PIN Points
The Processes of International Negotiation Project
Network Newsletter 24/2005

From the PIN Steering Committee

It will soon be twenty years since the current PIN network was conceived and initiated. PIN began as a project for one book and has ended up—so far—with fifteen published books on international negotiation, with two more due to appear this year. For each topic, the editors—drawn from the PIN Steering Committee—have brought together experts from many domains and countries, making this endeavor a truly international and integrated achievement.

Beyond these facts, it is essential to emphasize the intellectual foundation of the PIN program and our strategy of conducting a series of diverse research topics, while maintaining the overall consistency of the program. This effort to build knowledge about international negotiation should not, however, be seen as a kind of mosaic that combines the various pieces in an artistic way but as a real edifice complete with pillars and arches. The pillars are the domains where we have tried to fill the knowledge gaps; the arches are the interdisciplinary concepts that we have elaborated, adapted, and used to link the various domains.

We have systematically worked on two tracks: theory and application. Each of these tracks has its own rationale, and our goal and challenge has always been to bridge these through constant exchanges between the two. In so doing, we have provided articulation between, for instance, negotiation and organizations, systems approaches and negotiation, and objects (such as environment and climate) and negotiation.

One goal among several has been to delve into conceptual fields such

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Concepts: Mutual Enticing Opportunity (MEO)

Both practitioners and analysts would like to think there could be a more positive prelude to negotiation than the Mutually Hurting Stalemate (MHS) that, along with the perception of a Way Out (WO), could constitute the elements of Ripeness (Zartman, 1997; Zartman, 2001). Could the pull of an attractive outcome replace the push of a painful deadlock to open the way to negotiation? The concept is intriguing but the cases are few. And the cases are so few for the strong and simple reason that negotiators do not know ahead of time the outcome that could pull them through negotiations until it is all over. Negotiators themselves must craft a Mutually Enticing Opportunity (MEO) from their deliberations in order to pull the negotiations to a successful conclusion. Although not an alternative to the push of an MHS in preparing negotiations, an MEO is important in the broader negotiation process and has its place in extending ripeness theory into the agreement and postagreement phases.

While the MHS is the necessary, if insufficient, condition for negotiations to begin, the negotiators must—during the process—provide the prospect of a more attractive future to pull themselves out of their negotiations into an agreement to end the conflict. That, as Pruitt (1997), Pruitt and Olczak (1995), and Ohlson (1998) have pointed out, is the function of the MEO. The push factor has to be replaced by a pull factor as the motor element of the negotiations; the pull factor must be in the form of a formula for resolution and a prospect of transformation that the negotiating parties design during negotiations. Here, the substantive aspect of negotiation in analysis and practice pulls ahead of the procedural approach: the Way Out takes over from the Hurting Stalemate. The seeds of the pull factor begin with the Way Out, which is vaguely perceived by the parties as part of the initial ripeness; but this general sense of possibility needs to be developed and fleshed out to be the vehicle for an agreement. Thus, the

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as culture, power, multilateralism, escalation, and justice. Another goal has been to push further on application domains such as environment, climate, the European Union, nuclear security, international regimes, and preventive diplomacy.

Research is a type of exploration, and we have tried to break new ground here, with books such as *How People Negotiate*, which draws lessons from the Bible as well as from the various ways in which tribal people from the remotest parts of the world resolve their differences.

All this we have done on a voluntary and unpaid basis, devoting our time and energy to science and knowledge. In carrying out our task, we have stuck as firmly as possible to basic values such as being systematic in our approach, using an intellectual methodology that is both inductive and deductive, and reflecting a universalistic trend in terms of conceptualizing or framing problems and issues on an intercultural basis.

Finally, although our publishers have always been well-known ones that have made our work continuously available to potential readers, we do not rely on the success of our published books alone. Throughout the years we have also developed our own strategy for disseminating knowledge through what we call our "roadshows." We have traveled and held lectures all over the world to launch, assist, and strengthen local initiatives as well as to develop research groups. We have also organized round-table discussions on international negotiation and conflict resolution wherever we have found a need and an opportunity. This is where we now stand after twenty years of action to develop and promote a topic that is so vital for the future of humanity.

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perception of a Mutually Enticing Opportunity is a necessary but not sufficient condition for the continuation of negotiations beyond simple agreement to a successful conclusion of the conflict.

Negotiations completed under the shadow—or the pressure—of an MHS alone are likely to be unstable and unlikely to lead to a more enduring settlement; they will represent only an attempt to cut the costs of conflict, get the bug rather than the bear off the back of the parties, arrive at an agreeing formula for a cease-fire in the absence of a resolving formula, and then stop, unmotivated to move on to a search for resolution. The agreement is likely either to break down as soon as one or both parties think they can break the stalemate, as the 1973–1975 evolution of the situation in Vietnam, among others, illustrates, or to remain truncated and unstable, even if the parties reach a conflict management agreement to suspend violence, as in the 1984 Lusaka agreement in southern Africa or the 1994 Karabakh cease-fire (Zartman, 1989; Mooradian and Druckman, 1999).

Like the MHS, the MEO is a figment of perception, a subjective appreciation of objective elements, but unlike the MHS, it is an invention of the parties (and their mediator) and is internal to the negotiation process not the result of an objective external situation. It must be produced by the parties, using their analysis of the conflict and its causes, their appreciation of their interests and needs, and their creativity in crafting a mutually attractive solution. It contains forward-looking provisions to deal with the basic dispute, with unresolved leftovers of the conflict and its possible reemergence, and with new relations of interdependence between the conflicting parties (Zartman and Kremenyuk, 2005).

Thus, an MEO is a resolving formula that is seen by the parties as meeting their needs better than the status quo. This is an unavoidably soft, judgmental, and conclusionary definition, like many definitions in social science. [The standard behavioral definition of power—the ability to move another party in an intended direction (Tawney, 1931; Simon, 1952; Dahl, 1957; Thibaut and Kelley, 1957)—is also conclusionary, and tautological to boot (Zartman and Rubin, 2001).] Its value lies not in its predictability but in the fact that it identifies the necessary elements that explain the adoption of an MEO and lead the negotiator and mediator to the elements that need to be achieved in negotiation.

But the MHS cannot disappear. It needs to carry into the negotiations themselves, and the perception of ripeness has to continue during the process if the parties are not to reevaluate their positions and drop out in the revived hopes of being able to find a unilateral solution through escalation. Thus, arrival at an enticing and resolving formula depends on keeping alive the supply side of the rebels' terms of trade—the conflict violence—until the demand side is firmly in place. The rebels' supply side is already limited by the characteristic MHS; if the two sides were not stalemated, they would simply continue the war, ultimately to the point of eliminating one side or the other, as the rebels threatened to do in Costa Rica in 1948 and did in Liberia and Lebanon, and as the government did in Angola, Sierra Leone, and Algeria. The current literature on uncertainty in decisions to use violence thus fits directly into ripeness theory. The rebels' challenge is to keep the element of violence alive throughout the negotiations in sufficient quantity to buy the required concessions on the demand side—MHS against MEO. For the most part, however, the supply of violence is latent and contingent (as is the other side's supply of concessions, as in any negotiation, until the deal is closed)—a threat to be used if negotiations break down (Schelling, 1960).

Therefore negotiations, and especially mediation, work on both sides of the equation, keeping the supply of violence under control and seeking to tailor demands to meet the amount of concessions acceptable to the other side. If the mediators can show how continued or renewed violence would lose a party international respect and support, the violence can be kept at the threat level in case of failure rather than at the actual level during negotiations.

The vulnerability gap between cease-fire and full integration into the power structures of the state, when rebel disarmament leaves them open to attacks from the government forces, has been identified as a crucial moment in peace-agreement implementation requiring external guarantors to fill the gap (Walter, 2001). MEO formulas can also help fill this gap by incorporating immediate power sharing and power dividing in their provisions, so that the rebels are already placed in positions of authority, particularly over the newly integrated armed forces. Obviously, it is difficult to distinguish between guarantees of future involvement and return to past combat, as both are assured by the continuing existence of rebel forces. But it is, after all, the possibility of revived combat that keeps the implementation process on track, just as it was the presence of armed rebellion that brought the conflict to negotiation in the first place. It is the potential for renewed hostilities that keeps the MHS current and the peace process honest.

As in any bargaining problem, the point of agreement is determined by the intersection of supply and demand; thus, either the supply of at least potential violence must be raised to cover the demands or else the demands must be lowered to correspond to the available threats of violence. It is therefore most likely that the rebels will brandish a little violence from time to time to keep their "supply side" credible. There is no telling where the lines will cross; parties and mediators alike make their estimates of the firmness and softness of demands and supplies on either side (Bueno de Mesquita and Lalman, 1992; Mason *et al.,* 1999; Raiffa *et al.,* 2002).

This challenge is generally beyond the grasp of mere bargaining or concession-convergence behavior—zero-sum reductions of demands on a single item until a midpoint agreement is reached. Of the three types of negotiation—concession, compensation, and construction—it takes at least compensation (the introduction of additional items of trade, the reframing of issues to meet both sides' needs) to produce the positive-sum outcome that constitutes an MEO. As usual, in line with prospect theory (Farnham, 1994; McDermott, 2005), threats of losses work better than inducements, as the cases unfortunately show—again a reason why an MHS needs to continue through the search for an MEO. Where economic aid for development is seen as part of the resolving formula, it may contribute to providing an enticing prospect, as dropping it would mean a loss. But in general, aid packages and other inducements come into the negotiations only in adjunct with negative pressures and are not as widely used or as effective as sanctions (including the threat of sanctions; Cortright, 1997). The tension between the effectiveness of implied losses and the need for positive compensations and constructions to produce an MEO underscores the narrowness of the field of play open to those who would prepare an attractive resolving formula, and thus deserves further investigation.

If the ingredients of an MEO and the process by which an MEO is obtained are identified, why were these not achieved in cases of failure? Both internal and external reasons emerge from concept and practice:

(1) The MHS may sag. The discussion shows that the continued existence of the MHS is necessary to prod the parties to develop their own MEO. Therefore, if the impulsion to negotiate weakens, the parties no longer have any incentive to look for a joint solution but simply proceed to work on their own for a unilateral outcome.

(2) There may be absolutely no MEO. The parties may not be able to conceive of an outcome that satisfies both of them. Sometimes, one of the parties is a spoiler, interested only in winning even though unable to escalate to victory (Stedman, 2000; Zahar, 2003). But the other party cannot escalate to victory either, until the end when it eliminates the spoiler and makes a negotiated settlement possible. The classic illustrations are Savimbi in Angola and Foday Sankoh and his lieutenants in Sierra Leone. These situations have the makings of intractable conflicts where there is no single salient solution (Zartman, 2005b).

(3) There may be relatively no MEO. Spoilers or not, parties may fail to find an MEO preferable to the status quo, even when an objectively good and fair one is offered. For them, the status quo of conflict is preferable to the offered or conceivable terms, and the stalemate in which they find themselves is an S^5 situation (a soft, stable, self-serving stalemate) without any pain that they cannot absorb. But again, no MHS is present in these situations to bring the parties to negotiations or, once they are in negotiations, to give a full consideration to the formulas offered. A comfortable status quo in Angola, Mozambique, Sudan, El Salvador, Lebanon, Macedonia, and Costa Rica, led one or both parties to reject the formula that they eventually accepted to end the conflict; in most—perhaps all—cases this perception was not one of eventual victory but simply the ability to endure continuing conflict in preference to the terms offered. Even objectively good and fair formulas for resolution, such as federation/autonomy in Cyprus (offered in 2004), Karabakh (mooted on occasion), Sudan (tried in 1973–1983), and Sri Lanka (negotiated in 2003), and institutional reforms in Lebanon (discussed since 1975), were rejected by the parties in favor of continued conflict that did not hurt the leadership too badly (although it hurt the population mightily).

I. William Zartman

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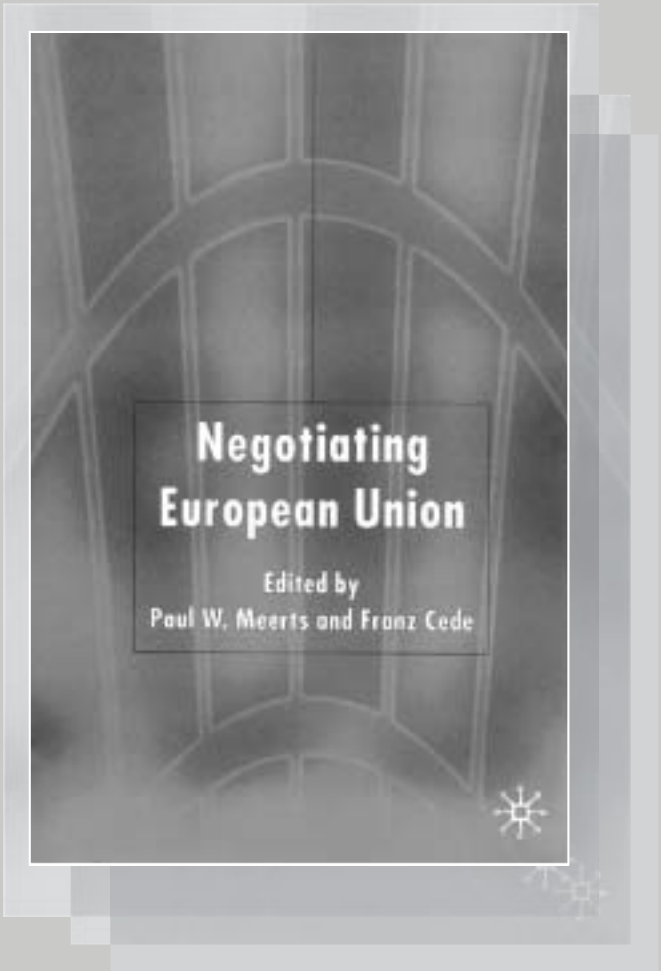
Good Sales Reported for *Negotiating European Union*

Palgrave Macmillan have reported first-rate sales for the PIN book *Negotiating European Union,* edited by Paul W. Meerts and Franz Cede.

The book is an "introduction" to the intricacies of the enormous bilateral and multilateral process of internal and external negotiation that characterizes the European Union and is the work of twelve authors, experts in their field, from different corners of Europe. *Negotiating European Union* is a comprehensive work: it analyzes negotiating processes, actors, and interests; evaluates power, effectiveness, and trust; and comments upon strategies, skills, and styles. The popularity of the book is unsurprising in the sense that it is the first of its kind—a unique probe into the relatively unknown arena of negotiation processes in the European Union.

With recent developments regarding the adoption of a European constitution, the structure of the European Union and its decision-making processes are again in the limelight, and it is currently unclear what the future path of European integration will be. As the editors remark with some insight in their Foreword to *Negotiating European Union,* the book is a "very valuable attempt to obtain a better understanding of the character and the characteristics of negotiations processes as an opportunity—or as an obstacle—to European Union."



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The Topic of Change in International Negotiations

The dynamic nature of negotiating processes is a reflection of the changing environment in which actors have to continuously adjust to new and often surprising situations. It goes without saying that the better prepared the negotiator is to face the dynamics of the game, the more easily he will adapt to a concrete negotiating situation. His mind will be trained to think from alternative standpoints. Like a chess player, he will develop a capacity to forecast his opposite number's possible moves; and, in his intellectual arsenal, he will have a whole array of schemes at his disposal to respond to new patterns, as the negotiation proceeds. The shifting terrain, however, is just one of the complicating factors of negotiations.

The negotiation process is generally determined by the structure of the negotiations, the role of the actors involved, and their basic positions at the outset of the discussions. Given these core elements, it would—in a static situation—be relatively easy to analyze not only the main options available but also the major perspectives of the process. In real-life dynamic situations, however, following a simple pattern in which the course of the negotiations can be determined in a logical and straightforward manner is much more difficult.

To illustrate this point, one need only point to factors outside the parameters of the negotiating framework, such as the shifts in domestic and international public opinion. Changes in the political landscape of the countries involved in the negotiations may also influence the "ball game" in ways that cannot be predicted in advance. Another element that may suddenly modify the initial equation is a "mega event." Unquestionably, the 9/11 trauma changed the discourse on international terrorism once and for all. Suddenly, the fight against terrorism popped up high on the international agenda—with obvious consequences for terrorism negotiations. Indeed, it is hard to think of any multilateral political forum after 9/11 that would not, in one way or another, address the scourge of terrorism.

Obviously, without these dramatic events, ongoing negotiations on the broad issue of international terrorism would never have gained the momentum they enjoy at present, nor would they have resulted in concrete measures within such a relatively short time span.

Triggered by 9/11 and by the recent Madrid bombings, the whole focus on homeland security in the United States and the antiterrorism campaigns now being conducted at national and EU levels in Europe testify to the new determination to combat the evil of terrorism. In short, outside events have a direct bearing on negotiations.

Another, quite different, example immediately comes to mind as regards the effect of mega events on negotiations, namely, the recent tsunami catastrophe that claimed the lives of over 100,000 people in Asia, many of them European tourists. The tragedy of this natural disaster of gigantic proportions has suddenly energized the debate on how best to coordinate a rescue operation on a global scale. The call for the establishment of an early-warning system has also been voiced. Within the EU, discussions among member states have addressed the lessons to be learned from the tsunami disaster.

The impact of global developments on world public opinion hardly needs to be further demonstrated, and their effect on negotiating processes are easily traced.

As well as outside developments, such as man-made or natural catastrophes, changes in the political landscape may significantly influence the course of negotiations. Take the case of elections in a country that is a major player in a concrete negotiating exercise. In the wake of an election, a new government may take quite different positions over a given issue from those of its predecessor.

When a socialist government took over from the conservative government in Spain in the national elections held shortly after the terrorist attacks in Madrid in March 2004, it decided on the withdrawal of Spanish troops from Iraq. This dramatic step was the logical consequence of a change in policy that entailed a whole series of adjustments in Spain's attitude toward military engagement in Iraq. Obviously, this change became apparent in all the negotiation processes Spain was involved in. At a global level, a change in the U.S. presidential administration in November 2004 could have had enormous ramifications for ongoing negotiations. The Middle East peace process and the global climate talks are but two spectacular instances where the impact of a new U.S. administration might have been felt.

The speed with which international developments unfold has shortened the half-life of well-defined assumptions underlying many negotiation exercises. Accordingly, the topic of "change" in international negotiations deserves closer attention.

Franz Cede

Chairing International Negotiation Processes

What is it like to be an effective chairperson of international negotiations? Although there is literature on chairing meetings, publications on effective leadership of international multilateral bargaining are in very short supply.[1] However, as member states of the European Union (EU) feel it important to train diplomats and civil servants in preparation for their country's next EU presidency, there have been some recent attempts to gain a better understanding of effective chairing in an international context. For example, the European Institute of Public Administration (EIPA) and the Clingendael Institute recently organized a large-scale training conference to give Dutch negotiators a more thorough insight into target-oriented chairing.

These EIPA/Clingendael seminars revealed many important aspects of negotiation chairing, as the participants were people with great experience in European Union negotiation processes. The seminars involved introductions on the subject matter, discussions, workshops, simulations, and debriefings. The following issues came out of the discussions.

Effective chairpersons should prepare thoroughly. The chair must know the subject matter as well as the positions of the participating countries and must analyze these so as to be able to identify common ground. Ideally, the chair should have a draft agreement in his/her pocket before the negotiation starts. Knowing the positions is not enough. Information on needs, bottom lines, possible concession patterns, and specific problems concerning the negotiators' home front will help greatly. The chair should understand what the real problems are, who is going to negotiate, and how the negotiation might develop. The "how" is very important indeed. In the planning phase the chair will need to think about his/her main strategies and the tactics that go with it. Knowing the procedures is, of course, an important point, but knowing how to handle them effectively is even more important. And, of course, the chair will have to communicate, or at the very least have, a thorough understanding of the agenda.

In the face-to-face stage, the president will need to manage the agenda in a subtle way. He/she must be firm in sticking to the points on the agenda without becoming too rigid. The presidency must show impartiality and fairness. In the European Union, this is achieved by separating the chair from its country position. A state delegation will represent the interests of the country while the chair remains impartial. This implies, however, that the delegation cannot separate itself too much from the chair, which has a moderating effect on its position. In the European Union, the chair of the working groups will need to rely heavily on the Council Secretariat for support. In other forums the creation of a "friends-of-the-chair" caucus is often a vital element for success. To start a meeting by giving the floor to these "friends" creates a cooperative atmosphere that is instrumental in setting the stage for a collaborative negotiation process.

Managing time is vital. The chair will usually have to instigate a first phase of exploration to search for options that might lead to a synergetic and integrative outcome. This puts a lot of strain on the president, who will have to see to it that the process moves in a certain direction, while at the same time avoiding premature outcomes that might forestall the agreement of more effective package deals. Setting clear objectives, having a good ear, using effective communication, and keeping an eye on possible changes are vital in the context of the negotiation to keep the process under control. The extent to which pulling and pushing tactics are effective tools in any situation are the prerogative of the chair. An assertive chair is certainly an asset, but a bulldozing president is a nuisance to the negotiations—impartiality creates the legitimacy the chair needs to be accepted as an honest broker.

As negotiations move in the direction of an outcome, the chair will need to strike a balance between his/her own interests and those of the collective whole. It has already been said that impartiality is important. However, complete neutrality leaves the interests of the country represented by the president virtually undefended. During the United Kingdom seminars, participants played the Clingendael Pentagame in which they had to rotate into the chair every twenty minutes. This proved that chairing could be a serious obstacle to effective negotiating. In one of the games all the chairs pushed forward the possible package deals like hot potatoes, delaying decision-making until they were relieved of the chairmanship. The effect of this was failure to reach a collective decision.

In other words, the fear of losing too much in terms of individual interests through being responsible for a collective outcome, blocked that very outcome. This created an interesting dilemma, as it implies that there will be more assured outcomes if chairs can legitimately maintain reasonable resistance to attempts to undermine their national interests. Complete neutrality is therefore just as damaging as one-sidedness. This raises the question of fairness and effectiveness and how these should be defined in connection with assured and unassured outcomes.

Participants learned that it was vital to have the chair when the process was getting close to ripeness and that they should be able to take a strong country position again at the time of decision making—thus avoiding being the chair at that moment. As this was not always possible, countries with extreme positions ran into difficulties. They therefore tried to push more moderate state representatives into the presidency at the decisive moment. They also learned that a chair still has to protect its own interests without becoming unfair—this fine-tuning was of vital importance both to effective chairing and effective negotiating, as they had to be merged within the behavior of one person.

Four stages could be observed in chairing simulations of international negotiations: (1) the chair has to set the stage, (2) options must be explored in relationship to countries positions, (3) "predecision stage," where packages were made ready for decision making, (4) decisions are finally hammered out into agreements. These stages should be observed or the negotiations will end in mayhem with outcomes not being secured.

It can thus be said that the chair is a negotiator with a specific role. Or, to put it another way, a chair has the dual role of negotiator and mediator. His/her task is, first of all, to take responsibility for a collective process that will end with an acceptable outcome. To perform his/her role well, the chair will need to be fair. Fairness involves a substantial degree of impartiality. But at the same time the chair has a responsibility to his/her own country or organization. The interests of that party should not be too greatly neglected, as the chair has a responsibility to his/her home front as well. As in mediation, impartiality is vital, but neglect of self-interest is fatal. The chair will need to balance these two contradicting roles using processes and procedures to maintain an acceptable equilibrium, getting parties and people to accept him or her as the pilot of the negotiation process. Chairing an international negotiation process is mediating while negotiating. The chairperson is a mediating negotiator.

But representing both national and collective needs in a balanced way also depends, of course, on the nature of the processes and the procedures of the platform on which these negotiations take place. In the United Nations Security Council the chair really has to combine collective and individual interests. The same is true for the European Union Council Working Groups, but here at least a second representative will speak up for the country position of the chair. The president does not need to do that him/herself. In other international organizations, chairs are drawn from the ranks of international civil servants and can therefore be more independent as a leader of negotiation processes.

To sum up, the chair has to balance needs, to observe different phases in the process, to understand and influence the people, and to use the procedures in an effective way. If negotiation is to give something in order to get something, then chairing is to navigate somewhere to get somewhere.

Paul W. Meerts

Note

[1] Two of the few insights on effective chairing of diplomatic multilateral meetings can be found in Lang (1989) and Kaufmann (1998). We find a more recent view in Walker (2004, 210–213). A view geared to the European Union can be found in Schout *et al.,* (2004) and in Guggenbühl (2004).

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Second International Biennale on Negotiation

NEGOCIA—PARIS, 2005

A second international conference on negotiation will be held in Paris from 17–18 November 2005. This conference is jointly organized by NEGOCIA, a French business school affiliated with the Paris Chamber of Commerce and Industry, the LEARN (Laboratoire d'Etudes Appliquées et de Recherche en Négociation /Groupe ESC Lille), and the French PIN group (GFN). The main topic is:

NEGOTIATION AND WORLD TRANSFORMATIONS
New perspectives for research and action

- Selected topics:
- Innovation within existing practices?
- Conflict, crisis, and violence management
- Fairness and ethics in negotiation
- Business negotiation (new domains, new practices, new requirements)
- The cultural dimension in future negotiations
- New negotiator profiles
- Effective negotiation practices in a changing world
- Cooperation and competition
- New forms of mediation
- International conferences and world transformations
- New negotiation paradigms?
- Negotiation and complexity

If you wish to propose a paper on one of these subjects, please consult our Web site under the heading "actualité": http://www.negocia.fr

An audience of researchers and practitioners is expected. The language of the conference will be French and English, with simultaneous translation for most of the workshops. A publication in French and another in English summarizing the most significant contributions on research and practice will follow.

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Empowerment of Developing Countries in International Talks

A Strategy to Make Global Regimes More Effective

International regimes are becoming increasingly important in this, the "era of globalization." Many critical issues confronting governments are transboundary in nature and require joint efforts in international institutions to be coped with effectively. Some problems can best be handled by the dynamics of international markets, but most governments agree that regulations and other forms of governmental intervention are also indispensable. For example, it has clearly been advantageous, or rather necessary, to have a free-trade system built up within the General Agreement on Tariffs and Trade (GATT) and its successor, the World Trade Organization (WTO), a rule-based institution.

International regimes frequently have serious weaknesses and, furthermore, are often difficult to assess because of their contradictory properties. Take, for example, the case of the climate regime. The international climate talks have produced the 1997 Kyoto Protocol with its binding and costly commitments to reducing emissions of greenhouse gases into the atmosphere. This achievement should not be underestimated. However, it is also clear that the climate regime needs to be developed. There are serious implementation problems. The number of signatories to the binding commitments in the Kyoto Protocol has to be increased radically. The level of emission reduction is much too low. According to a mainstream scientific assessment, cutbacks of greenhouse gas emissions need to be lifted from the present level of some 5% to 60% or perhaps 70% for there to be a significant impact on the alarming process of climate warming. Other international regimes display a similarly ambiguous character.

There is accordingly an urgent need to continue to develop and assess methods to sustain and develop the robustness and effectiveness of international regimes. Various approaches are conceivable, which is reflected by the different perspectives on regimes that are disputed among both academic analysts and practitioners.

One school of thought looks at the actors (for example, states and NGOs) that are associated with a regime and focus on compliance with treaty obligations. Another school, which also has a legal orientation, emphasizes institutions and formal organizational procedures. A third school of thought includes a concentration of scientists and other issue experts. They are particularly concerned with the issues addressed in international regimes and particularly look out for the concrete results of international cooperation and regulation. A fourth perspective, where we conceive of a regime as a process, has been less appreciated by practitioners and therefore needs to be highlighted in analysis as well as in dialogs between academic analysts and policymakers/negotiators. The process perspective is typically regarded as exceedingly esoteric by practitioners. This is surprising, as it has evident and important practical implications. Hence, one theme following from this outlook is international decision making on global issues.

Making collective choices regarding international regimes is largely the same as multilateral negotiation, although some accords in the United Nations and other international institutions are formally established by means of roll calls. Multilateral talks are often unwieldy processes that are very time-consuming. Complexity has tended to intensify in the last decades because of more technically difficult negotiation problems in combination with an increasing number of both issues and participants. The development of the international trade talks in GATT and WTO (from 1994 onwards) is illustrative. The Kennedy Round in GATT took place between 1964 and 1967. In contrast, the Uruguay Round, which was the last negotiation under GATT, required some eight years to conclude (1986–1994). In the future we may have more or less continuous trade talks within WTO.

Multilateral negotiations are hence demanding enterprises for negotiating parties, causing them different kinds of difficulties. One of these problems continues to be a high degree of asymmetrical influence between different groups of states—and particularly between industrialized and developing countries. This inequality has been particularly marked in negotiations that aim to reach binding and costly commiments in an international regime. One example is the negotiation on the 1997 Kyoto Protocol. In this case the signatory states made a costly commitment to reduce emissions of CO_2 and other greenhouse gases into the atmosphere. Essentially, only the industrialized countries of the Organisation for Economic Co-operation and Development in Europe (OECD) were actively involved in the Kyoto negotiation and signed the accord that was produced.

A similar pattern is discernable in the international trade talks in GATT/WTO. It is only lately that WTO has begun to look like a UN institution with regard to its membership. In the current Doha round in WTO, a fairly large number of developing countries have been actively involved at all process stages of the trade negotiation, from agenda setting to bargaining on detail and final agreement. This is a fairly new pattern. The Kennedy round (1964–1967) was essentially negotiated between industrialized countries with the participation of only a few developing countries.

Many observers believe that the prevailing power asymmetry is still much too large. Numerous governments and nongovernmental organizations that assess power discrepancies from

a normative point of view find them unfair. It can also be argued that the existing power asymmetry is harmful from a purely instrumental standpoint. When feasible global solutions are sought to global problems it is desirable, and in the longer term necessary, for all countries concerned to be brought fully into a regime that is driven by a multilateral negotiation. This has often not been the case, and again the climate talks and the WTO negotiations on world trade can be used as good examples of a larger number of cases.

The fact that developing countries have not signed the Kyoto Protocol is now beginning to cause some difficulties in the process of implementation, as well as in the preparations for the upcoming post-Kyoto negotiation. Some governments in industrialized countries (including the United States) argue that it is unfair for them to have to cut their greenhouse gas emissions if (large) developing countries do not do the same.

The situation is similar with regard to the international trade regime. Under the General Agreement on Tariffs and Trade, developing countries (DCs) have had a right of *special treatment*, which has primarily meant exception from agreements on the elimination of trade obstacles. These accords have essentially been negotiated only among industrialized countries in the OECD. Exception for DCs could be absolute, but has usually been relative, in other words, less reduction or slower reduction of trade barriers in comparison with industrialized countries. In the present negotiations under WTO, the ambition is to eliminate the rules of "special treatment," which meets both technical and political difficulties.

If *one* problem haunting multilateral negotiation systems is that the prevailing power asymmetry remains much too large, then another problem is paradoxically that this discrepancy is now in certain respects decreasing. In the Doha round in WTO, developing countries participated more actively in a larger number than they had in GATT. For the first time, they effectively blocked the joint negotiation strategy of industrialized countries, notably at the Ministerial Meeting in Cancun. With China cooperating closely with the Group of 77 in the climate negotiation, the power position of developing countries has generally been strengthened. Nevertheless, in spite of these developments, there remains a significant power asymmetry in multilateral negotiations in most issue areas.

This slow progress is problematic because it includes only some developing countries, does not go far enough, and ultimately contributes to increasing the complexity of the negotiation process. When power asymmetry was more pronounced than it is today, the disadvantages were that the outcome of the negotiation was skewed to the advantage of industrialized countries and that the majority of developing countries were kept on the periphery of the negotiation

International Negotiation Now in Chinese

The Processes of International Negotiations Network is pleased to announce that *International Negotiation* has just been published in Chinese. There were three main translators, with forty-seven more giving additional support! The publisher is the well-known Hua Xia and the selling price of just 48 RMB (about € 5 or US$ 6) makes the book widely accessible.

The first edition of *International Negotiation*, which came out in 1991, became a best-seller and a classic in the field of global conflict resolution. In 2002 a second edition appeared which was substantially revised and updated to meet the challenges of today's increasingly complex international relations. Developed under the aegis of the International Institute for Applied Systems Analysis, this is an important resource which not only contains contributions from some of the world's leading experts in international negotiation but also represents a wide range of nations and disciplines. The authors offer a synthesis of contemporary negotiation theory, perspectives for understanding negotiation dynamics, and strategies for producing mutually satisfactory and enduring agreements. The information and insights provided are relevant for negotiators, policy makers, and all those involved in negotiations at the international level.

system. As seen from a technical bargaining point of view, one advantage of the power asymmetry was that it contributed to effective negotiation. Communication and problem solving was greatly facilitated by the limited number of active parties. Special negotiation groups could be kept very small and because of the resourcefulness of the active countries there was little problem with parallel negotiation groups. With an increasing number of active parties participating in the multilateral talks, these advantages are being diminished. Plenary meetings grow unwieldy with less time for creativity. Special negotiation groups are also expanding and becoming less-effective instruments of problem solving, and parallel negotiation on special topics are tending to become more and more controversial.

Various measures have been suggested and also tried out to strengthen weak developing countries in international regimes and negotiation. Such efforts need to be continued and reinforced, as the integration of developing countries needs to be speeded up. Sustainable negotiation results cannot be achieved without voluntary commitment by participating governments, which, in turn, requires these parties to have a reasonable say in the regime-building process.

Capacity building has long been one approach to enhancing the position of developing countries. For example, over the years, the United Nations Institute for Training and Research (UNITAR) has organized various "roadshows" in developing countries with training programs pertaining to the climate talks and other environmental negotiations. International organizations like the UN institutions and GATT/WTO have special units in their secretariats whose job it is to provide technical assistance and support to DCs. It has been proposed that more resources should be transferred to developing countries (1) to enhance their capacity to analyze and prepare issues and (2) to keep delegations in place at a conference site.

Institution building has also been used to support developing countries, including the establishment of favorable procedural rules (e.g., constraints regarding parallel meetings). For example, in GATT/WTO special committees have been set up to consider issues that are of special interest to developing countries and that have been given a low priority by industrialized countries. Such measures are nothing new. Recall that the United Nations Conference on Trade and Development (UNCTAD), established in 1964, was meant to serve the interests of developing countries as a counterweight to GATT and other organizations dominated by industrialized countries. Having been transformed into a regular UN institution, UNCTAD has retained this supportive role ever since.

I acknowledge that *capacity* and *institution building* can be, and have been, useful in supporting poor developing countries in the UN system and in the context of other international regimes. However, the point I want to make is that a more elaborate process approach—negotiation—should supplement the traditional approaches to helping weak countries perform better in international regime-building processes. Earlier PIN projects on multilateral negotiation generally, in specific issue areas (environment, climate, economics and nuclear security and safety), as well in regime building and post-negotiation, offer much food for thought in this regard and indicate that significant results could be attained in this avenue. An earlier project on asymmetrical power relations among states indicates that under some conditions counter-intuitive propositions need to be considered when facilitation strategies are designed. The research community has something to offer when facilitation approaches are discussed, if only the practitioners are willing to take part in a dialog.

The main point of this article is that the negotiation perspective should be applied more consistently and in a more far-reaching way than is usually the case when the effectiveness of regime-building processes is assessed. The problem of how to assist weak developing countries is a good example. If this problem is looked at through the lens of negotiation analysis, the remedy is neither transfer of resources nor capacity building or institutional reform as such. The key concept is *empowerment*, which represents an approach and a strategy to help a country to perform effectively in the special context of a multilateral negotiation giving movement and structure to the development of an international regime.

Thinking in terms of empowerment does not make resource transfers, capacity building, or institutional reform irrelevant, but it does subordinate those factors to an analysis of what happens in a multilateral negotiation on the road from prenegotiation to agreement and possible postnegotiation. What should be done is not to expand a general pool of resources or to enhance some general ability to understand complicated issues like, say, climate warming or the relationship between financial services, financial flows, and foreign investments by banks or insurance companies. Empowerment is enhancing the capacity of individual actors (for example, states and NGOs) and coalitions of actors to perform instrumentally and effectively in a negotiation with a view to promoting individual and joint interests. Obviously, relevant resources and capability can contribute to making weak states stronger, but this effect becomes better targeted and will have a greater impact if these inputs are integrated into an empowerment strategy that combines goal-seeking actor strategies with negotiation roles and process constraints, for example, the demands on actors that different process stages represent.

Gunnar Sjöstedt

Global Negotiations

Globalization is one of the most important processes in the international system today, optimizing the global processes of production and wealth distribution, and making individual nations part of a world community. Special attention should thus be paid to the tool that makes globalization work—international negotiations.

Global negotiations offer the possibility of creating a world where conflicts will be solved through negotiation and not on the battlefield. In the early 1990s after the end of the Cold War, there was widespread hope that the era of conflicts was over. But even in a world that is no longer divided by ideology, conflicts may occur and civilizations may clash; there is inequality in the distribution of resources between North and South; and there is terrorism.

There are regional conflicts that may be regarded as the offspring of global clashes and local conflicts that reflect global and regional controversies. Besides resolving conflicts, global negotiations have acquired global management functions: solving issues of security, economic development, environmental protection, the defense of human rights, and the promotion of cultural research and cooperation. No longer a tool for managing foreign policy issues that cannot be solved unilaterally, negotiations are tending to acquire a universal importance as the only thinkable way of managing world affairs.

As long as there is no global government or other supreme authority able to run the global community, the main task of negotiations will be to act as a decision-making mechanism in the world system. As a specific blend of individual strategies, communication methods, and decision-making procedures, international negotiations will become a major instrument for managing the interdependent and mutually adjustable nexus of global problem areas. Negotiations will perform at least two functions: (1) they will search for optimal solutions to specific problems (and this will be one subject of this work), and (2) they will perfect the international system as it now stands and increase its robustness and fairness through consolidation and cohesion (Zartman and Kremenyuk, 2005).

The first of these areas is clear—negotiations as a tool in and a method of solving existing problems. The literature on this subject is enormous and may require a more in-depth study (a topic for a future article). The difference is the idea of global issues—their specificity, their uniqueness and, hence, impact on the negotiation process—as a subject of negotiations.

This second area is much more promising for research. First, it touches on the issue of the narrow impact of negotiations on the state of global issues. Second, it affects the rules of conduct of negotiations and the growth of the comprehensive global negotiation network—two new phenomena with quite distinctive features.

In global negotiations, two issues coincide: global reach and global actors. These issues also include, for example, global issues, global solutions, and global consequences. There is, or should be, a certain identifiable and verifiable connection between the global magnitude of negotiated issues and the way negotiations are conducted:

- A certain sense of the limits of possible searches for solutions: the issues contested exist in a definite environment (limited physically and instrumentally) and may be subject to a limited number of solutions for technological, intellectual, or other reasons;
- A certain sense of responsibility resulting from the magnitude of the issues involved: their long-term nature and global consequences;
- A certain sense of human solidarity resulting from human confrontation with either man-made or natural disasters, and a sense of history, that encourages searches for outcomes; and
- A certain sense of the reliability of negotiation as an element of human culture, born of the understanding that the best solution to any problem is not an imposed but a negotiated solution.

One aim of the proposed research is to make use of some of the results of other IIASA research in the area of global issues, such as population growth and its consequences, land and water resources and their distribution, and global climate changes and global environment. These programs provide the opportunity to conduct "feedback" research: to analyze the system of negotiations from the standpoint of existing global problems and their successful solutions. They include assessment of:

- The dichotomy between global issues and global solutions;
- The arsenal of global solutions, with special attention to negotiations;
- The existing structure of negotiations and how they are organized (regimes, systems, standing committees); and
- The existing methods, theories, and practice of global negotiations.

The next steps should be to identify what is special about negotiating global issues: actors, strategies, structures, processes, outcomes. First, it would be helpful to analyze the scope of the global actors (who may be categorized as such and why) in managing global issues. The second task would be to identify the scope of issues that may and should rated as global, to analyze what makes them "global," and why they should be treated globally. The third task would be to make an inventory of global negotiating mechanisms (using case studies, e.g., the Ozone Layer Conference) and to analyze their scope, authority, performance, and modus operandi.

The aim of the study should be a group of issues that may be labeled as "global governance through negotiations" and the group of problems that constitute the global negotiation network: its structure, rules of operation, membership, relevance, and compliance.

Victor Kremenyuk

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Zartman, I. W., and Kremenyuk, V., eds., 2005, *Peace versus Justice: Negotiating Backward- and Forward-Looking Outcomes,* Rowman & Littlefield, Lanham, MD, USA.

Report on PIN Side Event at COP 10 in Buenos Aires

PIN is currently organizing a book project entitled *Facilitation of the Climate Talks: Dealing with Stumbling Blocks*. The project coordinator Gunnar Sjöstedt, along with several chapter authors, attended COP 10 [the tenth session of the Conference of Parties (COP) to the 1992 UN Framework Convention on Climate Change (UNFCCC)] in Buenos Aires, where they also put on a "side event" on Friday, 17 December 2004.

Such side events are usually organized by Parties, observer states, the United Nations, and observer organizations for the sole benefit of participants in the COP sessions and subsidiary bodies of the Convention. They are scheduled so as not to conflict with the UNFCCC negotiating process and slots are awarded on a first-come, first-served basis. The PIN Program was lucky enough to get a slot on what was a completely overbooked list of events with the help of IIASA and Helmut Hojesky from the Austrian Environment Ministry in Vienna who registered our side event through the Ministry and also acted as a presenter at the introductory part of the session.

Four colleagues working on the project, Gunnar Sjöstedt, Norichika Kanie, Larry MacFaul, and Dirk Hanschel, gave presentations on their joint undertaking and offered ideas and views as to how the climate negotiations might be facilitated.

Gunnar Sjöstedt (Swedish Institute of International Affairs) highlighted the value of social science inputs into the climate talks in particular and multilateral negotiations in general. Negotiation analysis can help scientific experts and NGOs better understand the logic of negotiation and the constraints and opportunities represented by the different stages of the process. Sjöstedt stressed the need to develop long-term strategies for structuring the negotiation process and recommended (1) using professional facilitators in future meetings, (2) launching capacity-building programs for delegates and NGOs in negotiation techniques, and (3) using regional forums to promote political coordination and exchange of views.

Norichika Kanie (Tokyo Institute of Technology) discussed how the participation of NGOs in the climate talks could be made more effective, stating that international decision processes—negotiations—need to become more democratic or transparent if that objective is to be achieved. He proposed institutionalizing NGO participation in the climate process by creating multi-stakeholder dialogs and incorporating NGO representatives into government delegations. Kanie presented interesting quantitative data showing how the rate of participation of NGOs in government delegations has changed from one COP meeting to the next, adding that the practice of some governments to constrain the role of NGOs should be discontinued. Kanie mentioned the important role that NGOs can play in informing the general public about international treaties. He also highlighted their contribution to assisting and supporting the implementation of binding commitments in international agreements.

Négociations: A New International Journal in the French Language

A new journal, *Négociations,* has been launched in French. The negotiations domain has been developing in European societies, and there is now a place for a journal that deals with what is happening both within and outside Europe. A whole host of innovations is evident in current practices, and the theory now has to catch up with the reality.

In the new political entity that is the European Union, new models are being tested and classical hierarchical institutions are being challenged and modified, if not replaced; while ordinary bargaining practices tend to prevail in a number of situations, other issues, such as values, are being more and more discussed beyond partisan interests. From whatever angle you approach the problem, one fact remains: negotiation is becoming a basic tool of everyday life. We have reached the "Age of Negotiation"; and a new journal to illustrate this is therefore fully justified.

This new knowledge must be shared with the research community and transmitted effectively to practitioners, whether diplomats, managers, scientists, or "the man in the street." The journal aims to bring its own original contribution to the growing intellectual impetus being given to negotiation and conflict resolution.

Négociations publishes original theoretical and empirical works covering all areas pertaining to negotiation (international negotiation, social negotiation, organizational negotiation, collective bargaining, mediation, negotiated interactions, environmental negotiations, business negotiations, etc.). It is interested in articles that investigate these topics from multiple disciplinary perspectives (sociology, psychology, political science, organizational behavior, industrial relations, law, etc.), as well as from academic and theoretical traditions. Synthetic reviews, new conceptual frameworks, and case studies are viewed as essential parts of the body of knowledge, while fruitful negotiation experiences contributed by negotiators and diplomats will also be published as material for further analysis.

More detailed information may be found at

http://universite.deboeck.com/revues/negociations
E-mail: revue.negociations@guest.ulg.ac.be

Guy Olivier Faure

Larry MacFaul (United Kingdom Verification Research, Training and Information Centre) addressed the critical issue of the implementation of the binding commitments of the 1997 Kyoto Protocol and, in particular, how verification can help obtain satisfactory compliance. MacFaul explained how verification works and the prerequisites for its effectiveness. He noted that the climate regime has a strong compliance mechanism in comparison with other environmental agreements, with national communications and greenhouse gas inventories being effective tools for verifying both policies and results. MacFaul added that a verification mechanism should not be evaluated only on the basis of its inherent technical properties and that the political context in which it will function also needs to be considered. For example, uncertainty about the second commitment period of the Kyoto Protocol is likely to reduce incentives for compliance during the first commitment period. On the other hand, the existence of a credible verification mechanism can be expected to facilitate bargaining on future binding commitments.

Dirk Hanschel (University of Mannheim) discussed how negotiation is influenced by its structural context, indicating more specifically the opportunities of institutional design. He reported on a project under way in Mannheim to develop a tool kit for international lawmaking that would provide practical guidance to negotiators and enhance the effectiveness of meetings. Hanschel mentioned a few examples of institution-related facilitation measures for the climate talks: (1) improved channels of communication between the UNFCCC Secretariat and subsidiary bodies, (2) innovative ways of coping with issue linkages, (3) the hiring of independent experts to identify win–win situations, and (4) a majority voting procedure at COP plenary meetings.

Gunnar Sjöstedt

PIN at the AAAS Annual Conference

On 18 February 2005, members of the PIN program presented their *Formal Models* project at a ninety-minute Symposium at the annual conference of the American Association for the Advancement of Science (AAAS) in Washington, DC. The theme of this year's conference, *Where Science meets Society*, could not have been a more appropriate one as far as the PIN Symposium was concerned.

It was after a second workshop at IIASA in June 2004 that the final structure of the PIN project *Formal Models* ***of***, ***for***, *and* ***in*** *International Negotiations* was established. Guided by William Zartman's concept that the world is made up of prepositions, the workshop defined three types of models as follows:

- **Models *of* international negotiations** are descriptive analyses that may provide insight into the outcome of past negotiations or aid comprehension of problems of ongoing or planned negotiations;
- **Models *for* international negotiations** may be considered as heuristic dynamic mechanisms established with the help of external data that can be used to provide information about the process of negotiations; and
- **Models *in* (or *around*) international negotiations** constitute something in between the other two. They may serve as guidelines either at the beginning of—or at some point during—the negotiation process in order to structure further procedures; fair division schemes may be mentioned as an example.

From the sixteen different contributions to the project presented and discussed at the two workshops at IIASA, four were selected that in some way represented the categories just mentioned. The four authors of these contributions, together with the Symposium organizer and presenters, came from different scientific backgrounds and five different countries, thus representing the truly interdisciplinary and international character of both PIN and IIASA.

The Symposium was organized as follows. The organizer, Rudolf Avenhaus, first introduced IIASA's PIN program and the *Formal Models* project, then the speakers and their subjects. Speakers were Markus Amann from IIASA, who reported on the RAINS model for international negotiations developed at IIASA and described its use in international ecological negotiations. Akira Okada from Hitotsubashi University, Tokyo, presented his game theoretic model of the Kyoto Protocol negotiations which is considered as being of the in type. As Michel Rudnianski from Reims and Paris universities was ill, his contribution was summarized by the organizer. This summary covered the use of relatively simple models of international negotiations and was illustrated by reference to the Islands Fisheries conflict and the Spratly Islands negotiations. Finally, Barry O'Neill from the University of California, Los Angeles, raised the question as to what formal models can tell us about real negotiations.

After the presentations William Zartman chaired a discussion, the starting point of which were his views on the usefulness to practitioners of the different types of formal models. As expected, the questions and comments from the very interested audience centered around this issue. It is hoped that interest in the book on formal models, which should be available toward the end of the year, will be as as strong as at the interest at the AAAS Conference.

Rudolf Avenhaus

The Negotiation Process concerning the United Nations Convention on Jurisdictional Immunities of States and their property of 2004

In view of the general uncertainty of the legal regime of state immunity—a general rule of international law derived from the sovereign equality of states, the International Law Commission (ILC) as early as 1949 had already included the topic of state immunity among the issues that were amenable to codification.

However, the elaboration process started only in 1977, when the General Assembly invited the International Law Commission to start its work on the topic of jurisdictional immunities of states and their property.[1] As usual, the ILC appointed a Special Rapporteur (Sompong Sucharitkul) and requested the Secretary-General to invite governments of member states to submit relevant materials on the topic, including national legislation,[2] decisions of national tribunals, and diplomatic and official correspondence.[3] In the following years, a first complete draft text was elaborated and subsequently, after the states had an opportunity to comment on it, a second, final text with 22 draft articles and a commentary[4] compiled under the guidance of a second Special Rapporteur (Motto Ogiso). This second text was submitted to the General Assembly with the recommendation of convening an international conference of plenipotentiaries for the conclusion of a convention on the subject.

However, this moment was marked by the breakdown of Communism and by fundamental changes in the economic system of states, which had a substantial impact on the substance of this text. States were not yet prepared to accept the ILC text. Consequently, the General Assembly decided to establish an open-ended Working Group of the Sixth Committee under Carlos Calero-Rodrigues to reconcile the divergent views on the issue.[5] The most disputed issues were the definition of the state, the definition of a commercial transaction, state entities, contracts of employment, and measures of constraint. However, the Working Group was unsuccessful, and the General Assembly[6] thus suspended the discussions until 1997 when it decided to resume consideration of the issues of substance. In the following year, it decided to establish an open-ended Working Group of the Sixth Committee and invited the ILC to present preliminary comments on those substantive issues to facilitate the task of the Working Group.[7] As the normal procedure of the ILC did not provide for a third reading of the text, it established a Working Group under Gerhard Hafner (Chusei Yamada acting as Rapporteur) and delivered a report including the genesis of the disputed questions, summaries of the recent relevant case law, as well as suggestions for a possible solution[8] for the Sixth Committee.

The Working Group subsequently established within the framework of the Sixth Committee, which was led by Gerhard Hafner, embarked on a discussion of the major issues and the possible outcome of the work on the topic. A number of delegations were in favor of a convention, as this would have to be applied by national courts. Others supported the creation of a model law that would provide for more flexibility in an evolving area of law.[9] In the light of these divergences, the chairman presented suggestions in the form of principles as well as alternative texts for the draft articles.[10]

In 2000 the Working Group was converted into an Ad Hoc Committee.[11] In view of the progress in the negotiation process, in particular, the progress achieved within the European Union, an outcome in the form of a convention gained more and more support. This was made possible by the addition of Understandings attached to several articles.

However, a crucial point for the acceptability of the convention was how the articles and these Understandings should be linked together. Only at its third and last session, in March 2004, did the Ad Hoc Committee succeed in including these Understandings in the Annex forming an integral part of the Convention and in adopting the text of the United Nations Convention on Jurisdictional Immunities of States and their property.[12] Within the Sixth Committee the Chairman clarified that the Convention did not apply to criminal proceedings, to military activities, and to immunities *ratione personae*. The question arose as to the legal qualification of this statement, and this issue was settled by a compromise according to which reference to this statement was included in the preamble to the resolution. The resolution itself explicitly confirmed the inapplicability of the Convention to criminal proceedings. The Convention was adopted by the General Assembly on 2 December 2004 without a vote[13] and opened for signature on 17 January 2005.

These negotiations had some interesting features: although states had ample opportunity to comment on the draft articles during the first period of work within the ILC, they did not accept the outcome but required further changes only when they were directly involved in the negotiation process. The length of the process of elaboration shows that they also had to be given sufficient time to enable them to evaluate their negotiating situation, review their position and, if necessary, convince their national authorities. It was also interesting to note that with a membership, finally, of 25, the European Union states became the most important actor in this negotiation process, a role that was accepted by the other states. Only after the adoption did Amnesty International voice an objection to the

Convention, as the latter did not provide for the denial of immunity in the case of grave violations of fundamental human rights, such as torture. This issue had, however, been discussed during the negotiations but rejected as being not yet generally accepted. It was very clear that the inclusion of such an exception to the immunity within the Convention would have excluded any possibility of achieving a generally acceptable text. As it stands now, there is a real chance that the Convention will enter into force in the foreseeable future.

Gerhard Hafner

Notes

[1] GA Res. 32/151 of 19 December 1977.

[2] National legislation on the subject of State immunity exists mainly in common law countries: USA: Foreign Sovereign Immunities Act (FSIA), Public Law 94-583, 28 U.S.C. §§1330, 1602-1611, 15 ILM 1976,1388, modified by Public Law 100-669, 28 ILM 1989, 397; United Kingdom: State Immunity Act (SIA) 1978, 17 ILM 1978, 1123; Australia: Foreign States Immunities Act 1985, 25 ILM 1986, 715; Canada: State Immunity Act 1982, 21 ILM 1982, p. 798; as well as in South Africa, Pakistan and Singapore. See Ch. Schreuer, State Immunity: Some Recent Developments, Cambridge 1988, at 3.

[3] UN Doc. A/CN.4/343 incl. Addenda. Reproduced in the United Nations Legislative Series, Materials on Jurisdictional Immunities of States and their Property (Sales No. E/F 81.V.10).

[4] YBILC 1991, Vol. II Part Two, 13 - 61.

[5] GA Res. 46/55 of 9 December 1991.

[6] GA Res. 49/61 of 9 December 1994.

[7] GA Res. 53/98 of 8 December 1998.

[8] YBILC 1999, Vol. II Part Two, Annex.

[9] Report of the Chairman of the Working Group, A/C.6/54/L.12, 12 November 1999, para. 7 et seq.; Reference was made to the UNCITRAL Model Law on International Commercial Arbitration 1985, A/40/17, Annex I.

[10] Report of the Chairman of the Working Group, 10 November 2000, A/C.6/55/L.12.

[11] GA Res. 55/150 of 12 December 2000.

[12] See *infra* subchapter 3.6; A/59/22.

[13] A/Res/59/38.

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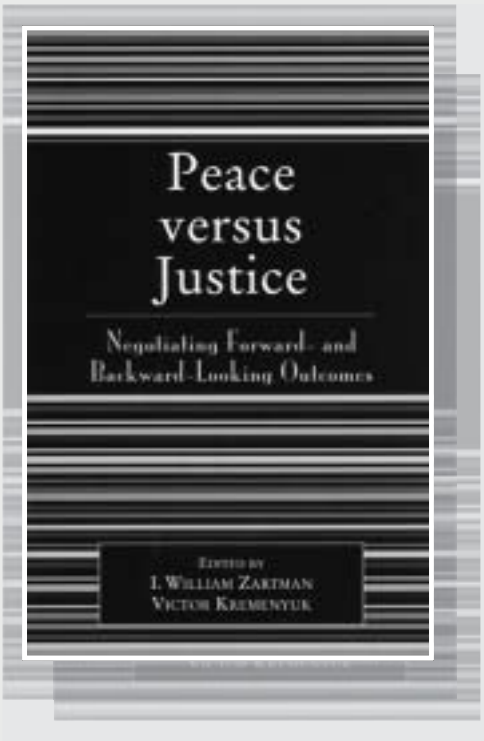

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