

CHAPTER 3

RESOLVING INTRACTABLE CONFLICTS

In Chapter 1, I made a general case for the argument that conflicts are inherently resolvable, in the sense that there exist solutions - at least in theory - for the issues and goal incompatibilities that underlie coercive behaviour and violence. I argued that acceptable solutions were possible both because incompatible goals were mutable and because they frequently represented underlying interests that could often prove compatible and even complementary. This position I contrasted with the rather more widespread view that many if not most conflicts are inherently irresolvable, so that the best one could hope for is some compromise settlement involving division or substitution, or some temporary form of management which avoids the worst excesses of unregulated and unrestrained pursuit of "our just rights and aspirations".

In this Chapter I want to apply a conflict resolution approach to two types of conflict which appear particularly resistant to efforts at any permanent resolution but which are alarmingly prevalent in the global society of the early 21st Century. These are conflicts involving territory and those involving ethnicity. Both seem to be examples of extreme intractability, at best open to compromise solutions achieved through coercive strategies and hard, positional bargaining. However, I would still argue that both types of conflict can, on closer examination, reveal ways of diminishing their apparent intractability and even of achieving a "resolution".

1. Territorial Goals and Irresolvability.

At first sight it appears self evident that conflicts over territory are the paradigm case of the zero sum conflict, where one party's gain axiomatically becomes the other's loss. If two governments both claim some islands, how is it possible, even in theory, to argue that there could be a solution to this goal incompatibility other than win, lose or divide? If a white farmer in South Africa wishes to retain the land sold to his family by the government, and its previously expelled tribal owners wish the land to be returned, what chances are there for any kind of "positive sum" outcome? If two nations wish to have one city as their capital, how can this possibly be regarded as anything other than a win-lose situation, with no "integrative solution"?

The number and intractability of conflicts over territory in the current "world order" are undeniable and depressing. Communities, ethnic groups, and nations all become parties to conflicts with "possession" of territory as their core issue, and goal incompatibilities about cities, islands, or whole regions lead to enmities, sanctions and wars. The Armenian community of Ngorno Karabagh seeks independence for that territory; the government of Azerbaijan seeks to maintain its country's "territorial integrity" and unity by retaining Ngorno Karabagh. The British and the Argentine governments both claim sovereign authority over those islands the British call "the Falklands" and the Argentines "the Malvinas". The Israelis and the Palestinians both claim Jerusalem as a holy city, as a capital city and as "their" city.

In none of these cases does it appear that both parties can, even theoretically, attain in their entirety the goals they so obviously and so ardently desire. Returning to a previous metaphor, disputes over territory seem to fall into the category of "cheese" disputes rather than "cat" [or baby] disputes, in that the only obviously available type of solution seems to be one of division - although solutions of substitution are also possible. Both types will clearly be of a compromise nature, with solutions of division involving a sharing out of the good in dispute, so that each adversary gets some, but neither gets all. Hence, there will often still be a good chance that one or other - or even both - of the parties will remain dissatisfied with the compromise and liable to try to overturn a settlement deemed unfair once a future opportunity arises.

1.1. Territory and the Concept of "Fair" Division.

The theoretical and practical problem of constructing acceptable and hence stable and long-lasting solution for conflicts over territory has led in recent years to major intellectual efforts to discover some systematic rules and procedures for constructing solutions of division which are "fair" - and hence to a consideration of what might constitute "fairness" generally in situations ostensibly calling for division and compromise (1). It is important to recognise at the start of any discussion of the issue of "fairness" in devising solutions that two rather different aspects of the conception are involved. Firstly, there is the matter of whether the procedure for arriving at a particular division is fair, and secondly whether the outcome itself is fair - or given that, like many things, fairness is in the eye of the beholder, whether it is deemed to be fair by those involved. The commonest example of a fair procedure leading - usually - to a fair outcome is the old "I divide, you choose" procedure, which operates to ensure that the divider has little interest in making anything other than a 50/50 division - or as near this as possible - on the grounds that the chooser will otherwise simply take up the bigger proportion

(2).

A whole series of more sophisticated methods of making a fair division have been developed in recent decades for both divisible and indivisible goods and are thoroughly discussed by Steven Brams and Alan Taylor [1996] and in other, less recent works. [For example, Raiffa, 1982; Young, 1991; and Hall, 1993.] Some involve an involved process of reducing differences between shares by continuous re-division - "trimming" - until a proportional and hence acceptable division amongst adversaries has been achieved. Others, such as the Adjusted Winner [AW] approach, involve a multi stage process in which those who do best out of an initial division of a number of goods in dispute hand over increments of their "win" until both sides view the distribution as of equal value and hence as fair. However, the overwhelming majority of these techniques are still based upon the assumption that what is actually "in conflict" only permits a solution that is based upon the splitting up of the goods in dispute among the adversaries and they basically seek to facilitate that division and to make it acceptable and durable by ensuring that the process of division is more open, understandable and agreeable; and that the outcome from this process is regarded as fair and as just as possible.

Leaving aside for the moment the issue of whether a particular process by which a compromise is reached is viewed as procedurally fair, a variety of criteria for determining whether a division of a good such as territory is fair [or "just" in some formulations] have been suggested, ranging from equality through equity, need, efficiency, prior entitlement through some previous relationship with the disputed good, and effort expended or sacrifices made in attempting to achieve it. Brams and Taylor [1996], with one eye clearly fixed on the issue of the likely unacceptability and hence instability of solutions of division based simply upon criteria such as equality or clarity, have suggested that fair divisions need to demonstrate the three characteristics of:

[1] Efficiency, the division in question offering the greatest possible benefit overall and to both parties [that is, there are no other possible divisions that could improve the outcome for one party without diminishing the benefit to the other];

[2] Proportionality, the division offering equal amounts of the good or - more accurately - equally valued amounts to all the parties involved in the compromise (3); and

[3] Freedom from envy, the division being one in which the members of each party involved feel that they have received the most valuable portion [according to their own evaluation] of the good and hence do not envy anyone else (4).

Brams and Taylor argue that an envy free division is most likely to lead to all parties involved in that division feeling that it is fair and hence to a situation in which all will, presumably for the foreseeable future, continue to support the settlement as the best possible solution and to adhere to its provisions. The assumption here seems to be that the key variable in determining whether a solution of division is, and continues to be, supportable is that all parties perceive that they did better than the others from the compromise, even though they failed to achieve everything they desired, or all they felt entitled to. I would agree that this factor may well contribute mightily to the durability of a solution of division, but whether the sense of having done better than an adversary from a compromise that still seems basically unsatisfactory will always outweigh the sense of having failed to gain all of what was historically and rightfully "ours", was originally stolen by "them", or was given to "us" by God, seems open to serious doubt. Even with the most subtle and sophisticated ways of arriving at and devising a "fair" compromise, one is still left with what is basically a solution of division and with the danger that such a solution merely postpones further efforts to attain the residue of the territory or other good in question, at least as long as the adversaries - or even one of them - continue to think of territory as being theoretically divisible, but actually integral and in very limited supply.

1.2. Territory: Title or Function ?

In contrast to the variety of sophisticated ways of arriving at solutions of division, there appear to be basically two alternative ways of thinking innovatively about territorial conflicts and starting to devise solutions of creation. Both offer ways of avoiding the trap of assuming too readily that a given conflict over territory is inevitably constant sum and thus is irresolvable, although it may be settle-able through some compromise, split the difference bargain.

The first of these approaches seeks to make a distinction between possession or title on the one hand, and use or function on the other. This distinction is recognised even in situations where human survival is linked to territory, as it is with peoples with simple levels of social organisation and technology. David Smith in his work on sharing and dividing geographical space makes this point implicitly when he argues that "...access to land or to the products thereof is a necessary condition of life...", but adds the caution that "...this may require exclusive access if the means of subsistence are to be assured..." [Smith 1990 p.1. emphasis added].

Smith's reference to access to territory and what it produces re-emphasises that, even if we start by assuming that only one person, community or government can own territory [and this may not necessarily be the case], this does not mean

that only one person, community or government can use that territory. Different people may wish to use the territory in different - or even similar - ways which are not necessarily mutually incompatible. A variety of functions can be performed on the same territory without necessarily interfering with, or detracting from, the performance of any of the others. On exactly the same piece of territory different people or organisations can:

- perform services [provide law and order and keep the peace, supply clean water, run a transport system];
- sell things [salesmen frequently talk about "my territory" when simply describing the area within which they market];
- collect and disburse revenues; [people can and frequently do pay taxes to entirely separate bodies]
- hold religious services [there are innumerable churches of widely differing denominations in many regions of many countries];
- conduct sporting events; and even
- be citizens of different countries.

The only goals involving territory that seem to be genuinely and wholly incompatible would be for different groups to wish to carry out any of these activities in precisely the same space at exactly the same time, which would, indeed, be physically impossible. Two individuals, organisations or governments wishing to do so would, indeed possess mutually exclusive goals.

As soon as one removes the temporal constraint, however, a whole series of possible uses for territory [and even any physical structures on the territory] become theoretically possible. Most activities can be "time shared" (5).

Put in slightly different terms, my argument is that even conflicts in which parties have apparently completely irreconcilable goals over territory may, at least in principle, be resolvable because the parties want the territory for different purposes or to carry out different activities. While these usages may still turn out to be mutually incompatible, equally they may not. Adversaries may both be able to do what they want on a given piece of territory without one activity preventing or obviating the other (6). Hence it becomes theoretically possible to share rather than to divide that particular piece of territory even if it proves practically difficult to do so.

In short, one can envisage many alternative ways of dealing with a conflict over territory, depending upon whether the parties' goals are:

- [1] To own or have title to the territory; or
- [2] To use the territory for some desirable purpose (7).

Smith [1990 p.3] neatly captures this difference by talking about parties that have a "claim over territory" as opposed merely to having a particular "claim on territory", the former involving an assertion of complete title to the territory in question and the latter merely a right to perform some limited activities thereon.

A goal mid-way between these two may be that of being in a position to control a piece of territory, in the sense of having the right to, or being able to determine which activities can take place on the territory and which cannot. In this case there can be different types or degrees of control, an important distinction being that between promotional and exclusionary control. The first type of control affords those "in charge" of the space or territory the right and ability to conduct certain activities on the territory in question - settle population, raise crops, base soldiers, mine guano, dig for gold, carry out nuclear tests. The second provides the right and ability to determine what may not take place - no hunting in parklands, no mining, no dumping of pollutants in streams and rivers - but more usually who may not have access to carry out these or other activities.

As David Smith makes clear, the exclusionary right to a piece of territory provides one group of people with the means to control access and to create partitions, which may be more or less porous, depending upon who is excluded and according to what criteria. Often, such controls are established to internalise particular benefits, as when richer areas or regions in modern societies incorporate themselves into new counties, cities or towns so that they can preserve their internal wealth; or to externalise costs as when newly incorporated towns cease having any fiscal responsibilities for supporting poor inner city neighbourhoods. (8)

On other occasions, exclusionary control is exercised to preserve a culture or to ensure its dominance, as in the case of Israel permitting only in-migration by Jews and not the return of Palestinian Arabs to pre-1967 Israel or to Jerusalem. Some cases of exclusionary control have involved the total exclusion of all "others" and all activities that are not acceptable to or in conformity with a particular culture, often as a way of preserving a culture. For example, Fay Gale [1990] argues that only complete spatial isolation in some parts of post-colonised Australia saved some of the Aboriginal people and their way of life from complete destruction.

These examples emphasise that, whatever the precise nature of the control, it can also vary in degree, in the sense of the number of functions that the controlling entity promotes or prevents and the categories of people it prevents or supports in carrying out these functions. [Pragmatically, control can also vary in the level of success achieved in limiting or

promoting each function.]

Between the alternative goals of owning title to territory or having access to it for some specific and limited purposes, it is generally the goals of possessing or acquiring ownership, title or authority for absolute, complete and unchallenged control that is regarded justifiably as the most intractable aspect of territorial conflicts, especially in conflicts involving nations and the governments that claim to represent them. The whole doctrine of sovereignty has been elaborated over the last 400 years to deal with such issues on a basis that no two authorities can be simultaneously "sovereign" over the same piece of territory - surely the paradigm case of a zero sum situation ? Sovereignty [exclusive right of ownership for all purposes] of territory is usually regarded as an absolute, so that while territory itself can be divided, like cheese, sovereignty over it cannot. I will return to this argument below.

1.3. Territory; End or Means ?

The suggestion that apparently intractable territorial disputes may actually be about the use rather than the ownership of territory leads a second, more general suggestion about how disputes over territory might be made less intractable than they first appear. This second suggestion is that it could be fruitful to ask: "What interests, values and felt needs underlie the conflicting parties' goals of exclusive possession of the territory that is in dispute ?"

It may be that exclusive possession of the territory is an end in itself for one or both disputing parties, but it is equally possible that the disputed territory fulfils some deeper interest for them - either it symbolises something, or provides something, or guarantees something, or prevents something undesirable happening. There is a wide range of possibilities, and as David Smith says "...Territoriality and its various expressions must be recognised as a means to some end, such as material survival, political control or xenophobia..." [Above cit. p.3]

Practically speaking, analysing any protracted, ostensibly zero sum conflict over territory might well start with an initial question; "What do these people want this territory for ?".

Even at a superficial level, there are a wide variety of reasons for parties having the goal of obtaining or retaining a particular piece of territory. These might well include:

- [1] For symbolic reasons; "Our nation began here."
- [2] For reasons of recompense or restitution; "It was stolen from us 250 years ago."
- [3] For reasons of material advantage; "It contains large quantities of oil which they already have and we don't".
- [4] For security; "It extends our forward defences against our [potentially aggressive] neighbours by 200 miles".
- [5] For "rounding out" ethnic unification; "One and a half million of our bothers and sisters live on that territory".
- [6] For protection of religious, linguistic or cultural practices; "A Protestant state for a Protestant people".

A more sophisticated response might be constructed from an analysis of the functions carried out by the national, territorial state, a political unit that developed out of the dynastic states of 17th Century Europe and which is the dominant model of preferred political organisation that has come to cover the globe by the end of the 20th Century - in aspiration, if not in actual fact. As John Herz argued over forty years ago [Herz 19], one of the chief functions of the territorial state was always security, so that the state was a defence or protection unit, both in a military and an economic sense, sheltering its citizens from damaging outside attack and their economic activities from damaging outside competition. Other writers have emphasised that the territorial state also provided a mechanism for managing or settling internal conflicts through codes and courts, through political processes such as coups, elections or referenda, and through other, often informal dispute resolution processes. Still others have viewed the territorial state, especially in its 19th and 20th Century manifestation as the nation state, as fulfilling the function of maintaining national unity through its encouragement of internal communication through national languages [see Deutsch 1953] and its control of external flows of information, particularly that relating to its defence functions and - in some cases - its commercial, industrial and investment practices. One final function is that highlighted by Smith (1990) and others, when they talk about the territorial state's function of preserving a dominant culture on its territory and within its borders. This function returns the argument again to issues of exclusion and control, and the "cultural protectionist" reasons for denying "others" access to a particular piece of territory. Smith [above cit p.9] comments that "exclusion is part of a broader impulse to seek conformity and uniformity within specific spatial limits..." while Williams and Kofman explain the underlying reasons for the frequent drawing up of such cultural "cordons sanitaires":

"The sovereign control of territory by the state ensures that the dominant culture can circulate freely throughout the space...within its boundaries. It can divide and rule its territory so as to hinder or prevent attempts by subordinate cultures from developing a solid base ..." [1989 p.5]

Two questions can be raised about the argument that territory - or some political unit based on territory - can invariably and fruitfully be viewed as a means of providing defence, economic sustenance and commercial protection, familiar ways of managing conflict, a sense of exclusiveness and identity, or anything else.

The first is; Does the territorial state as constituted at the start of the 21st Century still provide the means of fulfilling these functions and aspirations ? Without going into this issue in any depth at all, many writers have begun to cast considerable doubt on whether territorial states as presently - if traditionally - constituted can hope to continue to carry out their traditional functions, if they ever did. The development of attack technology based on long range missiles and nuclear weapons - and even the advent of suitcase sized nuclear weapons and hand carried but lethal biological weapons - has completed the work begun by bomber aircraft in mid-20th century in undermining any meaningful defence function based on territory. Economic globalisation and the current refusal of governments even to attempt to control the unfettered effects of "the market" have removed or seriously reduced the territorial state's role of economic or commercial protection. The development of a global communications system through the radio, the computer and the net, and the increasing globalisation of culture, have begun to undermine the territorial state's function in promoting and protecting its culture on its territory. According to Karen Litfin and her colleagues, satellite technology is rapidly removing even the territorial state's ability to control any information about processes and resources within its own boundaries, so that what happens on the territory of any state in the first decade of the 21st Century is rapidly available to anyone interested who can pay commercial rates for the data. [Litfin 1995].

However interesting possible answers to the first question might be, it is the second which is, for our purposes, the more relevant; Is the territorial state still the best or the only means of fulfilling these functions ?

As I have indicated above, it seems clear that, for many functions, the answer might simply be in the negative, or at least might indicate that, while territorial states remain the most efficient or reliable or simple in fulfilling certain functions, they are certainly not the only means for so doing. Economic promotion and protection might be as well achieved through transnational economic units; successful conflict resolution attained by using locally relevant procedures, unknown and untried in other parts of an existing territorial state; culture preserved by literary, cultural and sporting unions covering adjacent regions of legally separate and "sovereign" states. The main point to be made at this stage of the argument is that, in theory at least, there are alternatives.

The one serious doubt about the argument that territory can and does represent a means to some end that might be otherwise attained is the clear human tendency to identify with and become thoroughly attached to particular pieces of territory - what Smith calls "...a sense of place, comparable with the deepest emotional ties and feelings..." which can provide "...a sense of belonging to and affiliation with something beyond self and family..." [above cit. p.2] In a way, certain territories become an extension of individuals and groups, a part of them themselves. Individuals identify with homes and villages, gangs with their turf, nations with the "homeland" or with territorial locations that have deep historical and sometimes almost mystical significance - Mount Ararat for Armenians, Jerusalem for Israelis and Jews, Mecca for Muslims, the oaks at Gernika for Basques, the Black Hills for the Lakotas. In cases like this it could reasonably be argued that the territory or site has an intrinsic worth in itself and that no alternatives could possibly substitute for the territory in question or fulfil the often symbolic functions attached to that prized territorial symbol.

Against this it can be argued that there may be a tendency to over-emphasise territory and territorial symbols as sources of human identity. I will return to this issue when discussing the nature and implications of ethnic identity for conflict resolution below, but here it is enough to make the point that most land is occupied for some specific purpose, and also to recall that "territoriality" and the whole conception of human relationship to territory is a social construct rather than something innate, writers like Robert Ardrey [1971] notwithstanding (9). How territory is regarded and used varies from culture to culture. In some, land is regarded as simply a conduit, as a means of movement; in others the idea of owning land - especially by a single individual - is inconceivable (10). In still others, land can be owned collectively, but others can have rights to perform certain limited forms of activity thereon. Not all societies are based on a philosophy of possessive individualism as regards territory - or anything else.

Thus, it might be true that the most difficult problems connected with conflicts over territory will arise in cases where a people's strong sense of identity is involved and in which the territory is perceived as a part of "them" and as an extension of themselves. This factor of identification of self and territory should never be underestimated. However, there might be many ways in which a people can express their identity with a particular territory, without denying its use totally to others (11). Again, I will return to this argument below.

The more general and still essential point is that the interests and values that underlie publicly enunciated goals of attaining [or retaining] a given piece of territory are often both complex and unobtrusive. The functions that territory can fulfill for individuals, communities and nations are many and varied. Both facts provide opportunities to explore [at the very least] whether goals other than mutually exclusive ownership of the territory in question might fulfill parties' underlying

interests equally well, and whether these alternative goals might be non-conflicting or even complementary.

1.4. The Falklands/Malvinas Example.

I can explain many of the above arguments and illustrate the possibilities by briefly examining the conflict between the Argentine government, the British government and the Falkland Islanders over the Falklands/Malvinas Islands in the South Atlantic, 200 miles off the coast of Argentina.

At first sight, this is a classic, inter-state conflict over territory, with both the British and the Argentine Government claiming sovereign authority over the Islands, which have a population of about 2,000 people of British descent and which were seized [for strategic reasons] by the British navy in 1830 and the representatives of Argentine sovereignty ejected. In more recent times, all parties have tacitly accepted that "sovereignty" over the Islands is the key issue in contention to the degree that, following an Argentine attempt to seize the Islands by force in 1982, the British Government has refused even to discuss "sovereignty over the Islands" with their Argentine counterparts - a position wholly supported by the Islanders, who are the party most directly involved in the conflict. This "no discussion" policy is somewhat at odds with the British stance during the period 1965-82, which saw protracted negotiations between the two governments over the legal ownership and future of the Islands.

This seems, at first sight, to be a clear case of an irresolvable, zero sum conflict. There is a strictly limited amount of territory in contention between two governments and sovereign authority is conceived as being indivisible. Either the Islands are British, or they are Argentine, or they are independent of both, or they can be divided between the two governments in some equitable proportions. [At one stage during the 1982 war somebody suggested a plan whereby the British should retain East Falklands while the Argentines obtained West Falklands].

Thus the conflict may be reduced [with the parties refraining from coercive behaviour in pursuit of their goals]; it may be avoided [with the parties tacitly agreeing not to raise the issue as part of their overall relationship - for the time being]; it may be settled [in that a negotiated compromise may be worked out and set in place - temporarily]. But it cannot be resolved, as the goals of the parties are mutually incompatible and logically inconsistent.

On the other hand, if one begins to investigate more deeply the underlying reasons for the parties possessing and pursuing their goal of sovereignty over the Islands, and ask what interests and values title to the Islands confer [or would confer] then a different and slightly less intractable picture emerges. In Argentine perceptions, the Islands represent the continuation of both an extra-continental threat and a European domination that has always irked and which they find wholly unacceptable in this present time. The "Falklands" in British hands symbolise a continued Argentine failure and dependence that is galling and remediable. [Whether the Islands in Falklander hands would be perceived in a similar fashion is an interesting question.] The whole question of the Islands is thus bound up in complicated ways with issues of Argentine identity and with issues of status, recognition or worth, and respect, which a continuing British "imperial" presence on the Islands diminishes and denies. Understanding such factors helps to understand the widespread otherwise baffling, Argentine commitment to the return of these barren and potentially burdensome pieces of territory.

More practically, the Islands also represent access to rich resources of fish and deep sea oil, but these will need international capital and expertise to develop, so that joint development is probably necessary and can bring more rapid advantages than national efforts. The Islands are hardly a necessary outlet for surplus Argentine population, given the apparent reluctance of Argentines to migrate to mainland Patagonia.

From the British and Islander points of view [which may not necessarily be the same] the crucial issue at one level is British sovereignty, and at another the wish not to be seen to be giving in to coercion or threats of violence. However, the retention of sovereignty is basically the means on ensuring the continuation of the Islanders' way of life [which has already changed markedly because of the 1982 war and the infusion of new wealth into the Islands] and of their right to continue to "be British".

Given these underlying interests, the underlying issues in conflict appear to be less concerned with sovereign authority over land and people and more with sovereign authority over land on the one hand, and over people on the other. People can continue to "be British" whatever their physical geographical location, so that - if this is their goal - then it becomes possible to envisage a variety of arrangements whereby the people continue to "be British" [whatever that means] and the territory "becomes Argentinian" [and this latter can, equally, mean a wide variety of practical, on the ground arrangements]. There is an interesting echo here of some of the recent thinking carried out with regard to the conflict in Northern Ireland, with its two traditions of Anglo-Irish unionism and Irish nationalism, and with the growing conviction there that it is possible for some people to think of themselves as Irish and others as British even though they inhabit the same piece of territory; and for some activities to be conducted on an all-Ireland basis, others on a Northern Ireland basis and still other on a British or Western Isles basis. Nation-hood, in other words, is being divorced from territoriality and

nationalism from its territorial basis.

Other interests and values are involved in the dilemma of the Falklands/Malvinas, of course. Whether the main issue is defined as retaining sovereign authority or maintaining a way of life, or as obtaining sovereign authority and restoring a sense of justice and territorial completion, security for any new arrangements [and for those involved in them] is likely to remain a difficult problem. However, the point I wish to make through this example is that, even in the case of this apparently rigidly zero-sum situation, some arrangements by which the parties' underlying interests, values and aspirations are fulfilled can be envisaged. In other words, a resolution is possible, even though it might, at the present time, be impractical, given present relations between the parties involved and their leaders.

If, therefore, resolutions can be developed by the strategy of analysing underlying interests and values in the case of disputes over territory, it seems likely that similar strategies might be productive with other types of intractable conflicts.

1.4. Sovereignty as a Divisible Good.

At several points in the argument so far the concept of "sovereignty" has been mentioned in connection with the intractability of certain types of conflict, especially those involving differing claims to territory such as the one over the Falklands/Malvinas Islands discussed in the previous section of the paper. In this, as in many other conflicts - Chechnya, Moldova/ TransDniestria, Gibraltar, Northern Cyprus, Ngorno Karabagh - the issue in conflict is presented as one of "sovereignty" over territory and the intractability and resistance of the conflict to any "win-win" resolution attributed to the "fact" that sovereignty is, by its nature, absolute and indivisible.

This is, of course, the conventional view of sovereignty inherited from the 17th Century political ideas of thinkers like Jean Bodin and Thomas Hobbes and elaborated into a fundamental doctrine of international law in the following century by jurists such as Juarez, Vittoria and Grotius. It is this all-or-nothing view of sovereignty which has underpinned the search by leaders of such territorially based political entities as Croatia, Macedonia, Georgia, Tibet, Abkhazia, Kurdistan, Slovakia, Estonia, Latvia, Transdniestria, Eritrea and many more, for recognition as independent and, above all, "sovereign" states. It is this indivisible view of sovereignty - one either has it or one does not - that has led existing sovereign states of the 1990's and 2000's, such as the Russian Federation, the Yugoslav Federal Republic, Moldova, Spain or Azerbaijan to deny that Chechnya, North Ossetia, Karelia, Kosovo, Trasndniestria, the Basque County or Ngorno Karabagh are or can ever be "sovereign". This conception of "sovereignty", defined as the complete and unfettered right to control all and every aspect of life within a recognised territorial area, through such a definition ensures that conflicts ostensibly over who is sovereign over a given area can only permit solutions of division of that territory [or solutions of substitution if compensation for loss of sovereignty is ever deemed possible] and, almost by definition, makes the central goals of adversaries in sovereignty conflicts the achievement of all or as much of the divisible territory as possible.

However, in recent years many scholars have begun to point out that, however familiar, stable and accepted, the idea of sovereignty remains just that - an idea, a conception or a "social construct" [See Bierstaker & Weber, 1996]. Hence, its meaning can change over time, or be deliberately reviewed and re-interpreted in the light of changes in the referent world or in thinking about the referent world. In other words, it is the case that one can conceptualise sovereignty over [or ownership of] territory itself differently and in non-absolute terms - as a situation in which there are gradations of rights, powers or exclusions over a piece of territory, ranging from the right of an individual, a people or a government to do whatever they like with or on a particular piece of land, to a situation where they possess only a right to carry out a limited range of activities.

As I have argued elsewhere [Mitchell 1989] if both ownership and control can be thought of as variable rather than absolute, then sovereignty can be envisaged as divisible, with one body having authority in a given territory over certain aspects of life or wealth, and other bodies over other aspects (12). It can be regarded as divisible in many other ways, as when sub-national units begin to establish rights to take over functions and actions that - traditionally and within a framework of a government having absolute authority and control - have been the sole purview of a central and sovereign authority. When regional governments and NGO's begin to by-pass central governments and conduct their own external relations with other central governments, it may be helpful to accept Duchacek and his colleague's [1988] conception of "perforated sovereignty", but this seems basically another way of indicating that it is possible to regard sovereignty as an inherently divisible good, rather than as something one possesses or does not possess.

Whatever concepts or labels one uses to describe it, it seems clear that the referent world of the late 20th Century is becoming more and more "perforated", as aspects of state sovereignty become shared among sub-national, transnational and international entities. If it seems doubtful whether any state was ever truly and completely "sovereign" in the older, absolutist sense, and it certainly now clear that many states are increasingly handing over authority, autonomy and control of a range of previously exclusive activities to supra-national and transnational bodies. Transnational entities such as Alpe Adria are conducting their own calibrated economic and investment policies. Regions such as Northern Ireland are

establishing trade and development missions in Brussels and Strasbourg. The State of Illinois has a trade office in Tokyo and the Republic of Tatarstan currently maintains 8 permanent representative offices in countries outside the Russian Federation of which it remains part, even while claiming to be a "sovereign" republic therein. [Slocum 1999 pp.60-1]. In the real world of early 21st Century politics, the lines between "autonomy" "independence" and "sovereignty" are being blurred, as are those between "intra-national", "foreign" and "international".

Both the intellectual and the empirical changes in the accepted nature of sovereignty have clear implications for the issue of conflict resolution in conflicts about sovereignty over territory. A divisible conception of sovereignty enables questions to be asked about "sovereign over what activities ?" or "sovereign over whom and for what purposes ?", rather than confining the search for solutions to the question of how best to carry out a division of the territory, rather like the classical cutting of a cake, with each piece going to one of the adversaries complete, absolute and un-trammelled. As with questions about the use of territory and the functions that adversaries might want to perform in the region, country or city in dispute, questions about the exercise of a divisible or shared sovereignty permit creative questioning and at least the hope of some answers that permit a resolution of even the most intractable conflict – a resolution that satisfy underlying interests and values and is durable, perhaps because it is, among other things, envy free. I now turn to the question of whether such an outcome might not also possible in the other type of intractable conflict that forms the second focus of this Chapter.

2. Intractable Conflicts and Issues of Ethnicity.

The second major type of intractable conflict that I wish to examine is that which falls broadly under the heading of "ethnic conflict", largely because such conflicts are usually viewed as being essentially zero-sum in their nature, but also because there is a contemporary consensus that this type of conflict will be prevalent and protracted from the post Cold War era on into the 21st Century. In the former Soviet Union and Eastern Europe, in Africa, in South West Asia and elsewhere on that continent, even in the apparently unified societies of Western Europe, ethnic conflicts and divisions give rise to violence and destructions and to questions about how Bosnias, Rwandas, Punjabs, and Ethiopias might even be ameliorated, let alone resolved.

Moreover, in an empirical sense there seems to be a very close connection between conflicts of ethnicity and conflicts of territory (13), in that it often seems to be the case that what are commonly called "ethnic" conflicts appear to take place between ethnic groups over ownership or control of territory, thus making them wholly intractable. As Stephen Ryan remarks in his study of the international implications of ethnic conflict, "...to the extent that ethnic conflicts are conflicts over control of territory, they are zero-sum games..." (Ryan 1990 p.xvii) That being the case, we seem to confront a conflict type that poses a major challenge to those who argue for the inherent "resolvability" of all conflicts.

2.1. The Nature of "Ethnic" Conflicts.

And yet, is this the case ? Or can some arguments already made above apply equally to conflicts of ethnicity ? Before attempting to answer these questions, I think it is important to be clear about what is meant by "an ethnic conflict", and what essential characteristics qualify particular cases of goal incompatibility between parties for inclusion in that category. There often seems to be an assumption in the very diverse literature on ethnicity and ethnic conflict that these conflicts have uniquely defining characteristics as regards the parties, the issues and the behaviours involved, but is this really so ? What distinguishes an "ethnic" conflict from other types of conflict, apart from the unarguable fact that they are more intractable than most (14) ?

One simple approach to the question of what makes a conflict an "ethnic conflict" is to fall back on straightforward distinctions, recalling a basic definition that a conflict is "a situation where parties possess incompatible goals". From this basis, the simplest approach might be to distinguish between:

[1] Conflicts that are between ethnic groups or communities - that is, the parties are ethnically based; and

[2] Conflicts that are also about ethnicity - its existence, its expression, its implications.

There are two important implications of such a starting point. One is the argument always made by writers on ethnicity, but never widely recalled, that the mere existence of ethnic differences is not in itself the same as or enough to bring about a situation of ethnic conflict. For ethnic communities to be "in conflict" it is not enough that they are simply different from one another [no matter how wide the differences in appearance, language, religion, custom or culture], nor that they feel suspicion or mistrust towards each another; there must also be clear and understood goal incompatibilities.

Rupesinghe puts this point most elegantly when he says "...mere existence of ethnicity is certainly no precondition for conflicts: it would be absurd to assume that there will be conflict merely because ethnic groups as such exist..." (1987

p.531)

The second implication is that when such goal incompatibilities do come into existence, they may be over issues which arise directly from ethnic differences but, equally, they may not. Goal incompatibilities could arise over issues that are not, strictly speaking, inherently ethnic - jobs, political power, educational opportunities, church-state relations, or social status. All of these may be based on class or caste. Empirically, it often appears that non-ethnic issues are likely to become entangled with the existence of different ethnic groups in a country, thus increasing the intractability of a conflict, but analytically it is important to make a distinction between conflicting goals that arise from an inherent ethnicity and those which equally could arise in non-ethnic situations, and which have become entangled with ethnic divisions.

2.2. Ethnic Issues in Conflict; Security and Identity.

The next question to be addressed is what types of issue arise from "inherently ethnic" goals. What types of issue arise because and only because a society is characterised by ethnic divisions ? One approach suggested, among others, by Burton (1991) is that conflicts between ethnic groups can take place about three basic types of issue, which in any protracted conflict usually inter-act and become inextricably entangled to increase that conflict's intractability:

[1] Issues of ethnic access to resources, such as wealth, political influence, status, education, jobs etc.

[2] Issues of ethnic identity, and how this can be expressed to the satisfaction of one group without infringing on its expression by another group.

[3] Issues of ethnic security, and how this can be achieved without threatening or diminishing the security of other ethnic groups.

In line with the point made earlier, the first issue type is not one solely found to involve ethnic groups, and much social conflict based on class, region, gender, or age arises from competition for material and other socio-economic goods. However, the history of many protracted ethnic conflicts indicates that often the initial trigger events for cycles of intense ethnic conflict arise over competition for jobs, for educational opportunities, or access to welfare provisions. For example, many conflicts ostensibly over "official" languages in multi-ethnic countries are, at least in part, over what the adoption of one official language will mean about closing access to high status government jobs for speakers of non-official language.

Once such issues arise, however, they give rise to other issues and these frequently concern matters of ethnic identity and, ultimately, security. Language conflicts are partly about being advantaged and disadvantaged in job markets or in access to higher education or in abilities to be socially mobile; but they are also partly about ethnic groups having their identities implicitly recognised or dismissed, depending upon whether theirs is an official language or not.

Ultimately, such conflicts also come to be seen as part of a general threat to the security and survival of an ethnic way of life, or the ethnic community itself, and the issues in the conflict come to be interpreted in an existential sense. One party's goal may become that of survival, and doing anything it can to ensure this.

2.3. Ethnic Conflicts and the Survival Goal.

Both logically and theoretically, existential conflicts are clearly zero-sum in nature, and hence irresolvable. If one party's goal is the destruction of another, and the other's its own survival, then opportunities for a creative solution are limited, to say the least. If one party's goal is the conversion of the other so that they become indistinguishable from the first, then a mutually satisfactory resolution of that conflict seems a remote possibility, unless the assimilation occurs voluntarily.

Moreover, the dynamics of protracted ethnic conflicts [even when the latter start over issues of equal opportunity, access to political influence, or acceptance of religious freedom] frequently appear to drive the parties into a frame of mind in which these basic goals of eradication versus survival come to replace the original pragmatic issues at the core of the conflict. Once issues of ethnic "survival" and threats to survival become part of any relationship between different ethnic groups in a country, they tend to permeate that relationship, to ensure that future conflicts rapidly come to concern that issue, and the make any lasting solution of otherwise resolvable conflicts almost impossible to achieve.

However, I did preface the above argument with a conditional "if", and while it is historically unarguable that many ethnic conflicts come to be perceived by those involved as being about their security and very survival (15), this may be the result of the dynamics of the conflict. In many protracted conflicts, the behaviour of the adversary usually becomes an issue in and of itself, and original issues become "masked" by others that arise both tactically and strategically during the course of the conflict.

Reinforcing this is the tendency of leaders of ethnic groups in conflicts over dominance or redistribution, or even over the survival of a particular "way of life", to portray such conflicts as being about physical destruction or survival of their

people. Alternatively, many protracted conflicts between ethnic groups and communities come to be defined as being about ethnic dominance within a particular piece of territory, so that the only possible "solution" becomes that of ensuring ethnic survival and identity through that dominance [and usually dominance within the largest piece of territory that negotiating skill or political power can obtain]. The conflict thus becomes one that revolves around the conflicting goals of expulsion of a particular people from a given territory, or their maintenance therein; or the relative positions of political, economic and social dominance within a contested area.

Conflicts that involve determined and committed ethnic communities clashing over such goals and becoming involved in dynamic processes that involve large scale violence and destruction (16) thus seem inevitably to become intractably zero-sum, and hence to be irresolvable, even theoretically.

2.4. Underlying Interests of Ethnic Parties in Conflict.

A counter argument to this conclusion, however, is my previous point about goals in conflict often representing means to achieve underlying values and interests, and the question of whether these might be the only available means, even for adversarial ethnic communities in multi-ethnic countries. Frequently, the publicly incompatible goals of ethnic communities in conflict involve attaining or maintaining a dominant position within a given territory, the expulsion of the other from that territory, the separation of that territory from an existing country and the achievement of "independence" and "self-determination", ultimately taking the form of a recognised, separate state.

However, it may be that the goals of achieving or maintaining political dominance, or of achieving a national home or an independent state are ways of fulfilling underlying interests of the conflicting ethnic communities, which involve the security of those communities and the expression of their ethnic identity [their "way of life"]. The attainment of a separate, ethnic state or province - free from the presence of others not members of "the volk" - is usually seen as the best, or sometimes the only method of attaining safety, security and longevity for the community and its values, and as the best way in which its "way of life" can continue, - or even as the supreme symbol of that way of life. But if the achievement of the goals of a separate and ethnically homogenous state [or even province] is currently seen to be the best means of fulfilling key interests of security and identity, one can legitimately ask whether there are - theoretically at least - other ways in which such interests might be fulfilled, apart from separation, independence, ethnic cleansing and the like. Are there no other ways in which ethnic identity can be expressed and maintained? Must the only means be a separate state on the piece of territory often exclusively sought by another ethnic community for similar purposes of expressing and symbolising its identity? Is exclusive possession of, and control over a piece of "our" territory the only way in which threats to a community's security [or survival] can be lessened or removed? Or might there be a variety of different ways in which interests involving an ethnicity's security might be safeguarded and its sense of identity expressed and acknowledged in a satisfactory manner?

It may be that, ultimately, the answer to such questions will be; "No - this is the only way!". It is an answer that becomes more and more likely the longer and more violent the conflict, the greater the loss and damage suffered by the adversaries, and the more intense and deep-rooted the hostility and mistrust that develops between and within the parties. But there is no logical reason why the answer should be in the negative. There are examples of ethnic conflicts involving goals of territorial control and ownership that have been resolved in ways that fulfill the interests of the parties by other means through attaining other goals. The ending of the intense conflict between Swedish inhabitants and the Finnish Government over the Aland Islands after the First World War is one example of such a resolution. The solution found to the South Tyrol conflict following the Second World War is another.

To say that such resolutions have been devised is to say that they are possible, nor to say that they are likely or that devising them is easy. The very fact that parties in conflict, ethnic and non-ethnic, are trapped in the conventional worldview that insists that conflicts are irresolvable and - at best - can only be bargained to a compromise involving much sacrifice is, in itself, a major barrier. The assumption is a major obstacle even to contemplating the possibility of a win-win solution, let alone to starting the hard intellectual and practical task of working with the conflicting parties to explore underlying interests and search for mutually acceptable solutions that remove or undermine mutually incompatible goals or positions.

However, difficulties do not add up to impossibility, and this possibility of a resolution needs to be kept at the back of one's mind even during stages of conflicts when only victory or defeat through continued mutual destruction seem real alternatives. At such times, one needs to recall the first Chairman of the Atomic Energy Commission, David Lilienthal's comment in 1946 as he wrestled with the problems of the international control of atomic energy: "...We keep on saying 'We have no other course'. What we should be saying is, 'We are not bright enough to see any other course!'" The remainder of this Handbook seeks to set out some methods and techniques through which parties in conflict might be

enabled to think about alternative means of achieving their interests and goals, about neglected opportunities for a different relationship with their adversary, and about the possibilities of achieving a practical “win-win” resolution through innovation and creativity.

ENDNOTES

(1) Oddly, one of the most neglected aspects in the discussion of the dilemmas of fair division concerns the fair sharing of "bads". Some work has been carried out on the fair sharing of "chores", where parties' objectives revolve around attempting to obtain the least possible for themselves [Brams & Taylor 1996 pp. 49-50], but a similar approach could presumably be taken to any problem involving the fair sharing out of the costs of any enterprise.

(2) Brams and Taylor [1996 p.10] point out that this principle is still invoked as a means of resolving complex problems involving, for example, maritime resources. The 1992 Convention on the Law of the Sea stipulates that, whenever a developed country wishes to mine a portion of the seabed, its government must propose a division of the portion into two tracts. An international mining company representing the interests of developing countries through the International Seabed Authority [and funded by the developed countries] then chooses the tract it prefers. The developed country obtains the other tract for its own exploitation. Through this process of divide and choose some parts of the seabed are reserved for developing countries which otherwise could no participate at all in the benefits from sea bed mining.

(3) Brams and Taylor suggest an alternative desirable quality to "proportionality" in their recent work [1996 pp.71-2]. This is "equitability", which they define as the condition in which adversaries receive an allocation of the goods in dispute, and values this in such a way that they are indifferent between retaining this allocation and being awarded the exact fractional allocation [say 1/3 of the value if three parties are involved, 1/4 if four] that would arise from a simple proportionate division.

(4) In the case of multi-party conflicts, Brams and Taylor [1996 pp.82-3] note the difficulty in finding a means that always leads to the devising of a solution that fulfils all three criteria of efficiency, equitability and freedom from envy. They suggest that, in real world conflicts, loss of "efficiency" [a solution that could not, even theoretically, be bettered] might be regarded as much less important if equitability is achieved, together with lack of envy among all the parties.

(5) This is not to argue that such "time sharing" is necessarily simple, costless, or psychologically easy. It may not even be politically possible, at a given point of time. However, it is to argue that starting from such a conceptual position does provide an opportunity to envisage alternative arrangements from those whereby exclusive rights and abilities to do whatever one wants with and on the whole of a piece of territory in dispute, or some share thereof, are gained by adversaries in conflict. Temporal sharing may have its attractions after two communities or nations have been involved in a protracted, violent and costly conflict over "whose territory" a particular area will remain - or become.

(6) Logically, for example, it is physically possible for Jerusalem to be both the capital city of Israel and the capital city of a Palestinian state - at least in the sense that the functions of both capitals could be carried out within the same city, with difficulty, but without necessarily interfering with the successful running of the two sets of government business. Given an effective, city wide traffic control system, ceremonial state "occasions" could even be carried out with efficiency and panache.

For an interesting discussion of the problem of Jerusalem and the general issue of "indivisible goods" in conflict situations see Cecilia Albin's analysis. [Albin 1991]

(7) Naturally, the impact of the usage in question will make a difference to parties' willingness to share territory, depending upon whether a particular use [a] leaves the territory used unchanged; [b] changes the nature of the territory temporarily but the user commits to restoring it thereafter to its original condition or [c] changes its nature permanently. Australian Aborigines' differing attitudes towards mining companies on the one hand [they just make a big hole in the ground and then go away] and tourists on the other [like cattle, they destroy whole areas of territory and do not respect the environment] illustrate this "respect v harm" factor. [See Gale 1990 p.226]

(8) The early secession of Slovenia from the Yugoslav Federation was not unconnected with the fact that Slovenia was the richest of the constituent republics in the Federation and its people felt that they had been contributing too much to the Federation and to the poorer republics without getting much in return. Secession clearly seemed one means of preserving Slovenian GDP and its people's standard of living. This might be a good example of what one cynic characterised as "Self determination for Beverly Hills !"

(9) The conceptual and practical link between territory and nation is not one with a long history, as David Smith reminds us by arguing that "...it is easy to overlook the relatively recent origin of the idea of congruence between a people with shared characteristics and the spatial expression of their political organisation..." [Smith above cit p.5] - an argument which clearly implies that forms of political organisation other than spatial are conceivable.

(10) Faye Gale reports a frequent comment by older Australian Aborigines as "...you whitefellows say you own the land; we blackfellows know the land owns us..." [Gale 1990 p.230]

(11) Although the processes involved in such outcomes are not necessarily to be commended, the settlements of conflicts over territory between some Aboriginal peoples and state governments in Australia might be viewed as examples of solutions of creation. In two cases, title to lands in the Northern Territories was restored to Aboriginal peoples who had sought to re-establish ownership and in both cases the land was then leased back to the Australian National Parks and Wildlife Service so that the regions could be run as national parks, local people being consulted about the parks' development. In addition, in the Kakadu National Park, mining was permitted but royalties were to be paid to local peoples. [Gayle above cit. pp.225-6]

(12) Something of the sort appears to have been happening in practical [let alone theoretical] terms in the European Community since 1956. If it can happen there, then the same principles of limiting and distributing sovereignty might be applicable to other disputes over territory - Ngorno Karabagh, former Yugoslavia, Sri Lanka, the Spanish [and French] Basque country, the Falklands/ Malvinas Islands.

(13) It should be noted that "territorial conflicts" are defined by the goods or issues in dispute, while "ethnic conflicts" are defined by the kind of parties involved in the adversarial relationship. This implies that it is possible to have ethnic conflicts that are not about territory, and territorial conflicts that do not involve ethnic groups as conflicting parties.

(14) It often seems to be the case that ethnic conflicts are more intense than others, in the sense that they give rise to greater violence and more extreme feelings of fear, hatred and mistrust. But, in fact, ethnic conflicts do not seem to be unique, at least in their behavioural manifestations. The American civil war was hardly an ethnic conflict, yet it was not carried out at a low level of violence. Neither the First nor the Second World Wars were clearly ethnic conflicts. Nor were the Korean War or the two Vietnam Wars. Destructiveness does not seem to be a unique characteristic of ethnic conflicts.

(15) And with some justification, given the nature of behaviour in many ethnic conflicts. One would be hard put to argue with a Tutsi that the ethnic conflict in Rwanda was NOT about survival, or with a Dinka that the Sudanese civil war was about the political relationship between northerners and southerners in that country, rather than the purposeful extermination of the peoples of the south.

(16) Such violent inter-action will only seem to confirm the perception that the basic issues are over threats to a community and its way of life and - probably - over its physical survival. Reactions to such perceptions will lead to behaviour that reinforces similar perception within the other ethnic community. There are strong elements of self-fulfilling prophecies in such relationships.