

## APPROACHES TO CONFLICT RESOLUTION

**Deborah F. Shmueli**

*Department of Geography, University of Haifa, Haifa, 31905, Israel*

**Keywords:** environmental conflict, negotiation, international negotiation, mediation, arbitration

### Contents

1. Introduction
  2. Negotiation
  3. Multilateral Negotiations
  4. Mediation
  5. Arbitration
  6. Conclusion
- Glossary  
Bibliography  
Biographical Sketch

### Summary

International environmental problems are multiplying, and with increasing complexity. Approaches to conflict management and resolution, as applied to these disputes, include bilateral and multilateral negotiation, mediation and arbitration. This is an overview article to those presented in the Conflict Resolution Theme. Collectively, the articles present a comprehensive review of a variety of participatory and consensus-building processes as applied to international environmental disputes.

### 1. Introduction

Environmental problems are linked to the gamut of human activities – personal, local, national, and, increasingly, international. Environmental legislation and management require complex coordinating processes. On the national level, many diverse agencies and interests may be involved, such as those for industry, physical planning, agriculture, parks and recreation, energy and finance. In the international arena, the complexities are compounded by multiple governments with varying levels of commitment to the stated objectives.

Typical characteristics of environmental public policy disputes at all levels include:

- multi-party, multi-issue
- complex issues
- differing perspectives
- interests based on principles and values and not just on outcomes
- loosely knit community and nonprofit interest groups
- relationship between disputants in *ad hoc*
- issues not clearly defined

- unequal resources, power and expertise
- uncertainty

Conventional dispute resolution on the international level is often entrusted to the legislative branch (by vote) or the judicial system (by law), or to an administrative arena where decisions are made according to some technical expertise. When legislative action and administrative rulings are disputed and result in court action, the focus frequently centers on technicalities of law and procedure, rather than substantive issues. The frequent dissatisfaction of the parties, when disputes are settled through these traditional channels, has led researchers and practitioners to explore alternative dispute resolution methodologies to supplement conventional systems. In recent years, scholarly attention has begun to focus on the use of social scientific knowledge to develop methods for resolving conflicts (Fisher and Ury, 1981; Raiffa, 1982; Shea, 1983; Lewicki and Litterer, 1985; Lax and Sebenius, 1986; Ury, Brett, and Goldberg, 1988; Gray, 1989; Breslin and Rubin, 1991; Pruitt and Carnevale, 1993). Substantial literature also addresses the application of these methods to environmental and public sector disputes (Bacow and Wheeler, 1984; Bingham, 1986; Amy, 1987; Susskind, 1994; Shmueli and Vranesky, 1996; Susskind, McKearnan, and Thomas-Larmer, 2000). A synopsis of some of the basic differences between the conventional and alternative approaches to dispute resolution is summarized briefly in Table 1. As with many synopses, these characterizations are true sometimes, but not always, and not along all dimensions.

<i>Traditional Approach</i>	<i>Alternative Dispute Resolution Methodologies</i>
Crises force policy choices	Early discussion of policy options
Little contact or personal exchange amongst stakeholders	Face-to-face discussion among parties to encourage candor and trust
Polarization occurs before options can be explored	Interests explored rather than positions immediately taken
Facts selectively used to support partisan positions	Experts used to help establish and clarify factual issues
Outcome can include frustration and residual distrust	Explicitly collaborative, but does not try to hide disagreements
No neutral convenor assists parties explore issues and negotiate	Neutral convenor may assist parties identify issues, clarify fact, and explore options

Table 1: Alternative contrasted with traditional approaches to public policy making

Another basic caveat is that alternative dispute resolution techniques may lead as readily to socially unjust outcomes as is the case for traditional means. This necessitates that conflict managers be trained to be aware of social-justice aspects of conflict resolution and the ethical dilemmas that arise. The processes should aim to increase the gains for all groups involved in the conflict, rather than only for some. Susskind and Cruikshank (1987) identify four characteristics of good negotiated settlements: fairness, efficiency, wisdom and stability. To expand on this, criteria for evaluating methods of conflict management include:

- agreement: leads to agreement if agreement is possible
- maximizes interests: maximizes legitimate interests of each side:
  - personal interests
  - mutual interests
- fair: resolves conflicting interests fairly:
  - appears fair in retrospect
  - does not unnecessarily impinge on outside interests
  - sets a good precedent for the future
- durable: produces durable agreements
- efficient: produces quick, low-cost decisions
- stable: improves (or does not damage) relationships between parties
- adaptable: works in a variety of situations and conflict types

The contention is that outcomes produced by negotiated settlements (alternative dispute resolution methodologies) often satisfy these conditions better than those reached by litigation or political compromise (traditional approaches).

There are a variety of participatory and consensus-building processes in public policy, ranging from stylized and rhetorical, to interactional and communicative, to dynamic and transformative. Approaches to conflict resolution, as applied to international environmental disputes, include negotiation, mediation and arbitration. The four contributors to the Conflict Resolution Theme are all outstanding researchers in the field of environmental decision-making. Collectively they present a comprehensive review of the many approaches, tactics and expedients employed before a settlement is reached, as well as offering keen insights into the utility of their varied mechanisms.

Fen Osler Hampson details the various aspects, systems and approaches to negotiation. William Zartman addresses negotiation from the uniquely multilateral aspect. Sandra Kaufman deals with the various approaches to mediation. In the international sphere, environmental conflict resolution often begins through diplomacy and involves arbitration. Special organizations have been created, with their supporting governing boards, secretariats and international legal conventions (Bjorkbom, 1990). The article in this section by Lisa Bingham and David Prell details these instruments.

## **2. Negotiation**

Hampson deals with the complex phenomenon of international negotiation. He provides a road map to the varying approaches and methodologies to a field that has yet to establish generally accepted theoretical models for studying international bargaining and negotiating behavior. By syncretizing the definitions of “negotiation” by scholars of the field, he highlights both its potentials and its hazards, rejecting the assumption that the process itself is necessarily optimal or leads to the best outcome for any or all concerned parties. There are major cases of states with the most power and resources obstructing the will of the vast majority of other participants. However, the reverse is also possible. For example, the rules and norms that govern many large-scale international conferences dealing with the environment operate under consensus-based rules of negotiation, giving everybody a potential veto and small states a disproportionate leverage over the process. They may also involve parties not at the negotiating table, but

whose interests are affected by the outcome. In the case of global warming and other overarching, world-wide environmental conditions, the issues involve the fate of generations as yet unborn.

In his section on the approaches to the study of international negotiation, Hampson uses a threefold categorization. “Structural analysis” emphasizes the role of power in bargaining relationships although, for many reasons, the strong do not always prevail over the weak. The weaknesses that he finds in this approach are that the concept of power is ambiguous and highly context-specific, and that the approach is more amenable to bilateral than multilateral negotiations. This difficulty in relation to multilateral negotiation is dealt with specifically in the article by Zartman.

“Decisional analysis” utilizes models which assume that all individuals are utility maximizers and that bargaining payoffs can be quantified. It is within this approach that Hampson describes game theory, linkage analysis and concession analysis. He cautions that there is no evidence to support the assumption that actors will automatically seek optimal solutions once the relevant payoff structure is identified. He also notes the changeability of preferences over time in a protracted negotiation, and that reality is never as clear-cut as laboratory games. “Process analysis” addresses the context of international negotiation and how it affects actors’ choices and decision-making. These approaches view the process in terms of phases where different situational pressures, cognitive influences, personality and interaction factors may impinge on negotiation behavior and influence outcomes. Within this category he deals with institutional bargaining that is characterized by linkages and transnational alliances among interest groups; staging and sequencing analysis, which pays special attention to the dynamics of the process and the ability of negotiations to move from one phase to another; cognitive analysis, which stresses the limits of rational choice, and the psychological impediments that constrain negotiating choices; and third-party mediation as a means of facilitating conflict resolution. The article by Kaufman expands on the various mediation methodologies employed and analyzes their efficacy.

While Hampson does not attribute superiority to any one of the three theoretical approaches, all of which contain valuable insights, he finds that the process-oriented models move beyond restrictive assumptions, and allow for greater empirical richness and consideration of a wider array of variables in international negotiation processes. As new issues for research, Hampson highlights the kind of leadership qualities required for different kinds of situations, and the meaning and importance of culture in negotiation. A matter of growing interest is the problem of how to deal with issues of justice, especially problems involving the “global commons”, such as the environment.

-  
-  
-

**TO ACCESS ALL THE 14 PAGES OF THIS CHAPTER,**  
Visit: <http://www.eolss.net/Eolss-sampleAllChapter.aspx>

## Bibliography

Amy, D. (1987). *The Politics of Environmental Mediation*. New York, NY: Columbia University Press. [This book is a critical exploration of the advantages and disadvantages of environmental mediation, and explores its political promises and pitfalls.]

Bacow, L. and Wheeler, M. (1984). *Environmental Dispute Resolution*. New York, NY: Plenum. [A compilation of environmental case studies which illustrate both the promise and difficulties of mutual gains negotiation methodologies. The mode of analysis presented draws heavily from decision theory. The book contains exercises following each case description and is an excellent textbook for students of environmental dispute resolution.]

Bingham, G. (1986). *Resolving Environmental Disputes: A Decade of Experience*. Washington, D. C.: Conservation Foundation. [Bingham, writing in 1986, looks back at the first decade of environmental dispute resolution practices, assessing both the achievements and lessons to be learned.]

Bjorkbom L. (1990). Resolution of Environmental Problems: The Use of Diplomacy, in Carroll J., *International Environmental Diplomacy: the Management and Resolution of Transfrontier Environmental Problems*, Cambridge, UK: Cambridge University Press, pp. 123-137. [This chapter focuses on diplomacy for the resolution of transboundary environmental problems and the factors which tend to constrain national governments' use of diplomacy for this purpose.]

Breslin J.W. and J.Z. Rubin (1991). *Negotiation Theory and Practice*. Cambridge, MA: Program on Negotiation Books. [This book is a compilation of articles, most of which originally appeared in the *Negotiation Journal*, and is a good source book on critical issues in contemporary negotiation theory and practice.]

Fisher R. and W. Ury (1981). *Getting to Yes: Negotiating Agreement Without Giving In*, Boston, MA: Houghton Mifflin. [This book is about the method and the basic elements of principled negotiation developed at the Harvard Negotiation Project.]

Gray B. (1989). *Collaborating: Finding Common Ground for Multiparty Problems*, San Francisco, CA: Jossey-Bass. [This book draws on organization theory to focus on collaboration as a method for solving inter-organizational problems.]

Innes, J. (1999). Evaluating Consensus Building, in Susskind L., McKernan, S. and J. Thomas-Larmer (2000). *Consensus Building Handbook: A Comprehensive Guide to Reaching Agreement*, Thousand Oaks, London, New Delhi: Sage Publications, pp. 631-675. [This chapter relies on concepts drawn from the complexity sciences, best practices developed by dispute resolution professionals, ideas drawn from social theory and an extensive body of research on consensus building research to develop evaluation criteria.]

Lax D. and J. Sebenius (1986). *The Manager as Negotiator*, New York, NY: Free Press. [The book combines scholarship on negotiation in general and managerial applications in one volume.]

Lewicki R. and J. Litterer (1985). *Negotiation*, Homewood, IL: Richard Irwin. [This book integrates the theoretical work from social psychology, the literature on collective bargaining from the field of labor relations, and the "how to do it" writings on negotiation, and applies them to managerial negotiation.]

Pruitt, D.G. and P.J. Carnevale, (1993). *Negotiation in Social Conflict*, Pacific Grove, CA: Brooks/Cole Publishing Company. [Negotiation is the main topic of this book with social conflict being the secondary topic. The authors summarize and integrate the literature on negotiation in the context of social psychology and offer a critique of this literature, pointing out limitations in the theoretical paradigm that underlie much of the research on negotiation.]

Raiffa, H. (1982). *The Art and Science of Negotiation*. Cambridge, MA: Belknap Press of Harvard University Press. [This book blends discussion of the practical side of negotiation with the "science" – the systematic analysis – of negotiation, using simple mathematical analysis to explain the latter.]

Shea G.F. (1983). *Creative Negotiating*. Boston, MA: CBI Publishing Company. [Negotiating creatively is the primary focus of this book. The bulk of the book contains descriptions of methods which help develop creativity. Shea then offers methodologies for applying creative solutions to negotiations.]

Shmueli, D. and A. Vranesky (1996). Environmental Mediation in International Relations, in Bercovitch, J., *Resolving International Conflicts: the Theory and Practice of Mediation*, Boulder, CO: Lynne Rienner Publishers, pp. 191-215. [This article examines the structure of mediation that is most pertinent to environmental conflicts and highlights the roles mediators enact in such conflicts.]

Susskind, L. (1994). *Environmental Diplomacy: Negotiating More Effective Global Agreements*, New York, Oxford: Oxford University Press. [This book explores how best to structure global environmental negotiations so that the internal and external pressures on national negotiating committees can be addressed effectively.]

Susskind L., McKernan, S. and J. Thomas-Larmer (2000). *Consensus Building Handbook: A Comprehensive Guide to Reaching Agreement*, Thousand Oaks, London, New Delhi: Sage Publications. [This book contains three sections: A short guide to consensus building; how to build consensus; and cases and commentaries which draw from a broad range of disciplines relating to consensus building.]

Susskind L. and J. Cruikshank (1987). *Breaking the Impasse: Consensual Approaches to Resolving Public Disputes*. New York, NY: Basic Books. [This book is written primarily for the layperson and only secondarily for students of dispute resolution. It draws heavily on research of the Public Disputes Program at MIT.]

Ury W., Brett J., and S. Goldberg (1988). *Getting Disputes Resolved*. San Francisco, CA: Jossey-Bass. [The book presents the basic conceptual framework for dispute systems design, a variety of lessons and examples for practitioners and a detailed case study.]

### **Biographical Sketch**

**Deborah Shmueli** is a Senior Lecturer in the Department of Geography at the University of Haifa. She is a planner specializing in environmental policy issues related to land use, water, transportation and solid waste. A strong focus of her efforts is towards environmental and public sector conflict management and community and institutional capacity building. As a faculty member, Dr. Shmueli teaches courses on both the undergraduate and graduate levels which encompass dispute resolution techniques. Publications (both singly and co-authored) in the field of dispute resolution and institutional capacity building include: *International Environmental Mediation: the Premises and Promises of a New Approach*; *Institutional Frameworks for Management of Transnational Water Resources*, *Lessons for Management of the Shared Water Resources in Israel, Jordan and the Palestinian Entity*; *Negotiating Middle East Water Management*; *Participatory Planning and Ethnic Interaction in Ma'alot-Tarshiha - A Jewish-Arab Community*; *Real and Ideal Institutional Frameworks for Managing the Common Arab-Israeli Water Resources*; *Approaches to Water Dispute Resolution: Applications to Arab-Israeli Negotiations*; *Shaping a Culturally Sensitive Planning Strategy: Mitigating the Impact of Israel's Proposed Trans-national Highway upon Arab Communities*; *Institutions for Management of Transboundary Water Resources: Their Nature, Characteristics and Shortcomings*; *The Potential of Framing in Resolving Environmental Conflict*.