreements • No free riders

²⁴ Personal communication with Ambassador Ralph Earle, Acting Head of the US delegation to the 1995 NPT Review and Extension Conference, on 30 June 1998; personal communication with Van-Thinh Tran, Head of the EC permanent delegation to the Uruguay Round of the GATT, on 25 March 1998.

²⁵ C. Albin, *Justice and Fairness in International Negotiation*.

understand what a balanced settlement of conflicting claims means concretely, it is necessary to examine specific situations. We might say that fairness is achieved when this notion is applied to take account of relevant contextual details; for example, any entitlements, contributions, ability to bear costs or forego benefits, and any established norms in the particular issue area. It takes into account the interests of parties, but places constraints on the raw pursuit of self-interest. It may reflect some power inequalities between them, but does not simply mirror the prevailing balance of forces. The next section develops this concept further, by showing how it relates to different aspects of negotiations.

Making cooperation succeed: from agenda-setting to implementation

Cooperation on peace and security issues (and GPGs specifically) so often fails or is insufficient, because countries stumble over critical justice and fairness issues when attempting to negotiate the terms of collaboration. What then are these issues that have to be tackled? They concern the structure, process, procedures and outcome of negotiations.

Structural issues of justice and fairness

These concern the fundamental conditions and constraints under which the negotiation process unfolds and negotiators operate.²⁶ They can prejudice the talks and the outcome considerably, particularly for weaker parties. Three issues are especially important in negotiating GPGs: agenda-setting, parties, and rules.

What issues are placed on *the agenda*, and how they are ordered and linked, impact upon the subsequent bargaining and outcome. Negotiators naturally seek maximum coverage of issues of most interest to themselves, and linkages which can improve their bargaining position. In negotiations over GPGs, agenda-setting often raises heated disputes about fairness along the North-South divide. Representatives of LDCs hold that GPGs of vital importance to their survival and well-being (such as health and poverty issues, and the finance of economic development) are persistently neglected, while other GPGs of most benefit to richer states and the corporate world are imposed and prioritised on the international agenda (such as nuclear non-proliferation, the environment, and intellectual property rights).

The attempt to launch another round of trade talks at the 1999 WTO meeting in Seattle fell partly over this issue. Key developed countries (DCs), led by the US, pushed for electronic commerce, investment policy, and labour and environmental standards to be placed on the agenda for new talks. LDCs found these areas of little interest or even potential harm to themselves; for example, labour and environmental standards linked to trade would discriminate against their goods produced by child

²⁶ J. Z. Rubin and B. Brown, *The Social Psychology of Bargaining and Negotiation* (New York and London: Academic Press, 1975).

labour and by workers without trade unions rights.²⁷ They also held that rich countries had neglected to open up their markets sufficiently to goods in which LDCs have comparative advantage, such as textiles and agricultural products. LDCs insisted on further progress in removing barriers to trade in these products before new concerns were added to the agenda.

The notion of justice as a balanced settlement of conflicting claims calls for a broad and balanced agenda which includes, orders and links issues in a way which takes into account the essential concerns of all parties. It does not cater predominantly to one set of interests at the expense of others. This makes possible a fair negotiation process as discussed below, and an outcome which all can accept. The need to get to the table and to an agreement can encourage fairer agenda-setting in this sense. In the preparatory talks to the Uruguay Round of the GATT, it was recognised that LDCs had been marginalised in the agenda-setting for earlier rounds, and that industrialised states had not responded sufficiently to their concerns in areas such as agriculture and textiles. That Round would have been impossible to launch without the eventual formulation of an agenda which balanced competing interests, partly by making progress in talks on services conditional upon progress on issues essential to LDCs.²⁸ Service sectors of importance to DCs, such as capital flows, as well as to LDCs, such as labour, also had to be included. Charges of unfair agenda-setting re-emerged at the 1999 WTO meeting in Seattle but, at a WTO ministerial meeting in Doha (Qatar) in 2001, governments finally agreed on a more balanced agenda for a new round of global trade talks.²⁹

Another set of issues concern *the parties* to the negotiations: their attributes, representation, and relations between them. Unequal power relations, for example, raise fairness issues. If sharply unequal parties bargain over GPGs, the process and its outcome may mirror their respective power or lack of it more than voluntary agreement, entitlements, contributions or needs. On representation, offering every party a seat at the bargaining table as far as possible is important: it helps to ensure that all interests are considered, enhances the legitimacy of the outcome and facilitates its implementation talks.³⁰ The rise in negotiations over global issues has, however, raised difficult questions about what fair representation entails. Many GPGs implicate far more interests and parties than governments, often responding to constituencies at home and looking to the next elections, can represent. Yet, the traditional admissions criteria of statehood and sovereignty still prevail in international negotiating fora, and the participation of non-state actors remains largely unofficial or ad hoc and subjected to the approval of state delegations.

Justice as a balanced settlement of conflicting claims speaks for a principled and cautious expansion of the opportunities to participate in negotiations over GPGs. It should be based on criteria which relate to what parties (state and non-state) can

²⁷ J. Bhagwati, 'Third World Intellectuals and NGOs-Statement Against Linkage' (November 1999). Retrieved from <http://www.columbia.edu/~jb38/papers.htm>

²⁸ Personal communication with Tovar Nunes, member of Brazil's delegation to the Uruguay Round talks on services (from 1988 to 1991), on 7 May 1998.

²⁹ 'Doha WTO Ministerial 2001: Ministerial Declaration.' WTO Doc. WT/MIN(01)/DEC/1 (Geneva: 20 November 2001).

³⁰ L. Susskind and J. Cruikshank, *Breaking the Impasse: Consensual Approaches to Resolving Public Disputes* (New York: Basic Books, 1987).

contribute to the process in terms of enhancing its representativeness, legitimacy and effectiveness. They must be discriminatory enough to avoid the process being paralysed by too many actors and demands, yet broad enough to win general respect and approval. What united the diverse groups demonstrating in the streets of Seattle in December 1999 was the view that the WTO was unfair and undemocratic in over-representing the interests of rich countries and large corporations, and failing to listen to ordinary people and those made vulnerable by free trade.

Negotiation *rules* concern methods of communication and decision-making (such as voting, consensus rule), any involvement of outside parties, and the use of deadlines, among many matters. They help to organise large-scale multilateral talks over GPGs, coordinate expectations, and facilitate agreement. Concerns about fairness arise if, for example, some parties do not participate in selecting the rules or are disadvantaged by them. In the World Bank and the International Monetary Fund, the key multilateral institutions concerned with the global economy, economic strength remains the primary factor determining voting power. Thus DCs hold over 60 per cent of that power. Not surprisingly, efforts to improve the global financial system have so far called for LDCs to adjust to the existing order, rather than for fundamental reforms in that order or adjustment in DCs.³¹ LDCs and parties sympathetic to their cause focus instead on the need for more representative institutions in debates over the present economic order which, in the words of one commentator, needs 'repair, updating and re-legitimization'.³²

Many GPGs are negotiated with formal rules of procedure which are seen as fair. Decision-making by consensus, for example, gives every country veto power which encourages taking a broad range of interests into account. At the WTO meeting in Seattle it enabled LDCs to block the inclusion of labour standards on the agenda for new trade talks, and in the 1995 Review and Extension Conference of the Nuclear Non-Proliferation Treaty (NPT) it helped to produce an outcome considered reasonably balanced and fair by all.³³ However, structural fairness in this or any other sense can never guarantee a fair process or a fair outcome. Actual negotiation practice (including informal rules) may compromise officially established rules.

What is a fair negotiation process?

It refers to how parties relate to and treat each other during negotiations. It is, in brief, about fair behaviour. Two matters are important to justice as a balanced settlement of conflicting claims, and in negotiations over GPGs: fair input and fair play.

³¹ *Trade and Development Report, 2001* (Geneva: United Nations Trade and Development Conference, 2001).

³² G. K. Helleiner, 'Markets, Politics and Globalization: Can the Global Economy be Civilized?', p. 20. Tenth Raul Prebisch Lecture, Palais des Nations, Geneva, 11 December 2000 (Geneva: United Nations Conference on Trade and Development, 2000).

³³ Personal communication with Jayantha Dhanapala, President of the 1995 NPT Review and Extension Conference and UN Under-Secretary-General for Disarmament Affairs, New York, on 29 June 1998.

The first, *fair input* or *fair hearing*, refers to parties and issues. Each party should have an adequate chance to put forward its case and have an input into the process, from the stage when the problem is framed and options assessed to the point when the final agreement is formulated. A fair process is expected to consider as far as possible all affected interests, with a view to their merits rather than existing power structures. It is to avoid marginalising, or exploiting the absence of, any parties by settling issues at their expense. Full information about the issues under negotiation is to be made available to all, and to be considered openly. This may require the assistance of outside individuals or organisations if participating governments do not possess enough resources or credibility to gather and present relevant data impartially.

Fair play means that each party can freely accept or reject proposals, without being subjected to heavy-handed coercion and threats. Stronger parties refrain from pressurising the weak and dispossessed into accepting terms which, to impartial observers, would appear unreasonable or even exploitative. But numerous multi-lateral framework agreements on GPGs also stress that all participants are obliged to negotiate 'in good faith'; that is, genuinely work towards and contribute to a negotiated settlement. They are expected to reciprocate concessions and balance different interests. A party cannot pursue its own self-interests in an uncompromising way that halts the entire process or blocks an agreement to the detriment of others.

Fair play also requires parties to agree on clear negotiation rules and procedures, and to respect these thereafter (unless changed subsequently by consensus). This brings us to *procedural fairness*, that is, the features of the methods used to arrive at an agreement.³⁴ They include voting, linkage of issues, mutual reciprocation of concessions, and decision by consensus. They may be inherently fair or unfair in some respect (such as, by giving, or failing to give, every party a power of veto or a vote), or endorsed by virtue of favouring a certain outcome seen as fair (such as one based on a balance of concessions between parties). Some are adopted during the bargaining process while others, as discussed above, are agreed in advance as part of the overall negotiation structure. Minimally they cover two matters: consultation practices with parties inside and outside the negotiating room, and methods of decision-making which, whatever their specifics, should be representative and transparent. Ideally, they are more comprehensive and may clarify matters such as: are the parties expected always to give full (and truthful) information about their interests, priorities and options? In one argument, lying and other deceptive tactics are unacceptable unless all parties know and accept that they are part of the game.³⁵

In the Comprehensive Test Ban Treaty (CTBT) talks from 1994 to 1996, Australia along with 50 sponsoring countries bypassed the Conference on Disarmament and its consensus rule by submitting the final draft treaty to the United Nations (UN) General Assembly for approval. The purpose was to prevent India, an opponent to the draft, from blocking its adoption. Australia defended the action by arguing that

³⁴ The terms 'process fairness' and 'procedural fairness' are often used interchangeably without making this distinction, to refer to the negotiation process generally.

³⁵ D. Lax and J. Sebenius, *The Manager as Negotiator: Bargaining for Cooperation and Competitive Gain* (New York and London: The Free Press, 1986).

'the extension of a national point of view to the point of seeking to prevent others from acting on theirs' was unacceptable.³⁶ Yet there were countries other than India which felt that 'India was treated unfairly in the CTBT negotiations because a solution was forced on them that was not forced on anybody else. The rules of the game were changed. That was unfair.'³⁷ It is at least clear that overriding the consensus rule made it more desirable and easier for India to reject the final CTBT with some moral justification.

Negotiations over GPGs frequently take place under framework agreements which endorse principles of process fairness mentioned here. Yet, their material impact on outcomes to date has in many cases been disappointing. It partly reflects the fact that well-to-do countries enjoy advantages in terms of representation (presence, size, and preparation of delegations); negotiating experience and skills; access to technical knowledge, information and other support; and sheer weight in international economic, military or political terms. Some LDCs even lack a permanent diplomatic presence in important international fora. For such reasons, actual decision-making power over GPGs can be vested unproportionally in the hands of a few states, which come to dominate the negotiation process excessively. Other parties may find few real chances to stand up for their interests and influence the talks on an equal basis.

The WTO machinery is based on formal decision-making rules which help to reduce power inequalities between its members. Nevertheless, in practice, the great number of parties, interests and issues involved in talks under its auspices creates a need for leadership. Economically more powerful states, well resourced to handle issues of great technical complexity, frequently end up exercising this function, while resource-constrained countries find themselves poorly prepared to take an active part in the consensus-building deliberations. In the Uruguay Round of the GATT this meant that weak states were periodically marginalised, particularly in important informal talks taking place outside the official conference rooms. The 1999 Seattle meeting failed partly because the 135 WTO members, the majority of which are LDCs, were asked to sign an agreement which only about 25 countries had been seriously involved in drafting. This small grouping was seen as unrepresentative, and left LDCs feeling that industrialised states had excluded them and neglected their concerns. Delegates from both rich and poor countries blamed the US for seeking to impose an agreement suited to American interests on others, and explained the failure of the meeting in terms of such methods used.³⁸

Does a negotiation fulfilling the criteria of process fairness here proposed lead to a fair outcome? There is much empirical evidence to suggest that matters such as taking all parties and interests well into account, and taking decisions by consensus, enhance the perception of the outcome being fair and balanced. For instance, greater participation by LDCs is now seen as essential if reforms of the global

³⁶ R. Johnson, 'A Comprehensive Test Ban Treaty: Signed but not Sealed'. *Acronym Report*, no. 10 (May 1997).

³⁷ Personal communication with Don Sinclair, member of the Canadian delegation to the 1995 NPT Review and Extension Conference, and a 'Friend of the Chair' in the negotiations leading to the CTBT, on 2 July 1998.

³⁸ 'Trade talks failure prompts rethink', BBC News Online, 4 December 1999; 'WTO: Who's to blame?', BBC News Online, 6 December 1999.

Table 5. *What is a fair negotiation process?*

Some proposed criteria of process fairness
<i>Fair input / fair hearing:</i>
<ul style="list-style-type: none"> • Full and equal opportunity for all parties to present their case and have an input • Full consideration of all positions and affected interests • Open and impartial review of all facts about the issues
<i>Fair play:</i>
<ul style="list-style-type: none"> • Freedom of choice and voluntary agreement • Obligation to negotiate ‘in good faith’, reciprocate and compromise • Truthful information about positions, interests, alternatives and their implications • Adherence to agreed rules for the negotiations

financial system are to be credible and effective. So process fairness facilitates, but as we have seen, cannot guarantee a fair outcome.

The justice and fairness of the outcome

This concerns, firstly, *the principles guiding the distribution of benefits and burdens in an agreement*. They are the criteria underlying the terms of cooperation over GPGs. Negotiators who eventually reach a successful agreement usually employ, as we have seen, a combination of different principles. It is a means to consider more pertinent factors than a single criterion can capture, to overcome conflicting interests, and to win the approval and cooperation of all needed parties. The practice is seen as right and reasonable, not only as required on pragmatic grounds, and corresponds well with the notion of justice as a balanced settlement of conflicting claims. For example, the 1994 Uruguay Round agreements or the ‘Final Act’ ended seven years of conflict-ridden negotiations with a package based on the consideration of all affected interests. Differential treatment of LDCs to take account of their financial, trade and development needs (such as more time for compliance and time-limited exemptions from agreed obligations), mutual benefit, non-discrimination, and transparency were among the principles which were balanced and combined.³⁹

But of concern is also *fairness after the agreement*, that is, actual implementation and compliance with its terms and principles, and the soundness of these over time with changing circumstances. Renewed talks may be needed to combat free riders and ensure that all parties honour their part of the bargain, or to adjust the original terms in light of new knowledge and developments. This stage often determines whether an agreement on paper will actually result in effective – and fair – co-operation on the ground. Fairness after the agreement is central to the notion of justice put forward here, and a challenge to achieve regarding GPGs because of the

³⁹ ‘The Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations’. Signed by ministers in Marrakesh on 15 April 1994 (Geneva: GATT (1995) [GATT 94/4]).

temptation to free-ride. Some states can often escape the duties of cooperation and yet consume its benefits, at least until those complying find a way to take action or decide to abandon the agreement themselves.

The objections of LDCs to the trade regime focus on how agreements to date have supposedly been implemented in favour of industrialised states. They criticise DCs for being slow and reluctant to carry out their trade liberalising obligations under the Final Act. They also point to the US and the EU using anti-dumping legislation and favouring labour and environmental standards in discriminatory ways. Significant trade barriers certainly remain in areas where LDCs have comparative advantage, such as agriculture and textiles. Even after the reforms of the Uruguay Round, agricultural protectionism in high-income countries reportedly caused annual income losses for LDCs of almost \$US20 bn per year. LDCs' exports of manufactured goods to DCs are subjected to trade barriers which are four times higher than those applied to exports from developed states.⁴⁰ At the 1999 WTO Ministerial Conference in Seattle, India's Minister for Commerce and Industry highlighted LDCs' great concern about implementation issues, including 'the non-realisation of expected benefits from Agreements such as textiles and agriculture', and held that addressing these effectively would alone give the WTO 'an image of fairness and equity'.⁴¹

Promoting fair negotiation practice

Justice and fairness issues thus figure prominently in bargaining over GPGs, from the earliest phase when the talks are structured and the agenda set to the final phase of securing implementation and compliance. Like conflicts of interests, these issues can undermine the capacity of negotiation to produce acceptable and durable solutions. They go a long way to explain why countries all too often fail to reach agreement on GPGs. Ultimately, however, parties depend on large-scale cooperation in securing the continued provision, management, and benefits of most GPGs. Too arbitrary or too self-serving proposals and arrangements usually fail to win the respect and voluntary approval of all parties and their constituencies, and have a short lifespan. Negotiators are therefore motivated to act and formulate terms for collaboration based on principles for the allocation of duties, rights, benefits and costs which everyone can freely accept as reasonable and legitimate – as fair.

The notion of justice as a balanced settlement of conflicting claims offers guidelines as to what is required in negotiations over GPGs. For example, the agenda needs to be set collectively and balance the interests of all parties. Every party, as far as possible, should have a chance to participate actively in and influence the negotiation process. The voices represented at the table should be expanded in a principled and cautious way, beyond those of governments and states. Methods employed to reach an agreement should be inclusive, open and non-coercive. Just agreements not

⁴⁰ 'Seattle WTO Talks Must Focus on the Poor. [World Bank President James D.] Wolfensohn Calls for 'Fair and Inclusive' Round'. News Release no. 2000/115/S (Washington, DC: The World Bank Group, 29 November 1999).

⁴¹ Statement by Shri Murasoli Maran, Minister for Commerce and Industry, India, at the Third WTO Ministerial Conference in Seattle, 30 November 1999, *India and the WTO Newsletter* (<http://commin.nic.in/doc/wtonovdec2.htm>).

only deliver real benefits to all participants but also establish a sound balance of benefits between them (give each its 'fair share' of the gains from cooperation); make demands on individual parties with consideration for their resources and other relevant circumstances; and balance the two when they seem to conflict. Such agreements combine and reconcile different principles and interests, can be justified on impartial grounds, win the voluntary approval of parties, require evenhanded implementation, and ban intentional free-riding on others' compliance.

Few of these ambitious criteria have been met fully in negotiations over GPGs to date. What then can be done to promote fair negotiation practice, and thereby better cooperation? By way of conclusion, we will discuss four sets of strategies.

The first concerns *improving negotiating and decision-making methods*. This could go a long way to make the bargaining process over GPGs more inclusive and efficient. Firstly, in an informal, off-the-record context, parties could prepare for actual negotiations by engaging in open dialogue and problem-solving over contentious issues. The purpose would be to clarify goals and intentions on all sides; brainstorm and evaluate possible alternative solutions which may be mutually beneficial; and, in the process, enhance trust and goodwill. As part of this exercise, the parties could develop and agree on a set of explicit rules and objectives defining their understanding of a fair negotiation process and outcome. Subsequent adherence to these would then be reviewed regularly, when revising and deciding on drafts of a final agreement and at other critical junctures. A detached party, such as a committee consisting of subject experts and representatives of the host organisation, could help participating governments to undertake these reviews impartially and to find ways out of any disputes.

The observance of agreed criteria of fairness could also be examined *across issue areas* at regular intervals. Organisations sponsoring negotiations over GPGs in a range of areas may be well suited to institute such a procedure; for example, the UN General Assembly. Such broader reviews acting as 'watch-dogs' may reveal patterns and trends which would not become as apparent on an issue-by-issue basis; for example, any negligence in the treatment of the priorities and concerns of LDCs or other parties in global agenda-setting and in the implementation of agreements. Once formal negotiations are underway methods of consultation and decision-making need to ensure that all voices are represented and heard – *and* perceived to be so. This is a formidable challenge in negotiations over GPGs, which usually involve well over 100 parties, and takes time and skill. A core steering group consisting of a limited number of parties almost always needs to be formed to make agreement possible, but it has to be representative of the larger group.

The so-called 'Green Room meetings' with a small number of delegations which the US chair of the WTO meeting in Seattle held over three days became seen as unfair and undemocratic. By contrast the Indian chair of the 1995 NPT Review and Extension Conference, which lasted nearly a month, created a group of 25 countries representing all main positions and interests, to test ideas and proposals and draft the principles of an agreement. This method, combined with the chair's determination and leadership to reach an evenhanded outcome, 'allowed a solution to be worked out in a smaller group and to be accepted by a larger group'.⁴² That larger

⁴² Communication with Dhanapala.

group, the 175 participating states, then adopted the NPT extension decision by consensus, not by majority vote as stipulated in the Treaty, which boosted its moral authority and legitimacy. The US chair of the WTO meeting in Seattle argued that the world organisation had outgrown the consensus rule.⁴³ This case points to its continued potential value, however, if enough time is allowed to reach that consensus. Whatever methods of decision-making are used, they need to be representative and transparent in order to win respect and approval.

Providing training, research and technical support, and policy advice to disadvantaged parties is another way to promote fairness. These are crucial means to strengthen their individual and collective capacity to look after their interests in view of new developments, formulate effective positions, and influence negotiations. Such support could be provided prior to and during formal talks, and to individual countries as well as coalitions. Of course, the more LDCs can develop common positions among themselves before they begin to bargain with DCs, the more successful they are likely to be. Effective reform of the world's monetary and financial system, for example, depends extensively on whether LDCs can act collectively on their shared objectives. It also depends on preparing LDCs better for and increasing their participation in negotiations, with the assistance of DCs.⁴⁴

The establishment of the Agency for International Trade Information and Cooperation (AITIC) independently of the Bretton Woods institutions, the WTO's provision of trade policy courses and other initiatives have begun to prepare LDCs better for taking a full part in trade talks, and for intervening effectively before critical decisions are taken. In short, training and support are vital to ensure that the principles and rules of the trade regime are interpreted and implemented in an even-handed way, and deliver real benefits to all its members. The President of the World Bank appeared to recognise shortcomings on this front when stating that '[i]t makes no sense to urge poor countries to reform their economies, to urge them to compete and "pay their way in the world", while denying them the means to compete'.⁴⁵

Some *expansion of the opportunities for non-state actors to be consulted and participate* in negotiations over GPGs could enhance their legitimacy and effectiveness. Firstly, greater involvement of major affected groups within states, and relevant experts, in the development of national policies and positions could help. It could clarify the real effects of alternative measures which may result from the talks on a particular country, help to devise a balanced and coherent national policy, and reduce confrontations back home once international talks are underway. This is a way to anchor international negotiation and cooperation over GPGs more firmly in national policy objectives and consultations, and thereby enhance the prospect of their success. When negotiators formulate positions and deals behind closed doors, they may not be fully aware of the implications of their undertakings at the national or local levels and moreover often lose public support. In the area of trade, the result is then often that they revert to protectionism.

The second stage at which non-state actors, alone or in cooperation with governments, could make a real difference is in the international negotiation process itself;

⁴³ 'Trade talks failure prompts rethink', BBC News Online, 4 December 1999.

⁴⁴ Helleiner, 'Markets, Politics and Globalization.'

⁴⁵ Wolfensohn, 'Seattle WTO Talks Must Focus on the Poor'.

for example, by providing expertise and analysis which aid in the formulation of fair and effective solutions. The expertise of scientists has been enlisted regularly since the early 1990s in acid rain negotiations within the UN Economic Commission for Europe. Their computer models have played a key role in the successful negotiation of acid rain emission reductions. They serve as a tool to generate abatement strategies for maximum environmental protection at the lowest possible cost on a regional scale. Parties consider agreements based on such empirical knowledge fair and efficient. In climate change negotiations, scientists in the Intergovernmental Panel on Climate Change (IPCC) support the talks.

The International Conference on Financing for Development, launched under UN auspices in 2001 at the initiative of LDCs to debate reform of the global financial system, included civil society and private sector hearings from the outset.⁴⁶ Elsewhere, however, the participation of non-governmental parties has yet to be integrated. In the WTO, members meet only informally with such representatives, and official trade negotiations are closed to them as to the public at large and the media. During the WTO meeting in Seattle, US President Bill Clinton held that ‘the public must see and hear and, in a very real sense, actually join in the deliberations. . . . That’s the only way they can know the process is fair and know their concerns were at least considered.’⁴⁷ To take another example, negotiations over nuclear non-proliferation have been closed to representatives of non-state groups.

Finally, *linkage of issues* can enhance the fairness of negotiations over GPGs to the ultimate benefit of all. It allows a party or coalition of parties to exchange concessions on their supposedly lower-priority issues, which to another party may be of utmost significance, for concessions on other issues they value more. It is possible to link issues across two or more areas (for example, economic development and environmental protection), or different issues or aspects of the same issue in a single area. From the viewpoint of fairness and successful negotiation, there is nothing inherently good or bad about linkage: it depends entirely on the context and the manner in which linkage is used.

Linkage assumes that one issue or area can be traded off against another as a result of different valuations. This is not always ethical; for example, offering economic rewards to the needy in exchange for their acceptance of matters compromising their safety (such as toxic wastes from DCs). The method can delay and further complicate already complex negotiations, by placing additional issues on the table which are controversial. As mentioned earlier, a major reason for the failure of the 1999 WTO meeting in Seattle was the efforts of some DCs to link labour, as well as environmental, standards to trade on the agenda for new talks.

Linkage can help secure a balanced agenda, an evenhanded agreement, and compliance with its terms. Weak parties can use this method to improve their leverage and better terms for themselves, as required. They can tie their readiness to move and make a deal on a particular issue to a willingness by others to concede on matters important to themselves. Connections between economic development issues on the one hand, and environmental protection on the other, are now made routinely

⁴⁶ Kamal Malhotra, ‘The Road to the Earth Summit 2002’. Presentation at Heinrich Boell Foundation Conference, Panel on International Conference on Financing for Development, 20 April 2001.

⁴⁷ ‘Clinton calls for a more transparent WTO’, India Abroad News Service, 2 December 1999.

in negotiations. For example, LDCs commonly request financial and technical assistance as compensation for cooperating in tackling environmental hazards caused essentially by DCs to date, such as climate change. Many regard this as a justice issue: stemming greenhouse gas emissions would otherwise be likely to hamper the economic development of poorer countries, which carry relatively little responsibility for creating the climate change problem in the first place.

In the absence of shared priorities among countries, many global resources are valued divergently and can thereby provide a basis for trading. Interdependence between parties and the need for successful cooperation in GPG provision mean that it should be possible to use linkages more extensively than they have been to date. In a UN special session on controlling HIV/AIDS in June 2001, developing countries secured financial transfers and concessions on intellectual property rights which industrial countries had for long resisted in exchange for a greater commitment to fight their high infection rates.⁴⁸ Given that AIDS cannot be fought successfully without the collaboration of developing countries, their call for a better balance between intellectual property rights and the rights of people to good health and proper medical care was influential.

These, then, are some of the strategies available to enhance the fairness of negotiations, and of GPG provision. By aiming to increase representation, participation, legitimacy, and mutual gains, they can boost the prospects of successful negotiation and cooperation. The need for collaboration to ensure adequate supply and management of GPGs creates a high degree of interdependence between countries and peoples, which makes equity considerations impossible to ignore in the long term. The success of future talks over GPGs – whether the international financial system and trade, nuclear non-proliferation, the global climate or something else – depends in part on taking fairness better into account, and doing so is therefore ultimately in the interest of all.

⁴⁸ 'Declaration of Commitment on HIV/AIDS'. UN Special Session on HIV/AIDS (New York: 2 August 2001).