

PIN•Points

Processes of International Negotiation

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*Should we Negotiate
with Terrorists?*



*Time and Reconciliation
Dealing with Festering Wounds*



*Negotiating
Crowd Behavior*



*Diplomatic Negotiation:
Essence and Evolution*



Clingendael

Netherlands Institute of International Relations

EDITORIAL

Spring 2015 (a season rather than a weather designation!) is an exciting and dangerous time for crucial political negotiations. Four major negotiating arenas pose enormous questions to process analysis and deliver important lessons.

The *Ukrainian* crisis has run over a series of ceasefire that have immobilized Ukrainian forces while being broken by Russian and rebel forces. It is a case of multiparty negotiations, with different parties participating differently. Behind the Ukrainian government stand the Western countries playing different roles: France and Germany are doing the negotiating and the US is applying the sanctions on Russia, with some European support, in an effort to provide a cost that will level the playing field and create a stalemate propitious for negotiations. That point has not been reached as yet and so the two ceasefires negotiated at Minsk are selectively observed only in the sectors that are less important to Russia and the eastern Ukrainian rebels. The US threatened to raise the cost during the second Minsk negotiations by indicating it might supply some arms to Ukraine. But once the ceasefire was signed, without waiting for implementation, the US, in its style, said it never meant it, and so the truce was broken and the key rail town of Debaltseve linking the two sectors of Luhansk and Donetsk was taken.

Lessons: A threat and an agreement are only as good as their implementation.


But if there was waffling on the methods on the Western side, the

real question of even deeper importance to the negotiations is, What are Russia's aims? Are they fixed or are they a function of the reaction at each step, reevaluated according to the response the last step has gotten. The Western aims are pretty clear, if flexible. They started with a desire to maintain Ukraine's territorial integrity and to involve it in association with the EU and possibly within NATO, and were whittled down to the first, as a way to get Ukraine back on its economic feet. (Given the Russian mood, the consideration of Ukraine's (and a fortiori Georgia's) membership was a dumb and provocative move). But it is not clear whether Russia intends to give eastern Ukraine the Crimean treatment (annexation), the Abkhazian treatment (protected secession), or the Belarus treatment (predominant influence over the whole country). And stepping outside the Ukrainian sector, it is not clear whether there is a larger ladder, going from the Caucasus to Ukraine to the Baltic state, who are members of NATO. Yet these two sets of unknowns about intentions impact the negotiation approach: does the West seek to make an agreement on a stable outcome on Ukraine or on Ukraine as the central piece of a whole sector? Russian Foreign Minister Lavrov has indicated that Russia would like a territorial definition of relations along the new Armored Curtain. But is that a lasting relationship or just another step, and what would it look like (Crimea, Abkhazia, or Belarus)?

The *Syrian crisis*, suddenly turned into a major conflict where religious sectarian and regional power struggles have submerged an Arab

Spring uprising against a murderous regime, has constantly evaded attempts at negotiation in search of a ripe moment. The end of phase one of the uprising could be marked by the failed non-negotiations in January 2014 at Geneva II, where the conflict was manifestly unripe and as a result the Free Syrian Army (FSA) and National Coalition of Syria Opposition and Revolutionary Forces (SOC) were absent. It was folly to call negotiations to address the Annan Principles adopted in Geneva I when the FSA-SOC was too weak and divided and the Assad regime was still unshaken in its belief that it could hold on and that its people (those who were left) wanted it to.

Lessons: Negotiations called in the absence of a mutually hurting stalemate will not draw a good attendance

Since then, the vacuum of power and order created by the conflict lent itself instead to the rise of an authoritarian, dogmatic force of fanatics, the so-called *khilafa* or Islamic State (IS) and a three-cornered struggle between Assad, the FSA-SOC and the Islamicists. The West, which had neglected to support the first group found itself allied with the second, which it had qualified as the evil enemy, against the third. This time it is the West that is uncertain what it wants, or what it wants least. Not only has there been a vacuum in the conflict, that IS seeks to fill, but also in the negotiations, as Russia in February picked up the challenge and called its "Geneva" in Moscow. Again, FAS-SOC did not come, officially, but the bases of negotiations with the Assad regime may have been laid, 

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➔ under new auspices. The rise of IS may be in the process of creating a hurting stalemate for the other two sides, much as the rise of Hamas created a ripe moment for Israel and the PLO at Oslo in 1993 and the rise of IS may be having the same effect of the rival governments of Libya negotiating in Morocco.

The *Israeli crisis* reaches the 70th anniversary of the first negotiations and still running. There is no stalemate; Israel is running over Palestine and building on it; Palestine is taking it to court. Both policies are likely to spin out further, further angering the opponent. The interacting escalation is in full swing and has been going on for a while; by giving nothing to the Palestinian Authority (PA), Israel elected Hamas in 2006, and Hamas hardened Israel. Israel would have much rather just have a compliant PA subcontracting security, but the situation was untenable. At some point, the tightening stalemate will begin to hurt but it can also strengthen resolve and lead to further escalatory actions, thus inhibiting the hurting stalemate.

Lesson: Ripeness is subjective, a perception, but it has objective referents.

An equalizing move would be a unilateral declaration of independence (UDI) by Palestine, which would be logically consistent with the US two-state position, if the US were logical. UDI is not unusual and was practiced by Kosovo, Bangla Desh, Israel, and perhaps one could say by Eritrea and the Republics of the former Soviet Union (and indeed the USA and other former colonies), and attempted by Somaliland, Western Sahara, Nagorno Karabakh, Eastern Ukraine, Transnistria, South Ossetia and Abkhazia, without de jure rec-

ognition of the de facto move. It is therefore not an unusual occurrence; its success depends on its support by a strong power, preferably next door. UDI gives the newly independent party status; it also endangers any dependency relations and cooperation with the former suzerain and risks turning the conflict into an international war. But it would be a game-changer, and that's what is needed, new Israeli government or not.

But the *Iranian crisis* over non-proliferation constitutes the pinnacle of these world events. Negotiation between Iran and the P5+1 (Big 5 plus Germany) reached a head. For negotiations analysts it is an impressive case of how much less than what either side demands are acceptable to itself and to the other party? It poses the basic nature of negotiation: Giving something to get something, and confronts the negotiators with the operative version: How much are we able to give to get how much of what we want to get? How much is Enough? Sanctions have ripened the moment for negotiations for Iran, and the threat of a bomb has long made the moment ripe for the West to negotiate, whatever says Israeli Prime Minister Netanyahu. The preliminary result, announced just before Easter and Passover, contains some remarkable principles and precisions and leaves many knots to be tied and holes to be filled by June. The question remains, does it provide a lasting relationship or just another step?

Lesson: Negotiations involve concession, compensations and reframing (construction) for the parties to meet, uncomfortably, in the middle.

So stay tuned. The events of the moment are providing analysts with good illustrations of concepts

and plenty of new questions, many of which have been included in the articles of this PIN program publication.

In the first article, for example, Guy Olivier Faure puts to forth an insightful analysis of the requirements for useful negotiations with parties that adhere to the "nothing but the sword" principle. In the first of his two articles, I William Zartman expands upon the importance of the levels of immediacy when looking at the role of negotiation in conflict prevention. Valérie Rosoux follows by similarly emphasizing the role of time, or, more precisely, when reconciliation becomes negotiable. Mark Anstey elaborates in his article on what can be gained from the seemingly recent phenomenon of negotiating with crowds. In light of this ever so complicated world, Mikhail Troitskiy argues in his contribution that symbolic references can play a vital role in facilitating the coordination among actors. These focal points can for instance be found in arms control negotiations.

The articles in this issue remind us of the extensive use and usefulness of international negotiation. In his dissertation of last year, Paul Meerts defended his analysis and recommendations on how to further this use and usefulness of diplomatic negotiations. In this issue of *PIN•Points*, a summary is given of this dissertation which is now published as a book (accessible from the Clingendael website). The Montenegro PIN Roadshow in July answers to the call for more research attention to the processes of the closure of negotiations. In his second contribution, Zartman concludes this edition by providing a foundation for further PIN-research on how negotiations end and how this is actually determined.



GUY OLIVIER FAURE

SHOULD WE NEGOTIATE WITH TERRORISTS?

With the proclamation of the Islamic Caliphate, the new developments in the Middle East raises in the sharpest way the issue of negotiating with such a terrorist entity. Should we consider compromising with what many people view as an absolute evil? Are we not risking selling our soul in the process? However, if we look at history, during WWII Western democracies never negotiated with Hitler, but they did negotiate with Stalin. Furthermore, concerning the Middle East, it seems to be little realistic to consider that the only issue to the extreme complexity of the intertwined conflicts in this part of the world is a military solution. The US Secretary of State, John Kerry,

has threatened the Jihadists to crush them. In fact, many could be killed but that will not deterred them from going on fighting because they view death not as something to be feared and avoided, but as glorious martyrdom opening the road to heaven. In all cases, the point is not just to win the war but to win the peace that normally comes after through constructing a new balance in this shaky part of the world.

While denying they have negotiated almost all states negotiate with terrorists, even the most unlikely states such as Israel. The norm seems to be to declare that there have only been discussions and that whatso-

ever, no ransom has been paid in any case for the release of hostages. As a matter of fact, this is not true and there has been negotiations carried out and money handed over, sometimes astronomical amounts. In reality, there is nothing shocking about this, except the fact that governments are lying to their citizens, which is simply unacceptable in a democracy.

It is essential to negotiate with terrorists when there is no other available option because the point is to save human lives either detained as hostages or potential victims of the war going on. The ethical issue should not address the type of negotiation

counterpart, for we believe that we cannot always choose with whom to make peace and that ultimately we should even negotiate with the devil if necessary. The real issue should be stated in terms of what we give and what we give up among our fundamental values. If no serious interaction is developed with the terrorists, there is absolutely no chance to have any influence on them.

The recent events in the Middle East provide an opportunity to apply some of these main principles. The declaration of the establishment of the Islamic State in Iraq and al-Sham (ISIS), a new self-proclaimed caliphate is the result of a double action from the Jihadists, a mix of guerrilla warfare and classical war along Clausewitz lines. Stretching from the Mediterranean Sea almost to Baghdad, it is a lethal and merciless battlefield where intimidation, hostage takings, killings, rapes, torture, amputations, stoning, and crucifixions take place. However, it is also defined by some as the dawn of a new nation reuniting peoples of two countries artificially drawn by Western powers in 1916 to suit French and British colonial interests.

In such a situation and even during the current carnage, two types of negotiation opportunities can still be considered, one tactical and the other strategic. The tactical opportunity focuses on the detained hostages who are threatened with execution. The point is, once establishing that ISIS is really willing to negotiate, to discuss over the conditions of the release of the hostages. For the time being, this option has been conducted with a mitigated success and several Western hostages paid for this shortcoming with their lives.

The strategic option concerns the longer term. The issue is to re-inte-

grate the Jihadists into the peaceful community of the Muslims. It could be done in a similar fashion as it has been achieved in Egypt with the Jama'ah Islamiya (2) Such a task supposes a whole set of negotiations with the numerous stakeholders of the region and beyond, knowing that local alliances are complex and volatile, the interests intertwined and that the double language and ambiguity management are basic components of the current game.

The Sunni jihadist organization aims to govern an Islamic state of a new nature because it cuts across the traditional colonial state boundaries. Backed by an extreme ideological determination, sometimes resulting in "nothing but the sword", it keeps on with its successful modus operandi of "enduring and expanding". ISIS attracts numbers of Sunni from all over for the sake of defending the caliphate against the "crusaders and kaffirs (3) alliance". One degree further than al-Qaeda, it governs territories and tends to be financially self-sufficient through the control of oil and gas, taxation, extortion, and illicit trades providing funding for services and assistance. The basic idea is to take advantage of the current chaos to present itself as the defender of the Muslims of the whole world.

Contrary to what President Obama and a number of American observers said, ISIS does not carry a "nihilist ideology" but a much more complex system of values. Demonizing the enemy is not a very effective way to approach any problem. The point before negotiating should be to develop an understanding of the motivations and history of the leader of ISIS, Abu Bakr al-Baghdadi (who claims descent from the Prophet Muhammad), and his main advisers such as Abu Ali al-Anbari and Abu

Muslim al-Turkmani. An important father figure such as Abu Musab al-Zarqawi should also be part of the study.

As for the main stakeholders outside the region, another basic pre-requisite before launching any negotiation attempt would be to introduce enough coherence in their positions so that they can have some leverage in the evolution of the process. The European Union must sort out its endemic disorder and overcome its helplessness. The USA is finally realizing that it was much more directly concerned than the current administration would have liked and is getting out of its indecisiveness. Russia and China seem to be mostly concerned with enjoying the misfortunes of the USA and its allies.

To negotiate with any chance of success requires building up the conditions that will enable the negotiation process to be started. It may also have required working on some transformation of the problem in such a way that the counterparts are not caught in a zero-sum game and that a real ZOPA (Zone Of Potential Agreement) exists. It is under such conditions that peace may be restored in this part of the world.

(1) Faure & Zartman *Negotiating with Terrorists*. New York, Routledge, 2010.

Zartman & Faure. *Engaging Extremists*. Washington, United States Institute of Peace, 2011.

(2) Goerzig, *Egypt's Gamm'a Islamiya: Change through Debate*, in Zartman & Faure, *Engaging Extremists*, Washington, United States Institute of Peace, 2011).

(3) "Unfaithfuls", meaning everyone who is not a Sunni such as Shia, for instance.

I WILLIAM ZARTMAN

CONFLICT PREVENTION AND NEGOTIATION

Prevention is a paradox. On one hand, conflict is a natural, important and useful element inherent in human behavior. As such, it involves strongly held, committed, even existential motives from which individuals and states are not likely to be dissuaded. On the other hand, literally innumerable conflicts have been prevented from escalating to serious political contention and to violence, as a—if not the—basic component of the existing World Order. Statesmen, weathermen and firemen, among others, continually talk of prevention, but live on the insufficiency of their efforts. Beginning in January 1992 the first-ever meeting of heads of state and government of the Security Council concluded with a call for “analysis and recommendations on ways of strengthening...the capacity of the United Nations for preventive diplomacy” that produced Secretary-

General Boutros Boutros Ghali’s (1992) pioneering *Agenda for Peace*, welcomed by the Security Council and the General Assembly at the end of the year. No one has yet been decorated for preventing World War III, which has not yet happened.

But most countries do have a national hero who refused to be prevented from leading a bloody, patriotic campaign for independence. National security through national defense requires (and is accorded) about 200 times more to most countries’ budgets for military security than for diplomacy, the preventive and preferable alternative to war. The list of contradictions about prevention could continue. This article reviews elements in a forthcoming treatment of *Preventing Deadly Conflict* (Polity 2015), by I William Zartman, with a focus on negotiation.¹

Given the omnipresence of conflict inherent in human and interstate relations, prevention of its escalation into violence through its management and resolution is a fundamental component of the post-World War II and post-Cold War System of World Order. The functioning and yet-to-be perfected prevention of violent conflict is not just a set of techniques for dampening inter- and intra-state behavior. It is a set of norms and practices that hold World Order together and keep relations functioning normally and effectively, allowing them to move on to other, more creative and positive matters. The system operates through the individual and uncoordinated activities of members of the international community and through their coordinated actions in

¹ See also the PIN book edited by I William Zartman, *Preventive Negotiation* (Roman & Littlefield 1996).



international institutions—norms and organizations. Were it not so, international politics would indeed be total anarchy, wasting all time and energy in unregulated conflict and unprevented violence. With no authority or even coordinator to organize those activities and actions, the United Nations Security Council (UNSC) and General Assembly (UNGA) being only the tool and toy of their member states, states and non-governmental organizations (NGOs) have to do it themselves. Thus is World Order constituted, with the prevention of conflict escalation and violence as its key function.

It is especially in regard to the prevention of conflict over state security and territorial integrity that the World Order operates. Were it not so, the anarchy of the state system would be expressed in characteristic wars and aggressions as in the European (and particularly Italian) scene during the Middle Ages and Renaissance. Yet, as in other conflict settings, the number of escalated and violent conflicts is minimal compared with the possibilities of threatened security of one state by another. Exceptions are exceptions. It may be suggested that nothing more complicated than cost explains the phenomenon; aggression is expensive, more and more, and the results are not worth it, a common explanation for similar social behavior.

But there is more to it than cost. The development of formal and informal regimes regarding global security conflicts in the post-World War II world presents a fascinating record of tested understandings and tacit negotiations among the world's leading powers, where mistakes had a potential for catastrophe that was repeatedly prevented. A set of norms and expectations was established in a formal system of World

Order in the United Nations, upset by new developments and alignments, reestablished by informal interactions and implicit conventions, and again upset by new power realignments, leaving it in shambles without firm expectations to be again developed in action. Despite these mutations, it illustrates the conflict prevention capabilities of even the loosest set of behavioral standards and expectations even among the most powerful adversaries.

The same effect obtains in regard to other types of conflicts moving down the list from high level state security to issues of human security. Environmental protection, ethnic relations, human rights, population displacement, and even democratization and good governance are all subjects of sometimes intense conflict and conflict escalation but are general handled by accepted standards of practice and resolution negotiated among nations. These norms are powerful means of preventing most conflict escalation in their issue area, although they are not impermeable and they demand continual negotiation for development, refinement, and enforcement. Indeed, the new norm about sovereignty, the responsibility to protect (R2P), begins with its first pillar as the duty of the state to protect its own citizens and moves to pillar two the duty of other states to help it in that endeavor, before going into the rarest and most controversial third pillar, the duty of other states to protect the first state's population if the responsible state does not do so.

Diplomacy, writes Sir Harold Nicolson (1939/1963, pp 4-5) quoting the Oxford English Dictionary (see also deMartens 1866) "is the management of international relations by negotiation." Henry Kissinger (1964, 2) wrote similarly: "Diplomacy in the classical sense [is] the adjustment

of differences through negotiation." New challenges range from negotiations on climate change, nuclear nonproliferation, and broadened trade to negotiations with rebel and terrorist groups, with interstate aggressors, and with true believers on abortion and capital punishment. Two and a half centuries ago, one of the first encyclopedia articles on "Negotiation" began "In common usage, 'negotiation' means the art of handling the affairs of state.... However, negotiation is not limited to international affairs. It takes place everywhere that are differences to conciliate, interests to placate, people to persuade, and purposes to accomplish. Thus, all life could be regarded as a continual negotiation." (deFelice 1778).

NEGOTIATION AND PREVENTION

The role of negotiation in prevention proceeds through levels of immediacy of conflict escalation. It begins with longterm prevention, then midterm gestation prevention, pre-crisis prevention and then post-crisis prevention lest it happen again. In each of these levels, negotiation has an important but different role because each of the levels of immediacy requires a different role..

The Net of Norms for Longterm Prevention. The accepted "way we do things" is the broadest and basic means of prevention and the basis of the fact that literally innumerable conflicts are prevented from escalating to violence. Negotiation appears in the construction of the norms, in their development and refinement, and in their application to specific situations. Many of these norms emerge from practice: we prevent territorial or ethnic conflicts outside and inside the state because we learn to live within our "skin" and



with our neighbors, and the cost of upsetting consensually established practice is not worth the any benefits to be obtained. But in many other cases, these implicit consensual norms are formalized into negotiated sets of principles.

The striking example is the UN Conference on the Law of the Sea (UNCLOS) that took **12** years to formalize a change in the legal norms for the prevention of conflict on open waters. At the other extreme is the case of uprooted populations. The UN developed a code of conduct for refugees, administered by the UN High Commission for refugees (UNHCR). However, it left internally displaced persons (IDPs) outside its purview. Whereupon the Special Representative of the UN Secretary-General Francis Deng devised a set of Guidelines for the handling of TDPs (Deng & Cohen 1998) and as the Assistant Secretary-General of the UN became a missionary on behalf of the principles, which were then

picked up by member states and even, in the case of Africa, became formal obligations of members of the regional organization and part of the constitutions of some states. Negotiations are underway to extend the principles to cover displacement from natural disaster and climate change and to extend the right to non-refoulement to mean the right to remain in asylum, and then a third extended the entire concept to imply the right not to be displaced (Cohen 2011; Stavropoulou 2010; Morel 2012).

Process Mechanisms of "Early-Early" Gestation Prevention. Exceptional conflicts do get through the net of norms to the second level of immediacy, "early-early" gestation prevention. At this point the focus shifts to process mechanisms to interrupt the course of escalation and move the momentum toward resolution.² The process begins with the development of *awareness* of the danger of a conflict situation's potential for

causing trouble. That awareness is the bedrock of any further action and it need be engendered early lest the gestation opportunity be lost; lethargic Western responses to impending conflicts in Syria, Ukraine, and Liberia in the early 2000s show the importance of early awareness. This involves the diagnosis stage of negotiation. The second element in the preventive process is the introduction of efforts to *deescalate*, while reversing the impending trend through both blocking actions and negotiations to buy off or warn off its continuation.

The development of a *stalemate* through these efforts is the third element of the process, to produce a ripe moment that is the necessary condition to negotiation, which often involves ripening before the me-

² For a fuller discussion, see the PIN work, *Escalation and Negotiation in International Conflicts*, edited by I William Zartman and Guy Olivier Faure (Cambridge 2005), and *International Regimes* (US Institute of Peace 2003).

diator can proceed with a catalyzed negotiation toward management and then resolution of the conflict. Though necessary, the mutually hurting stalemate is not sufficient in itself and needs to be seized, either directly or through mediation. In the end, the final stage in the process mechanisms, *resolution*, is the best way to prevent conflict escalation. If the escalation momentum is handled, procedurally, without any attention to the substance of the conflict, it will return at the next opportunity; the threat of escalation should be used as the impetus for negotiations over the conflict issue itself.

Methods of "Early-Late" Pre-Crisis Prevention. If the escalating conflict eludes the process mechanisms of prevention and moves toward the crisis level of immediacy, these mechanism may no longer be adequate but it is still not too late to make a last stab at preventing the ultimate explosion of violence through a different approach. Three elements are crucial in negotiations at the doorstep of crisis. The first is *interruption*: immediate, intense efforts are needed to stop the events in their tracks. This requires focused and pressing negotiation by a third party to halt the self-propelling dynamics of the impending crash and give the escalating parties space and time to reflect and defect from their course. Secretary Kerry's mission to Ukraine and Russia to prevent a direct invasion of eastern Ukraine worked to suspend the crisis until further negotiations could be conducted.

But interruption needs to be consolidated by further negotiation for *separation* so that the parties can be kept from irritating contact with each other. Such measures, to be negotiated, include ceasefire that become conflict management devices, neutral zones and military pull-backs,

peacekeeping forces, items for discussion on a later agenda, neutral parties' monitoring. among others. The third element stands somewhat in contradiction to the second underscoring the delicacy of the operation: eventually, parties must be eased into contact and cooperation with each other, with measures that can be termed *integration*. Pull-backs from a contested border must be complemented by negotiated agreements on the location of the border and measures for a border regime that allows permeability and controls. This third stage comprises measures often referred to a conflict transformation, replacing the conflict with cooperation and interdependence between the parties.

Late (and Earliest) Post-Crisis Measures. The course of conflict, often portrayed as a bell curve, gives a misleading picture of a conflict that disappears into the sand when the deescalation measures are applied, when in fact efforts to wind down the conflict and even conflict management agreements merely send the conflict into remittance to begin the cycle all over again if they are not complemented by post-crisis prevention measures. Management implicitly promises resolution, yet it removes the pressure for it. Implementation is the necessary follow-through of agreements on conflicts prevented, but it needs monitoring to make sure the agreements do indeed follow through to completion. Prevision is needed to look ahead at possible recurrences and unanswered questions left over from the agreements, even when implemented, and is must translate into policies of reconstruction to cover the causes and wounds of the past conflict. Ultimately, remediation needs to be considered in order to fully heal those wounds and prepare for full reconciliation as the ethos of conflict transformation.³

THE ELUSIVE QUEST OF PREVENTION

In a world that is continually reorganizing its life and penetrating human society to a greater degree than ever before, there is no end to new aspects of conflict that will be seen as appropriate subjects for prevention. As the world gets smaller and its population larger, the pressure to reduce anarchy and aggression mounts, against rising contrary challenges.

The Search for New Imperatives. In the field of immediate concern over the prevention of conflict, it is the norms governing security conflicts that are the first target of new imperatives, as the first line of prevention. The international community has undertaken an extraordinary revision of the norms of sovereignty, through the doctrine of R2P. The established powers of the West, the coalition of the sometimes willing, are the leaders of this revision, as newly aroused to protect endangered world citizenry; the emerging powers of the BRICS (Brazil, Russia, India, China, South Africa) rise in constraint, if not opposition, as defenders of the old notion of sovereignty as the protection of the state; and the lesser countries stand by as the grass that gets trampled when elephants fight (Cardozo 2013). Norms of responsibility for the protection of people are not to be expected to be any more absolute than is the norm of sovereignty as protection of the state, whose debates have filled law books and commentaries. It is imperative that the guidelines for legitimate operation of the norm of sovereignty be further sharpened, lest the procedures for conflict prevention themselves become a subject for conflict escalation.

³ This is further developed in the new PIN work in preparation, *Reconciliation as Preventive Diplomacy*, Mark Anstey & Valerie Rosoux eds.

In a related area, the persisting appearance of collapsed states continues to pose questions over the responsibility of the international community in conflicts apparently beyond the cover of R2P. By the third R2P pillar, the international community has the responsibility to protect populations when the state's efforts are insufficient in their responsibility for the need to protect. But what if there is no state? In 2014, conditions in Libya, Mali, Central African Republic, Northern Nigeria, South Sudan, Afghanistan, Syria, Iraq Honduras, Guatemala, and Somalia qualified, and still others had struggling governments in charge primarily of the national capital area. With the state in mush, there are no pieces to work with. State collapse leaves not only large areas ungoverned, and thus open to all sorts of unregulated conflict behavior, but also rapacious gangs in charge of the nominal (and internationally recognized) state apparatus and also other nodes of power (Clunan & Trinkunas 2010). The nodes are busy and satisfied the way they are—in a pervasive S5 situation, a soft, stable, self-serving situation. When the hyenas ravage, even the elephants suffer. In state collapse, the state needs to be re-invented, on the job, in a form that fits local conditions. To deal with this situation before it happens is a new challenge for conflict prevention.

Similarly, the conditions for the recognition of a new state need greater regularization rather than being left to an ad hoc political process. Political process it will always be, just as the definition of statehood and the role of recognition has been the subject of long debates and longer exegesis, but states and movements should be left with a clearer notion of what they have to aim for to qualify. The condition that new EU members must be free of disputes with other

EU neighbors was removed by political blackmail by Greece in regard to Cyprus, eliminating the most effective inducement to settlement of the Cyprus conflict; on the other hand the EU rule has been helpful in attenuating conflict elsewhere, notably in regard to the Serbia-Kosovo dispute. Intractable conflicts, as over Palestine, Kurdistan, Kashmir, and Baluchistan, need clearer norms and strong adherence to the norms (as indeed to the norm of non-conquest) by the international community as an adjunct of prevention efforts.

The attachment of Crimea to Russia after its detachment from Ukraine in 2014, preceded earlier by the detachment of Abkhazia and South Ossetia from Georgia without any formal attachment, brought to the fore the conditions for moving boundaries and transferring territories. Currently, when a powerful state wants neighboring territory, it can take it, a reversion to an age thought to be past. In the same year, the horror, in the West at least, at Hamas missiles on Israeli territory and the condemnation of the occupying power as merely excessive in its response reversed the attitudes downward during World War II when occupation was condemned as inexcusable and resistance lauded. The incidents highlight the fact that there is no mechanism for legitimizing territorial transfers, since Russian claims to be protecting Russian *speakers* and to be sanctioned by a referendum after the occupation vitiated the expression of public support as a justification. There has to be a better way to legitimize transfers and avoid abuses.

The conflict with nature over climate change has already posed a challenge to the development of imperatives for prevention. Norms governing behavior in that conflict may well be produced some day, for protection

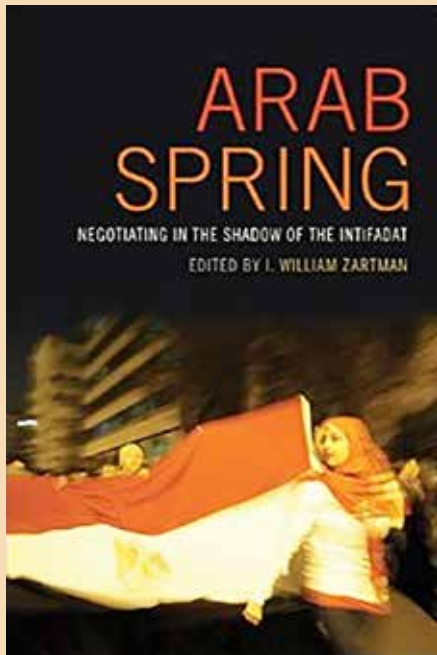
if not prevention, and probably too late. But immediate awareness and decisive action are becoming urgent (Edenhofer 2014). Although seemingly a direct conflict with nature, like earthquake prevention, climate change is really a conflict among causing human agencies over a reaction of nature to their activities. Here a change in attitudes is necessary to precede a change in normative structures, and the means will have to be found to pressure and finally perhaps enforce compliance in such an area of global cause and concern. One way regimes are formed is by establishing an agreement among agreeing parties, leaving the outsiders to join as they will, as in the European Union, the Law of the Sea Treaty, the International Criminal Court, and the landmines ban.⁴ The path to multilateral agreements, when blocked directly, can pass through partial or unilateral agreements (Chasek, Wagner & Zartman 2014). As some states feel more and more compelled to take action and other equally compelled to resist, conflict stakes rise and hostilities spread to other, often unrelated relations.

Other regimes involving the same type of conflict are in shambles, laying open the conflicts within their particular areas of focus. The nuclear arms regime show great cracks in its non-proliferation and test ban controls. The regime is a conflict prevention measure, but in the process it is a bitter subject of conflict, which in turn risks destroying its prevention capabilities and opens the door to a number of new Nuclear Weapons Capable States (NWCS), particularly in a volatile regions such as the Mid-

⁴ On negotiating international regimes, see the PIN book edited by Bertram Spector and I William Zartman, *Getting it Done: Post-Agreement Negotiations and International Regimes* (US Institute of Peace 2003).

ARAB SPRING: NEGOTIATING IN THE SHADOW OF THE INTIFADAT

ZARTMAN, I. W. (AUGUST 15, 2015).
UNIVERSITY OF GEORGIA PRESS.



CONTENT

The contributors argue in previously unpublished, countryspecific case studies that in uprisings like the Arab Spring, negotiation is “not just a ‘nice’ practice or a diplomatic exercise.” Rather, it is a “dynamically multilevel” process involving individuals, groups, and states with continually shifting priorities—and with the prospect of violence always near. From that perspective, the essays analyze a range of issues and events—including civil disobedience and strikes, mass demonstrations and nonviolent protest, and peaceful negotiation and armed rebellion—and contextualize their findings within previous struggles, both within and outside the Middle East. The Arab countries discussed include Algeria, Bahrain, Egypt, Libya, Morocco, Syria, Tunisia, and Yemen. The Arab Spring uprisings are discussed in the context of rebellions in countries like South Africa and Serbia, while the Libyan uprising is also viewed in terms of the negotiations it provoked within NATO. Collectively, the essays analyze the challenges of uprisers and emerging governments in building a new state on the ruins of a liberated state; the negotiations that lead either to sustainable democracy or sectarian violence; and coalition building between former political and military adversaries.

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→ die East. Along side, a regime for the prohibition of biological weapons need be negotiated to complete the ABC (atomic, biological, chemical) weapons regime.

Another area of conflict prevention that presses for focused negotiation concerns conflicts over depleting natural resources. Population pressure (also exacerbated by climate change in tropical regions) raises issues over the land tenure system in much of the developing world, where traditional ownership norms conflict with modern legal systems, with no established practices on how to combine the two; traditional norms themselves are unable to handle clashes between tribal (collective) ownership and longstanding usufruct claims. (Boone 2014). The many regimes governing the prevention of depletion of fish and wildlife need to be amalgamated onto a global or at least species- and geographic- or basin- basis, in the image that CITES on endangered species has created. Similarly, prevention is called for in conflicts over the depletion of water resources, where there are no norms, regimes or regulation to govern allocation and contain claims.

Information and Communication Technology (ICT) is a new double-faced area of concern, both as a subject of conflict and as an agent of prevention (Stauffacher 2014; DeNardis 2014). Cyber conflict has become a major arena of covert operations among states, as a means of locating intelligence, as a weapon of disruption, and as means of security and defense. Its use as the latter justifies its use as the former, and so the cycle of conflict escalates. But as a means of prevention, it is both a direct agent in the development of warning, awareness, and timely action, and a subject of new norms and their enforcement. Transparency,

confidence and security building mechanisms (TCSBMs) expand the original focus on confidence building alone to encompass the whole range of regime activities into this new area, where the operative details of prevention remain to be negotiated.

Search for New Mechanisms. A number of new mechanisms have appeared in recent decades—new institutions of various degrees of authority such as the new Law of the Sea (1982), the Framework Convention on Climate Change (1992), the Guidelines on IDPs, truth and reconciliation commissions, IAEA, UN SRSGs and PKFs (not provided for in the Charter), the International Criminal Court (1998), and the remarkable efforts of the OSCE High Commissioner on National Minorities and the Conflict Prevention Center and the UN Assistant Secretaries-General on Displaced Persons and the Prevention of Genocide..

The existing mechanism that needs most improvement is arguably the UN Security Council. Repeated blocking otherwise consensual action by one or 2 vetoes is as much a derogation of the spirit of UN operating principles as is intervention by a single party; the use of coalitions of the willing to carry out needed preventive actions is a properly creative response. Reforms of UNSC composition are unlikely, but rules of procedure that would give the forum more flexibility could be helpful in enacting preventing measures (although not entirely likely because of the organization's composition). Other UN bodies work on a decision rule of consensus or of unanimity minus one, an extension of the abstention rule that could facilitate positive action.,

Imposed suspension (interruption), a standard mechanism for inserting at least a pause in escalatory spirals

is used in labor disputes. There has been much progress in slowing down the sort of sudden response and crisis escalation that started World War I, although the June War in 1967 was launched by a similar escalation based on false intelligence on both capabilities and intentions (Parker). IAEA and OPCW inspections—and Comprehensive Test Ban Treaty Organization inspections, when the treaty is ratified⁵—are an important element in assuring atomic weapons regimes, although they need greater authority against tactics of sovereignty. Had they been able to overcome Saddam Hussein's ill-considered diplomatic games, they could have assured the absence of weapons of mass destruction and removed the excuse—and possibly the initiation—of the Iraq War (2003); the same goes for North Korea and Iran.

Another mechanism for interrupting the spiral of escalation is the awareness by the escalator itself that it has achieved some success and that it is time to pull back or at least to pause. Escalation can become a reverse entrapment, an end in itself rather than a means, with the escalating party unable to recognize when it has started to achieve its goals and can use its own reverse momentum to pull, rather than push, the other side to agreement. The dynamics of the US sanctions campaign against Iran is an eloquent case, as is the Russian covetousness campaign over Ukraine. At the same time sanctions must stay in place until some results occur and not be lifted just to create a nice atmosphere. The debate over the partial lifting of sanctions against Serbia before 1998 is an example.

⁵ For further analysis, see the PIN work edited by Mordechai Melamud, Paul Meerts, and I William Zartman, *Banning the Bang on the Bomb? Negotiating the Nuclear Test Ban Regime* (Cambridge 2014).

A difficult and daring mechanism would be the revival of the institution of trusteeship to help collapsed states (Ratner). The odor of revived colonialism and the bureaucratic inefficiency of international organizations provide two narrow limits within which such a reform would have to operate. The third limit would be the terrain in which the trustee would have to operate; it is simply dauntingly dangerous for any agency, whether the French or American army or a UN trustee, to try to restore law and order in Centrafrique, Syria, Iraq, Somalia or Eastern Congo, yet attempts are being made.

Mechanisms of enforcement run up against sovereignty in the state system. Enforcement of prevention depends on the constraints that states agree to impose on themselves. Therefore the mechanism of enforcement lies in the solutions negotiated with attention to the interests of the parties involved, either in specific outcomes to a conflict situation or in general responses to

a type of situation. Both depend on the reciprocity encased in the prevention arrangement.

As prevention looks for new material to work with if it is to avoid simply a return to *The Lord of the Flies*, it can look most productively at traditional local customs for managing conflict. Traditional societies long developed their own practices and norms for conflict prevention and escalation; the community served to prevent conflict in the first place and provide systems of accountability and healing. They have found effectiveness in Eastern Congo (Autaserre 2003), West Africa (Zartman 2003; 2013; Adebayo, Lundy Benjamin & Kingsley 2014) and Palestine (Abu Nimer 2003). When the problem is that there is no state to work with, in or about, the beginnings of answer can be to think small, at the local level. What is needed however is an existing community of some sort within which conflict prevention can operate to rebuild social tissue ruptured by conflict. Community has been

weakened by modernization, and if there it is any effort at a replacement it is on the national level as state nations seek to become the forum for its functions. It doesn't work. The search for mechanisms needs a functional replacement on the subnational level that can update traditional structures and function. Efforts such as Infrastructures for Peace including both revived and refitted traditional practices and local peace committees (LPCs) are an initial step that has been adopted by the Organization for Security and Cooperation in Europe (OSCE) and promoted by NGOs (van Tongenen 2013; OSCE 2012; Unger, Kundström, Planta & Austin 2013; UNDP 2013). The next, and necessary step, is to link these grassroots activities to national governance systems so that they do not remain autonomous unrecognized feet separate from the body politic.

Search for New Agents. Although the state is the prime agent of prevention, it can benefit from multiple assistants. A notable addition to the agents of conflict prevention in the post-World War II era is the rise of non-governmental organizations (NGOs) into an era that was long off bounds (Stein 2000). In the various issue areas and mechanism of prevention, NGOs have as active a role as do states. Other areas, such as awareness and mediation, have seen a growing civil society role to complement state action with activities the state cannot perform as well. For the most part, states are needed to officialize processes and results, but NGOs can be singularly effective in smoothing ethnic relations, promoting human rights, encouraging democratization, facilitating good governance, softening population displacement, promoting attention and attentiveness, providing mediatory functions, and facilitation imple-



mentation in sum, in working with people as opposed to with states.

The most important qualification to be observed on NGO work alongside states in conflict prevention (Track II diplomacy) is respect and coordination. Agency can only be public or private, but cooperation can take new forms. Increased use of NGOs puts unusual strains on resources. Standby teams for diplomatic as well as military duty have been set up in conjunction with the UNDPA Mediation Support Unit, with increasing success. The Carter Center's International Negotiation Network (INN) depended on availability and proved useful on occasion. Blue Hats, along with Blue Helmets, have been proposed to help post-conflict situation develop administrative skills on a shortterm basis; police (Blue Berets?) have been also seconded from national police duties to fill in in post-conflict situations and provide training. The Intergovernmental Panel on Climate Change (IPCC) and the UN Academic Advisory Council on the Mediation Initiative bring private expertise to bear on conflict situations to inform professional practitioners.

Search for New Knowledge. Conflict prevention remains an exciting and relevant field for the search for new knowledge. The uncertainty of the causal chain and the fallibility of foresight have been highlighted from the beginning. Better understanding of what causes conflict to emerge from its passive shell and climb the steps of escalation is necessary for more effective prevention. Such dynamics as the security dilemma and entrapment still escape effective interruption and remedy. While new work is being done on why rebellions arise (Collier, A&Z) and why people engage in them (Lichbach, Sambanis), the etiology is still not well enough understood to counter the causes

and satisfy the demands at the same time; frequently the people are the ones who are engaging in their side of normal politics (articulating and aggregating demands) and the government that is waging conflict against them.

New knowledge will give better predictions; nonetheless, human beings have the ineffable capacity to do dumb things and practice inspired creativity, in addition to following studied regularities of behavior. A study of political forecasting showed that experts were wrong 25 percent of the time when they claimed to be absolutely certain (Tetlock 2005). That means that were right three-quarter of the time, an astoundingly high figure for an activity subject of popular derision. It all depends on expectations. New knowledge on data, regularities and prediction will work on that 25 percent, although it will discover new irregularities at the same time, and hopefully will reduce dumbness and increase creativity. Prevention is a pressing concern as the system of World Order undergoes sharp shocks in the early XXIst century. The norm against conquest has been shaken by Russia in Ukraine and Israel in Palestine and the methods of interruption, separation and integration have wobbled. The norm against mass murder of one's own population has been trashed by Bashir and Kir in Sudan, Asad in Syria, and the mechanisms of awareness, de-escalation, stalemate and ripening have been left in the bag, unused. Ethnic and religious (often mixed) wars in Central Africa, Syria, Iraq, Afghanistan, Pakistan, both Sudans, Burundi, Thailand, and Ukraine have moved toward genocide. The non-proliferation, world trade, and climate change regimes have frayed at the edges with large loopholes in the middle. The Cold War blockade

of the UN security and preventive machinery by Russia and China has returned, bereft of ideology but just for reasons of power rivalry. Conflict and security as world-shaping interstate matters have reemerged from the history files of the last century, alongside anomies of terrorizing gangs, sometimes with a message, sometimes without a cause, such as Boko Haram, the various al-Qaeda franchises in the Maghreb, Arabian Peninsula, Egypt and elsewhere, ISIS (The so-called Islamic State), among others, but also thugs in Honduras and Guatemala for whom prevention is as elusive as solution.

In this World in search of Order, there is a crying need to focus on negotiation for prevention

In this World in search of Order, there is a crying need to focus on negotiation for prevention. Crisis management is only a part that comes too late, conflict management is another part that is incomplete without resolution, but prevention is the frame for the whole picture. More than periodic toolkits, a change of attitudes toward the field and the philosophy of prevention is needed if a sound system of World Order is to be reinigorated.

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VALÉRIE ROSOUX

TIME AND RECONCILIATION DEALING WITH FESTERING WOUNDS

There is a vast literature on time as a constraint and/or a resource in the field of negotiation. Practitioners and scholars emphasize the crucial influence of time pressure in favouring a political deal between parties (Lewicki, Saunders and Barry, 2010). Successes and failures in ultimatum bargaining have been very well investigated (Boles et al., 2000). Timing of entry is also intensely debated (Anstey, 2010: 254-257). The perspective chosen here is rather different. This contribution focuses on post-conflict situations and considers time in the broadest sense of the term. The main hypothesis of this paper is that time is one of the most decisive variables in determining to what extent reconciliation can be negotiated between former enemies.

In the aftermath of international or civil wars, timing is pivotal, but in a paradoxical way: urgency matters as much as duration. On the one hand, priorities such as rebuilding the political machinery and the economy, or prosecuting human rights abusers, are matters of great urgency. As is commonly admitted, "[t]he risk of relapse into violent conflict only increases with time" (UN Security Council S 2011/634, p. 4). This urgency requires extremely quick reactions on the ground and a great sense of adaptability. Accordingly, speedy decision-making is a necessary condition for impacting post-conflict transitions. The same comment could be made regarding conflict zones, where the priority is to reach a cease-fire as soon as possible, since each extra day results in further casualties. In such contexts, the willingness to put pressure on the parties to move on is

understandable; this eagerness being one of the conditions to prevent these parties becoming entrenched in never-ending civil wars.

On the other hand, timing is also of consequence in terms of duration. Speediness, as such, is no guarantee of success in the long run. The hopes and disillusion resulting from the Arab Spring - where political changes succeeded one another at a thrilling pace - show that acceleration and haste can have violent and highly questionable consequences. Thus, the rush to achieve quick results with respect to conflict resolution, and, even more so, reconciliation, may have no strong roots and may be unsustainable. The failure of the Geneva II talks on Syria demonstrates the extreme difficulty of forward-looking outcomes processes (Zartman, 2005). Experience with other transitions - such as in Iraq, Afghanistan, Tunisia and Bosnia-Herzegovina - reminds us that time is necessary in order to recognize the scale of destruction of both the infrastructure and the social fabric of the country, and to ensure a broad political will. If the initial process does not allow this indispensable time, the rest is often built on sand (Sissons and Al-Saiedi 2013).

To address this tension between short-term and long-term perspectives, the present contribution is divided into two parts. The first questions the notion of ripeness (Zartman, 2000) in a post-conflict context. When are people ripe enough to favour a rapprochement towards their former enemy? The second examines the long-term character of any process of rapprochement. After

mass atrocities, changes of attitude, emotions and beliefs take time. What is the appropriate pace?

1. RIPENESS: NOT TOO SOON

William Zartman notably emphasized the significance of ripeness in the area of negotiation. This issue should also be addressed with respect to reconciliation. To do so, it is worth underlining similarities and divergences between these two types of processes (negotiation and reconciliation).

INSPIRING SIMILARITIES

As in any negotiation, parties become involved in a reconciliation process when they have to do so. They only join together in this way if each party's efforts to achieve a unilaterally satisfactory result are blocked and if the parties feel trapped in a costly predicament. Similarly, the notion of "mutually hurting stalemate" is relevant in cases of a rapprochement between former enemies. When parties find themselves locked in a situation that is painful for both of them (although not necessarily to the same extent or for the same reasons), the way out they seek can indeed become the starting point of a reconciliation process.

The Franco-German case is telling in this regard. In a devastated Europe, the decision to work towards a rapprochement was not a matter of altruism, but was rather in both French and German national interests. Among all the political, economic, and security considerations that promoted the transformation of relations between "hereditary enemies",

one was particularly significant: the existence of a common enemy in the USSR – and therefore the external, mostly American, support for rapprochement. In such circumstances, French and German leaders perceived an undeniable “mutually hurting stalemate” and considered the European Coal and Steel Community (ECSC) as their way out.

Unlike this example, there are many cases which show that in the absence of a mutually hurting stalemate, the pain is not strong enough to drive the parties towards reconciliation. Situations which have remained unchanged for years, such as that in Cyprus, are emblematic in this regard. Other cases show that ripeness is a necessary but insufficient condition for launching a reconciliation process. Where spoilers considerably benefit from intractable conflicts, ripeness in the eyes of the population cannot lead to effective change on the ground. However, as in any other negotiation, the absence of ripeness is not a valid reason for inaction. In cases such as Israel/Palestine or the Congo, certain groups are able to conceive of a rapprochement with *the other*. Admittedly, without political support “from above”, their efforts cannot be sufficient to influence the whole population. Nevertheless, the existence of “*pause conflict zones*” (in contexts that cannot yet be qualified as “post-conflict zones”) can constitute decisive niches once there is a real eagerness to move forward. They create the social infrastructure which political leaders can count upon if they decide to take the risk – or the chance – of a rapprochement.

A DIFFERENTIATED RIPENESS

Having looked at these similarities, the main question remains: when does a protagonist emerge ready to make efforts towards reconciliation?

When do the parties start thinking in terms of reconciliation: during or after the negotiation processes *per se*? At first glance, a variety of scenarios can be observed, ranging from cases such as South Africa, where Nelson Mandela started negotiating reconciliation as soon as the secret talks began in the 1980s, to those such as Bosnia, where reconciliation was not at all on the agenda of the Dayton agreement. Besides looking at these varied cases, it is useful to take a differentiated approach to the issue of ripeness, according to the types of protagonists calling for reconciliation. In this respect, three main situations are conceivable. Rather than focusing solely on the top-down versus bottom-up debate, it is worth stressing calls for reconciliation coming from above, from below and from outside (Gluck, 2007). Each of these levels suggests a specific response to the question of ripeness.

(1) If we first examine the attitude of outsiders, a standard pattern can be detected: they highlight the need for reconciliation immediately after the end of the hostilities or even *before* it. The reaction of the former French President, Nicolas Sarkozy, after the death of Colonel Gaddafi is telling in this regard. Just one day after the death of the former Libyan President, Nicolas Sarkozy had a simple message: “What Libya needs now is reconciliation. Libyans need to forgive each other” (21 October 2011, AFP). Despite the fact that the country was still devastated by extreme violence, and despite the ambiguity of the notion of forgiveness in the aftermath of a dictatorship, the reference to reconciliation was almost instantaneous. The same comment can be made more broadly as regards the attitude of European Union (EU) representatives (Rosoux, 2014). Their insistence on reconciliation is both systematic and

immediate. As the former European Commissioner Stefan Füle suggested, “there is no alternative to reconciliation” (Batumi, 11 July 2012). Be they in the Balkans or in the Middle East, in Mali or Afghanistan, Ivory Coast or Somalia, the EU representatives appear as “reconciliation heroes”. To them, the notion of reconciliation is directly associated with the notions of peace, stability and reconstruction – and therefore presented as necessary. The argument is ambitious: it is because the EU itself is the result of a successful reconciliation that it is duty-bound to promote this process all over the world. This resolve has been particularly tangible in former Yugoslavia. Thus, the European Commission recommended starting accession talks *after* the conclusion of an agreement between Serbia and its province Kosovo. In this respect, reconciliation almost serves as an accession condition for joining the EU. The changing attitude of the Serbian President, Tomislav Nikolic, towards Kosovo, as well as towards the crimes committed in Srebrenica, shows that the EU’s persistent pressure in favour of reconciliation is not completely futile. However, as many parties argue on the ground, it takes more than words – essentially words geared towards pleasing Brussels – to open up an effective path to reconciliation.

(2) As this example suggests, the outsiders’ eagerness to call for reconciliation rarely coincides with the attitude of officials on each side. Rather than referring immediately to reconciliation, most leaders predictably adopt a pragmatic attitude. Their perceptions and their potential inclination towards reconciliation totally depend on international and domestic constraints. Thus, immediately after an election, most Presidents unsurprisingly start their mandate by extensive calls for national reconciliation. The attitude of President



Alassane Ouattara in Côte d'Ivoire illustrates this immediate response. In his first official statement, he made it clear that reconciliation and national unity were the main priorities of the country. Yet, in other cases, official authorities put the emphasis on the need to fight against impunity and therefore categorically reject any call for reconciliation. The Rwandan case is particularly interesting in this regard, since it indicates how quickly attitudes can change in this respect. When the Rwandan Patriotic Front came to power in 1994, the objective was not reconciliation but justice. The message repeated in the country and abroad was that Rwanda had to erase the culture of impunity (that lasted for too long and that was one of the causes of the genocide). Eight years later, the Rwandan president Paul Kagame started focusing on reconciliation. Three main reasons justified this shift. Firstly, justice was, in fact, impossible. Since the judiciary system was totally ruined after the genocide, the number of people who had to be tried and sentenced was unmanageable. Secondly, justice could result in the revealing of embarrassing truths. Justice meant dealing with crimes committed on each side, including those which were committed in the Congo after July 1994. Thirdly, most international donors strongly emphasized the

need for reconciliation in Rwanda. This was particularly true of Belgium.

These examples show that, at the political level, ripeness directly depends on the perceived interests of each protagonist. This predictable degree of opportunism leaves one question unanswered. As in the traditional game of "chicken", the question is: who will make the first move? As the Russian-Polish and Israeli-Palestinian cases reveal, most parties refuse to take the initiative towards a rapprochement. Few leaders are ready to expose a form of vulnerability - at least in the eyes of their constituencies. The choices made by Sadat in 1977 or Begin in 2003 were genuinely audacious - but also tragically dangerous.

(3) Besides calls for action coming from outside and above, we must consider initiatives coming from below. This perspective reveals the limits of any push towards reconciliation. The reconciliation process can not, indeed, be started at any time. Immediately after the end of hostilities, the population affected by the violence rarely calls for a rapprochement with those who are still perceived as enemies. In Kosovo, to take only one example, reconciliation between Serbs and Albanians was the explicit aim of the United Nations peace-consolidation mission. How-

ever, the impossibility of reaching an agreement as to the status of Kosovo showed that such a purpose cannot be imposed from above - it can only be an endogenous one. While many voices claim that a rapprochement between former enemies depends on tangible assistance from the international community in pursuing such a goal, it can hardly be denied that the forces for change are primarily internal and cannot be coerced.

In the aftermath of mass atrocities, victims simply resist when the so-called "politics of reconciliation" is perceived as an ideology or as a rhetorical argument that seems to disregard their suffering. In Rwanda, for instance, voices coming from all communities rapidly denounced what they called the "ideology of reconciliation". From their perspective, the right question to address is probably not *when* but *if* reconciliation is possible. All these elements show how delicate the issue of time management is in bringing about reconciliation. While institutional and legal measures can be taken relatively quickly after the end of the conflict, so-called reconciliation policies must not come too soon. If so, they are ineffective and even sometimes counterproductive.

2. DURATION: NOT TOO QUICK

According to Hayner, reconciliation can be understood as a way to build "relationships today that are not haunted by the conflicts and hatreds of yesterday" (2002: 161). From that perspective, the critical question is not only "what happened?", but also - and above all - "what shall we do with the past?" Similarly, one of the most fundamental issues is not whether to remember *or* forget, but how to remember *and* forget in order to move forward. Events such as particularly traumatic violations of human rights can remain unexpressed for a



period of time – a period that psychoanalysts often call “latent”. Some specialists refer to a period of 25 years. However, there does not appear to be any standard time-period in this matter. In Greek tragedies, for instance, old debts were only paid after three generations (Salles, 2012). This trans-generational transmission is absolutely critical in post-conflict situations. Case studies show that the second and third generations remain preoccupied with continuing feelings of guilt or victimisation, especially when past injustices have not been adequately addressed by their parents’ generation. The Armenian-Turkish case is emblematic in this regard. The persistence of intense emotions has specific consequences on the negotiation process. It limits the potential concessions made on each side and partly explains why certain issues remain non-negotiable for decades. Resistance can be so strong that it is often qualified as “irrational”. One way to understand the dynamics

that lead to this kind of impasse is to consider the extent to which the process may be “haunted” by the past.

AN OPEN-ENDED PROCESS

Far beyond the scope of any “quick impact projects” (UNHCR), “the path towards reconciliation is a marathon, not a sprint”, as the Polish President Bronislaw Komorowzki said after talks with the former Russian President, Dimitri Medvedev (quoted by Dempsey, 2010). The open-ended nature of the process is confirmed by all case studies. In 2012, by way of an illustration, the Estonian President, Toomas Hendrik Ilves, explained that, more than 60 years later, Estonia was “still waiting for apologies” from the Russian authorities (*Le Monde*, 12 April 2012). Speaking about the “illegal annexation” of his country by the Soviet Union after WWII until 1991, and more specifically about the deportation of 20,000 Estonians to

Siberia by the NKVD (Soviet political police) in 1949, he expressed regret that nobody had “ever apologized” for these crimes. This is not an isolated case - far from it. Thus the EU Parliament became a place of contentious and highly distributive negotiations between Germany and Poland, and between Germany and the Czech Republic, with respect to issues directly linked with the Second World War. In another context, negotiations between China and Japan are constantly at risk from the explosive weight of the past. To give a final example, the ongoing negotiations between Japan and North Korea have always failed to achieve closure regarding the Japanese who were kidnapped in the 1970s and 1980s, and who were used as spies for Pyongyang (*Le Monde*, 31 May 2014). Each of these examples - and there are tens of others - reminds us that reconciliation remains unfinished business that requires long and arduous negotiations at all levels.

AN INDIVIDUAL PROCESS

The experience of a Rwandan survivor, actively involved in a local reconciliation process, confirms both the dynamic character and the duration of the process: "I took the time to hate everybody. It took me ten years. I needed this time for hatred. Now I can think about reconciliation". In listening to this sort of comment, many observers emphasize the impact of a supposed "natural time for healing". Thus, in April 2014, the Canadian government considered that a period of two decades was symbolically enough to "recover" and turn the page of the Rwandan genocide (Montgomery, 2014). However, this emphasis on a quasi-magical effect of time has to be questioned in at least two ways. First, who can determine whether ten, twenty, fifty or a hundred years is the right time-period? How can we fix in advance a standard pace of healing? Secondly, how can one argue in favour of such natural healing processes when in most cases there is evidence that wounds remain? As numerous testimonies tragically remind us, the idea of a natural time for healing does not systematically correspond to reality – far from it (see *Pinpoints* 34, 6-9). The experience of Révérien Rirangwa is particularly emblematic of this oversimplification of survivors' experiences. After witnessing the massacre of forty-three relatives, this Rwandan survivor was disfigured and left for dead. In describing himself as a "prisoner of his ghosts and his anxieties", he explains: "my body, my face and the sharpest aspect of my memory bear the scars of the past – and will continue to do so until the end of my life" (2007: 14). His words are hard-hitting: "Survivors are troublemakers. We bother everybody with our pain, our tragedies, our dead ones and our rotten vivid memory. (...) The only narrative we

are allowed can be summed up in two words: 'Reconstruction, Reconciliation'. These watchwords – as nice as they are *per se* – smother the survivors' distress cries" (131).

These accounts raise fundamental questions regarding timing in post-conflict situations. One of them was once summarised by a German student of mine, who came to me after a seminar and asked, movingly: "How long?". Her two-word question meant "how long do we Germans have to apologize?"; "how long do we have to deal with a guilt that is not ours?"; "how long will we have to justify ourselves, compensate for and/or recall the events of the past?". The answer given by the German Minister of Foreign Affairs, Frank Walter Steinmeier, confirms the open-ended character of the process. As he admitted: "It is very dangerous for a politician to say that we have succeeded. We have to bring evidence of this reconciliation [between Germany and its former enemies] all the time" (*La libre Belgique*, 18 February 2014).

* * *

As we look at the many examples, we realize that the way in which past experiences are re-lived ultimately depends on each individual's attitudes, emotions and energy. International and intercommunity conflicts provoke an infinite series of individual fires that need to be extinguished one by one. The response to past atrocities is ultimately an individual one. Far from being reduced to a tension purely between anger and forgiveness, this individual response brings to the surface deep sadness, fear, loss of trust and hope, and other emotions, which may result in sorrow, or, rather, in calls for justice and accountability. All these reactions demonstrate that reconciliation cannot be negotiated at any price and/or at any

time. Therefore it might be useful to question our own assumptions. Is the aim to distinguish between "good" (resilient) victims and "bad" (resentful) victims or to define a new social contract? It is if – and only if – the diversity of reactions and tempos is taken seriously that one can finally see an end and a beginning.

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MARK ANSTEY

NEGOTIATING CROWD BEHAVIOR



INTRODUCTION

Emerging from a station in central Copenhagen recently I found myself in the midst of a demonstration, with protestors chanting and waving placards. Suddenly the march stopped moving forward – had the police arrived, was there a counter group blocking the way? No – in fact there was not a policeman in sight. A street crossing had been reached – the little red man was indicating stop. The crowd moved through in batches in strict compliance with the traffic lights! This was all in quite startling contrast to the demonstrations that occupy media time in my home, South Africa. Here the traffic lights would have been at risk of destruction, burning tires might have been dragged onto the road, a few cars burned and there would have been

a strong probability of confrontation with police!

A culture of protest action and the form that it takes is shaped by many factors including legal frameworks, social norms, group aspirations, emotional intensity of grievances, levels of frustration and patterns of behavioral response in dealing with these (the history of relations). It has been said that Lenin despaired of German communists' potentials for revolt when he saw them buying station tickets to participate in a protest organized at the Berlin station.

Despite a democratic legal framework that promotes freedoms of association, assembly, expression and protest action (procedural rights), it seems that many communities in South Africa believe that unless

they resort to disruptive action or there is an element of violence to property or persons, their grievances and substantive demands will not be attended to. It is a perception founded in long experience. During a negotiation on an impending general strike in South Africa in the late 1980's, employers sympathized with the workers' cause but complained about the disruptive effects of the strike on the regional economy. They proposed that workers demonstrate on a Sunday rather than a workday. With a look of amazement the union leader replied '*Look we are not here to organize a Sunday picnic – we are in a political struggle to end the government of oppression – it's meant to be disruptive!*'

While some individuals in crowds may have no shared common pur-

pose (shoppers in a mall) or share fairly benign purposes (support of a sports team, or celebration of a national day), others represent collectivities deliberately convened to communicate a grievance, or create a disturbance or disrupt the normal flow of public activities, or provoke authorities to action in front of cameras.

Crowd control is a challenge for public order police in both repressive and democratic societies. In the former they generally violate rules, and threaten regime control but police are given wide latitude to deliver a repressive response. In the latter however peaceful demonstrations are regarded as an important right, embodying freedoms of association, assembly and expression. Authorities are expected not only to tolerate protest actions but also to facilitate an enabling environment for them, and to ensure protections for the safety and security of both protestors and the wider public. Within this balance of democratic rights and responsibilities much can go wrong. Opportunists may use crowd situations to carry out objectives unrelated to those of a demonstration. Attacks on property and people and looting may give way to violent confrontations between police and citizens with casualties including bystanders. There may be some who have an interest in provoking a violent response from police as part of a media campaign of their own. Police may enter crowd control situations with inadequate training or equipment, and have ill-disciplined members within their ranks who carry malevolent feelings towards protesting communities, or who respond poorly in high stress situations. Even in benign crowd situations such as sports crowds, an unexpected event such as a fire may see panic and casualties.

Television screens carry daily images of protestors in confrontational exchanges with police. Across North Africa and the Middle East spontaneous protest action mutated into riots, then revolutions and civil wars. In some there was a rapid collapse of regimes (Tunisia, Egypt), in some regimes restored order through brutal repression (Bahrain); others escalated into civil wars (Libya, Syria, Yemen), or simply saw continuation of a long attritional exchange (Israel-Palestine). In Kiev, Ukraine, protestors occupied the town square with sufficient intensity to see collapse of the government but then (perhaps an intended consequence) a collapse into civil war and wider tensions in international relations between Russia and the European Union and USA. In Ferguson, USA, a police killing of a young black man gave rise to weeks of protest action and occasional rioting. In Brussels violent confrontations have taken place between police and workers protesting changes to pension arrangements. In Hong Kong activists engage in street protests for an open democracy. In South Africa social protest action has risen to a level described by one analyst as a 'rebellion of the poor', spiking into terrible violence on the platinum mines and the Marikana killings.

Thinking about crowds and crowd control has shifted. Understanding of protests as 'madding crowds' has given way to one of purposive collectivities. In more enlightened environments public order policing has moved away from simply tactics of escalated force to negotiated management approaches (Schweingruber 2000:371). In his review of 'mob sociology' theory Schweingruber (2000) does not question its validity as much as its influence over police crowd management tactics. Crowd management through negotiation has been more effective than the escalated force tactics

employed by public order police the theory originally informed. The extent of this shift is reflected in South Africa's Goldstone Commission's report of 1992, the report of the Human Effects Advisory Panel of the Institute for Non-lethal Defense Technologies in January 2001, and in such documents as the Commonwealth Human Rights Initiative 'standards and procedure for Crowd control' published in July 2005.

Crowds mutate into riots when their members commit violent or illegal actions that disturb the peace. Traditional understanding of this process is one in which individuals lose their sense of individual accountability in a 'mob mentality', and commit acts they would not usually do because the crowd makes them feel anonymous. Referring to Mombasse's classic work (1967) Schweingruber posits that 'all crowds can transform into lawbreaking mobs' (2000: 372). The process is one that sees angry people gather, fuelled by pent up grievances; milling around; being brought to a collective boil through collective grumbling and rumoring; becoming increasingly less responsive to extra-group stimuli as individuals lose rationality and self-control as they are absorbed into a 'crowd mind' and behave as parts of a larger crowd organism in a context of heightened emotionality and anonymity. Under the influence of agitating leaders, and following a trigger event (a spark) or rumor, these individuals may then participate in destructive and violent behaviour. It is a dynamic that places authorities in a dilemma with police accused of fueling violence whether they act brutally or too weakly.

Traditionally the thinking was that there would be an incident which would see people milling about – police would be required to do a quick read of the situation and try to resolve it as quickly as possible to

prevent any escalation. If this was not achieved however and the crowd became more excited and subject to influence from emergent agitating leaders, these individuals should be removed and police should call in reinforcements to show a capacity for force if the crowd did not disperse. But if this failed and the crowd moved to a stage of 'social contagion' and rioted, police should bring in further reinforcements, detain leaders, cordon off and isolate the crowd and use necessary force to break up and disperse the crowd. In peak intensity situations police might use dogs and then teargas and water-cannons to disperse a crowd, and (though seldom admitted) lethal weapons to 'take out' identified leaders. However this approach has been revised. In a review of studies of crowds and crowd control The Human Effects Advisory Panel of the Institute for Non-lethal Technologies in 2001 made several important observations of the nature of crowds informing modern thinking about the management of demonstrations. Crowds they concluded:

- are not unified homogenous entities but are usually heterogeneous and multi-motive;
- comprise 'companion clusters' rather than individuals;
- are not necessarily prone to 'anonymity' dynamics – they do not necessarily disable individual cognition;
- are a process – they have beginnings, middles and endings;
- are not necessarily prone to violence;
- are not violent simply because of social factors of deprivation, or frustration dynamics;
- seldom see entirely unified action – and if there is such action, it does not last long;
- precipitating events / flashpoints are usually only identified in

hindsight rather than being easily foreseen and prevented.

Modern thinkers caution against simplistic understanding of crowd behaviour in which analysts may simply find what they are looking for in a self-reinforcing cycle of theory and structured observation, and poor theory comes to inform action.

Police face dilemmas in managing crowd behaviour. In democratic environments they must both protect rights of assembly and protest and rights to safety and security of both protestors and the wider public. The challenge is how to prevent a crowd becoming a mob rather than trying to deal with it when it has. And police behaviour can be critical to this. Force may simply provoke greater resistance and escalate into higher levels of violence. The problem has been that understanding of mob violence has not advanced in many places, and if police expect violence they act as if it is going to occur (in terms of mob theory), failing to recognize that their own behaviour may provoke violence. *'Thus the theory justified the practice, and the practice proved the theory'* (Schweingruber 2000:383).

SHIFTS IN THINKING ABOUT CROWDS AND CROWD MANAGEMENT

However a change has occurred where police have adopted a negotiated management approach to demonstrations. Policy shifts to permit rather than stop protests and to employ 'minimum force necessary' softened police actions and limited police provocation as an element in mob violence. *'As police started trying to accommodate demonstrations, violence became less frequent'* (Schweingruber 2000:383). In short when authorities achieved greater success when they sought not to

defeat demonstrations but to prevent violent breakdown through more collaborative means. Strategies should in the first instance be aimed at preventing breakdowns in demonstrations, and then to contain and defuse and allow tensions to burn out through non-confrontational means wherever possible.

GOOD PRACTICE IN CROWD MANAGEMENT

Several elements facilitate good practice in crowd management. Authorities should have a clear understanding of their purpose and role and they should have an ability to assess the purposes, nature, composition and mood of the crowds they are faced with. They should wherever possible be proactive in building relationships of trust with communities where they work for intelligence gathering purposes, but also to facilitate negotiations with credible leaders when crowd management situations arise. If authorities negotiate with organizers of demonstrations over issues of timing, venues, routes, acceptable behavior, marshaling, and the role and location of police, the door is also opened to discuss measures to limit the risk of breakdowns and responsibilities amongst organizers and various authorities. For example in one very big march organized by the ANC during South Africa's transition, it was agreed that the police should post themselves a few blocks back from the crowd. They would be close enough to act quickly if things went wrong, but not so close as to provoke any angry responses from the crowd. Marshaling responsibilities belonged to the organizers of the march and they fulfilled these. The sheer pressure of bodies saw a jeweller's shop window crack – the marshals called for a police presence to guard the window and ensure that members of the crowd understood their pur-

pose, in effect protecting the police. The marshals discovered groups of youths interested in provoking a confrontation taunting some police who were parked away from the agreed march – they rather than the police brought them back into line.

PURPOSE

As with all strategies, purpose guides action. The purpose of police responding to demonstrations in democratic dispensations is to protect the rights of all citizens involved – of protestors to assemble and to march in expression of their grievance, and of the wider public to safety of person and property. The mission is not to defeat a crowd when there is breakdown but to defuse tensions. It is contain rather than to provoke. Often easier said than done of course, and especially if it is the intention of elements of a crowd to provoke the use of force by police under the gaze of television cameras. At all times though police should try to secure the moral high ground – it is not a military victory that is needed.

Police need to be clear about their own purpose and role but they also need to understand why a crowd has come together. Early studies distinguished between collections of people gathered for no particular common purpose, as in a shopping mall (casual crowds); those gathered for a particular social purpose such as a sports match (conventional crowds); those in which people assemble for non-destructive celebratory (singing and dancing) purposes (expressive crowds); and those assembled for more hostile purposes (aggressive crowds) where emotional intensity makes for a higher risk of breakdowns and violence.

Of course there may be many gaps between the overt and covert purposes of demonstrations, and

between those of organizers and others who might see opportunity in using the energy of a demonstration for purposes of their own. Those negotiating peaceful demonstrations need to surface such risks and where possible agree a *modus operandi* for managing scenarios in which a demonstration is hijacked by more aggressive elements. Crowds are no longer understood as homogenous entities and this offers opportunities for peaceful management – but a heterogeneous composition has problems of its own, demanding differential responses to sections of crowds and if badly handled may provoke hostile responses from elements that might otherwise have been peaceful.

In the case of spontaneous demonstrations police need to quickly *identify* the purpose of the action: benign communication, expression of anger, media attention, provocation of authorities, get someone to come down and negotiate. And of course they need to determine whether in fact the action is spontaneous or simply the coming together of a well-planned campaign by organizers who have chosen not to communicate with authorities.

The higher the risk of violence reflected in the purpose of the crowd the greater the need to negotiate the *modus operandi* of a march with its organizers. Even in apparently spontaneous gatherings police should try to identify leaders with whom they can talk.

EFFECTIVE PREVENTION

Two major preventive processes can be identified for police: one long-term and in the form of context creation, the other more immediate and in the form of negotiations around the conduct of marches. Police should do lots of preventive work building

long-term relations with communities, establishing community-police forums for trust building and information gathering purposes. They should 'make good things happen for communities', foster the building of relations between specific police and specific communities; and develop a deep knowledge of the communities and its social patterns. Apart from the value of such steps for normal crime prevention and detection, it serves to create an environment conducive to the second desirable process – the negotiated demonstration.

If communities see value in demonstrations and trust in police to protect their rights to protest it facilitates cooperation. With notice planners of protest action and police might negotiate a wide set of parameters for the activity: times, routes to be followed, marshaling, the form of police involvement, communication channels between protest leaders and police, the actions of other authorities such as local government officials to whom petitions may be delivered.

CROWD MOOD & SPONTANEITY

Purpose is often matched by mood. Those interested in managing demonstrations require skills in identifying shifts in crowd climate; whether it is a celebratory, grieving, or angry assembly – and whether a change in crowd mood is occurring and why. Celebratory or conventional crowds don't arrive with weapons; spontaneous gatherings don't wave printed placards. So there may be signals of the degree of *spontaneity* or *organization* within a crowd that authorities need to understand and work with. In the case of organized crowds there will be an organizing person or group with focus and purpose and organizing systems in terms of networks and use of media. *Spontaneous crowds* emerge in response to particular incidents or triggers and dependent



on access to a gathering point, availability of people and their priorities, including work and family responsibilities, daily routines and chores!

Crowd composition & leadership

As indicated crowds are seldom entirely unified or homogenous entities – they are often heterogeneous and multi-motive in character reflecting ‘companion clusters’ whose purposes for participation differ. Within crowds it is helpful to identify ‘energy pockets’ shaping crowd behavior, and the nature of such energy: anger, celebration, fun, grief. Energy pockets of course relate to leadership – are there leaders who might be engaged for negotiation purposes, or to target for arrest should resort to more forceful tactics be obliged later in the process?

CROWD CONTROL

Crowds can take many forms and once formed may mutate. Police require skills in continuous crowd assessment. The negotiated demonstration offers greater but not absolute certainty regarding crowd behavior, enabling shared responsibility for the conduct of a march and channels of communication to be set up between demonstration leaders

and police and other authorities. Spontaneous demonstrations are more difficult to respond to – and especially ‘planned’ spontaneous action organized through social media which may see police knowing action is impending but not exactly sure where, or involving how many. Planned ‘spontaneous’ demonstrations of course reflect a deliberate effort to evade negotiations with authorities, to disrupt through surprise. They present real difficulties of management.

SPATIAL AND OTHER DIMENSIONS

Experts suggest that how groups assemble indicates how they will disperse. Police should avoid trapping or cornering crowds, allowing exits and opportunities for dispersal and escape. It seems people die in crowds less because of panic stampeding than not being able to see what is going on – they are often not disorderly as much as uninformed about how to leave. Distancing affects crowd behavior – if police are too close it can provoke; too far does not allow for a quick response – the message carried through police positioning should be ‘containment’ rather than confrontation.

‘Pray for rain’ – it is a known cooler of hot crowds. Authorities should consider the impact of weather conditions on situations, as well as access to food and water and needs for sleep and warmth. Interventions may not be needed if crowds can be contained long enough. Of course activists have also considered this in recent times, bringing tents and supplies with them in their occupation of town squares. These tactics change the waiting game but the contain rather than contend rationale should be preserved for as long as possible. Police should proactively negotiate with those who will talk; validate leaders with credibility amongst activists partly because they have influence but also because it concentrates accountability. People listen to their own leaders first, and commit to rules they’ve negotiated rather than ones imposed.

The message is ‘we want to help you do this responsibly’ but police sometimes neglect their key role of networking. **Responsible protest requires responsive government.** Police should be active in networking into the frame political and business leaders with whom activists want to talk, and locate credible mediators where they may lack such credentials within their own ranks. The search is for non-violent resolution and wider social responsibility is often required. Those faced with managing demonstrations to peaceful conclusions also need the media as an ally rather than an enemy – and should have strategies to this effect.

THE USE OF FORCE

A longstanding principle observed by police in civilized jurisdictions is that minimum necessary force be used to achieve a desired objective. Modern thinking is to contain and dissipate rather than disperse or defeat res-

tive crowds. The use of force should require top-level authority from within the police, and it should be minimalist in character and progressive in implementation with the use of firearms as a last resort, after the use of teargas, batons and water cannons. Baton charges should only take place after clear warnings and following a signal (such as a whistle that can be clearly understood by a crowd). Baton blows should be aimed at soft portions of the body, avoiding contact with the head as far as possible. If baton charges are not successful resort to firing (rubber bullets first) may occur after warning the crowd and only on the authority of the most senior officer. Aim should be low, directed at the part of the crowd that is most threatening and ceased immediately when the crowd shows signs of dispersing. Help should be given any wounded. The proceedings should be accurately recorded – in reports and in modern times through video recordings.

Grabianowski (2014) outlines how police usually operate in riot scenarios. They are usually well-armed but seek to prevent injuries. They operate in a squared formation with commanders and an arrest team at the centre. This formation facilitates rapid response to changing situations and a capacity to respond to attacks from any quarter. Police try to allow escape routes rather than to entrap rioters. Moving forward police allow protestors into the centre of the square where they can be arrested and then close ranks before moving forward again and repeating the process. The task is to prevent rather than provoke violence. The use of batons precedes the use of firearms which requires special training to reduce risks of serious injury or fatalities. Rounds used escalate from wood and rubber to foam or sponge for close quarter work. Rounds may

include pepper-spray, water or be in the form of paint or dye balls – a hit is painful but does not cause permanent harm. The discipline of the police formation accompanied by stamping and banging of shields is intended to intimidate and encourage dispersal. Arrests should be selective with leaders targeted. Defuse, deter, disperse are the range of objectives rather than defeat of a crowd.

CONCLUSION

Anyone who has been involved in the management of large scale aggressive demonstrations will have a tangible sense of the tensions that run through exchanges between activists and authorities, and especially the police who find themselves on the frontline of such events. There is no room for naivete or weakness, but equally little for bullying or excessive force. The shift in managerial logic on the part of police in democratic societies has been away from tactics of defeating crowds, to ones directed at protecting the rights of all parties, preventing breakdown, shared responsibility for the control of marches, foreseeing and agreeing possible breakdown scenarios ... and only as last resort the use of force within a strict protocol of managed escalation. The means through which this shift is worked out is negotiation.

Not uncommonly it seems activists use tactics that signal no desire to negotiate – they want to ‘ambush’ a system, disrupt rather than simply communicate, provoke authorities into repressive responses – and these present police and other authorities with very real dilemmas. If police accept a role as protectors of illegitimate repressive regimes, the dilemmas are reduced. But if they see their primary role as being to protect citizens and the rights of citizens to express resistance to oppression

they assume a much complex role as frontline protectors of all citizens, and mediators of social change.

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MIKHAIL TROITSKIY

FOCAL POINTS IN ARMS CONTROL

In the contemporary world of growing complexity where major social, political, and economic shifts are determined by unexpected, cascade, and even catastrophic developments, facilitation of coordination among actors become vital. When decisions on cooperation or conflict de-escalation have to be taken under severe time pressure, the importance of conspicuous solutions is difficult to overestimate. Such solutions are often called “focal points” and include numbers, objects, and phenomena the value of which as bases for coordination is expected be evident to all parties involved. This essay looks at the role of focal points in facilitating arms control negotiations – a key activity shaping contemporary international security. The intuitive point of departure for the analysis presented in this essay is that symbolism plays a crucial role in enabling compromise in arms control negotiation – an area prone to zero-sum thinking and excessive concerns

about falling victim to artful exploitation by the opponent.

Thomas Schelling and his followers suggested two strategies of identifying potential focal points during negotiations or other types of interactions among humans. First, a focal point may be found in a certain conspicuous material phenomenon.¹ For example, the main clock at a city’s central railway station is usually identified as the default meeting place. In arms control, the range that separates strategic and other classes of missiles is agreed to be 5,500 km – roughly the distance a missile launched in Eurasia has to travel to reach North America, and vice versa. The “focal allure” of these points, usually called “salient,” results from the fact that they are expected to be evident even to individuals who seek coordination but are unable to communicate. Absent a widely-recognized natural phenomenon or a landmark underpinning a focal point,

participants in a negotiation without communication cannot resolve coordination problems. Some observers have noted, however, that the effectiveness of “non-communicable” focal points was debatable because it was not guaranteed that the parties “would attach the same salience to the same point.”²

Second, a round number that does not correspond to any widely known phenomenon can serve as a focal point in a negotiation where parties are able to communicate freely. Round numbers can be found in almost any area under negotiation, including arms control. A round numerical solution need not be so unique as to be identifiable without communication

¹ Schelling, Thomas, *The Strategy of Conflict*, (Cambridge, MA: Harvard University Press, 1960), pp. 57, 77; Schelling, Thomas, *Arms and Influence*, (New Haven: Yale University Press, 1966), p. 137.

² Freedman, Lawrence, *Strategy: A History*, (New York: Oxford University Press, 2013), p. 167.



between the parties. Schelling, who was mostly looking at cases of rapid crisis escalation in which adversaries did not have enough time to communicate, was not interested in this second source of focal points.³

Both types of focal points have gained traction in arms control. On one hand, arms control is a less rapidly unfolding process than a real-time international crisis or war, so focal points in arms control are mostly numerical and situational, that is, they are picked in the vicinity of negotiators' initial positions. On the other hand, conspicuous, or salient solutions are also used – for example, when negotiators need to delineate geographic boundaries of areas to fall under a negotiated arms control regime.

CLASSIFYING ARMS CONTROL SOLUTIONS

From the focal point perspective, one can identify three types of solutions embodied in arms control agreements.

1) *Non-focal point*. Most of negotiated arms control solutions come in such form. These solutions are reached without reliance on any symmetry or beauty of the number. In many cases, numbers in arms control negotiations are picked in a consensual manner without the need to attract negotiating parties to a position that they would otherwise not consider optimal based on their interests. In such situations, the beauty of the number may be present, but is not necessary to override anyone's initial negotiating position. Only a small share of numbers in arms control agreements conform to the definition of a focal point.

For example, the round numbers used extensively in the New START (2010) and Conventional Forces in Europe (1990) treaties were not needed as

tools of drawing the positions of the sides closer to one another; agreement on these numbers was quite easy for the negotiating parties to reach before they had to address more controversial issues. According to senior negotiators involved in the most recent round of strategic arms control talks between the United States and Russia, the ceilings for deployed nuclear warheads to be enshrined in the New START Treaty of 2010 were in fact not difficult to agree upon. Neither side considered it a major concession to commit to observing the maximum of 1,550 deployed warheads and 800 of deployed and non-deployed carriers.⁴

In a similar vein, the Conventional Forces in Europe (CFE) Treaty signed in 1990 and the preceding negotiations on "mutual and balanced force reductions" in Europe involved dozens of numbers most of which were, according to the existing accounts of CFE negotiations, in no way focal.

Overall, in arms control negotiations, numbers often generate less contention than, for example, the terms on which the sides would be monitoring and verifying implementation of the negotiated agreement. In these and many other cases, the round numbers' "focal promise," which can be defined as the power of attraction, was either unnecessary or weak.

2) *Non-equilibrium focal point*. This is a focal point in the vicinity of which there is another focal point, so that a shift from one to the other can occur relatively easily and oftentimes unexpectedly. One example of non-equilibrium focal points is provided by counter-value and counter-force targeting principles in nuclear strategy. Each principle is based on an underlying coherent logic that can be adopted by the mutually deterring sides. Counter-value targeting

is premised on the belief that even a minimal risk of a major city being hit by a nuclear-tipped missile is sufficient to prevent one's adversary from all-out aggression. In its turn, counter-force targeting is based on the assumption that a nuclear war can be fought and won by a sudden disarming strike that would eliminate all (or almost all) of adversary's retaliatory capability. While it would be most economically and politically sensible for a dyad of potential nuclear-armed adversaries to converge around the counter-value principle, certain trends in the evolution of their mutual political attitudes and force structures can result in a quantum shift to counter-force targeting – a much more costly and risky posture. In broad terms, the choice of posture depends on the dominant worldviews among decision makers, namely, whether they believe in deterrence in general and whether they believe that the side which has a bigger arsenal stands real chances of prevailing in a crisis.

It can be argued that the two principles under discussion during the CFE talks also constituted non-equilibrium focal points. The Soviet Union started off by demanding mutual force reductions in equal proportion to the initial numbers (in which Moscow had an advantage). In its turn, the United States and its European allies insisted that the USSR should introduce greater cuts that would eliminate the disparity between the Warsaw Pact and NATO. Eventually, the reform-minded Soviet leader Mikhail Gorbachev agreed in 1988 to the principle of parity because he considered the numbers of Soviet troops deployed in Eastern Europe excessive and unaffordable. This change of preferred focal point

³ Schelling, Thomas, *The Strategy of Conflict*, pp. 100-101.

⁴ See, for example: Lewis, Jeffrey, Bar Nunn, *Foreign Policy Blog*, October 17, 2012, http://www.foreign-policy.com/articles/2012/10/17/bar_nunn

allowed to promptly conclude the negotiations and sign the CFE Treaty in November 1990.

A similar focal-point debate unfolded during U.S.-Soviet negotiations on intermediate-range missiles. Under the leadership of Gorbachev, the Soviet Union eventually agreed to the complete elimination of this whole class of missiles which implied bigger reductions in absolute numbers for the Soviet Union than for the United States. An alternative solution would have been to cut similar numbers of missiles or to compensate Moscow in a certain way for scrapping a greater number of weapons.

The Global Zero principle – total elimination of nuclear weapons – is another example of a non-equilibrium focal point. As an end-state, the Global Zero is morally attractive; however, it does not represent a Nash equilibrium given the difficulties of compliance verification and everyone's temptation to obtain a decisive edge by quickly (and covertly) deploying just a few nuclear weapons.

3) *Equilibrium focal points.* These are focal negotiation outcomes in the vicinity of which there are no evident focal alternatives based on different concepts of justice, such as "equal cuts" vs "total elimination." Numerous examples of equilibrium focal points are provided below.

Both equilibrium and non-equilibrium focal points in arms control usually come in one of the following forms:

- numbers: round or otherwise "magical," that is, sticking out because of certain special characteristics;
- symmetries: points at the same distance from the preferred position of each negotiating side;
- natural or other physical phenom-

ena or objects, such as borders drawn along rivers or mountain ridges or physical principles underlying weapon technologies.

Several trends in the use of focal points in arms control deserve closer attention.

THE PROMISE OF NUMBERS

Round numbers began playing a visible role in arms control negotiations with the emergence of mass-produced standardized weapons. As the number of weapons at the disposal of each negotiating party was rising to overkill levels, these numbers became very large and abstract. A recent think tank report on the U.S. nuclear weapons capability suggested that "deep uncertainty [persists] in estimating the adequacy of nuclear forces: how will they work in the environment they might create? Lacking data, planners sought assurance in larger inventories, while analysts usually had recourse to modeling gains and losses under simplistic scenarios contrived to show the numerical consequences of various constraints—what Aron derided as 'strategic fiction.'"⁵

With abstract models and simplistic scenarios ruling the day, solutions based on numerical focal points became easier for negotiators. This concerned, first and foremost, nuclear explosive devices and the means of their delivery. Over the 1960s, consensus emerged between the United States and the Soviet Union, as well as on a broader multilateral scale, that the accelerating expansion of the deadly arsenals had to be contained. First results were achieved by the early 1970s in the form of "ceilings" imposed on further growth of Soviet and American nuclear stockpiles. At approximately the same time, negotiations opened between NATO and the Warsaw Treaty Organization on

limiting the massive conventional weapons arsenals that the two blocs had accumulated in Europe. CFE talks also had the potential to become rich in focal point outcomes.

However, the power of focal points in arms control failed to fully materialize. Numbers are usually dictated by the sides' strategies and postures, that is, by their determination of the most likely adversaries and conflict scenarios. Arms control negotiations usually focus on the possibility of an agreed change in postures that would, in turn, lead to a review of the optimal numbers of weapons necessary to maintain the new posture. Once postures are defined, agreeing on numbers becomes relatively easy. At the same time, round or otherwise "magic" numbers can serve as reference points that attract attention of negotiators and prompt them to consider changes in posture that would correspond to those "magic" numbers.

For the United States and the Soviet Union (Russia) rising numbers became both the cause and result of the choice in favor of counter-force targeting. Large nuclear stockpiles only make sense if nuclear weapons are regarded as a war-fighting capability and as usable and allowing to prevail in a conflict. Mutually deterring sides stay at low numbers if they only see nuclear weapons as a guarantee against ultimate defeat in a conventional conflict and do not consider surprise disarming strike scenarios as realistic. The decision by the two nuclear superpowers to proceed with building massive overkill arsenals signified a choice in favor of the counter-

⁵ Butterworth, Robert, *Slouching Toward Zero: Considering U.S. Nuclear Weapons Programs and Policy*, George C. Marshall Institute Policy Outlook Brief, April 2013, p. 6, <http://marshall.org/missile-defense/slouching-towards-zero-considering-u-s-nuclear-weapons-programs-and-policy/>



force targeting focal point. Once the U.S. and Soviet postures were adjusted and sides moved by the 1980s towards discussing disarmament options (as opposed to just agreeing to cap the arsenals' growth), the exact number of retained warheads and/or missiles became – within certain limits determined by the postures – less a matter of principle than of a technical decision.

At the same time, the three other NPT-compliant nuclear-armed states, including China, have remained content with their limited arsenals, unwilling or unable to plan for responses to a potential first disarming strike by an adversary. Their nuclear postures remain centered on the focal point of counter-value targeting. In the recent years, according to some analysts, India and Pakistan reached counter-force numbers and are therefore likely to be planning for retaliation against massive surprise nuclear attacks by the other side.⁶

Once the United States and the Soviet Union securely locked themselves in an overkill situation, win-sets in arms control negotiations between them or their blocs began to be based on raw estimates of “sufficient” numbers rather than on exact calculations or plans of using the weapons, especially nuclear. For example, it became popular to claim, in Moscow or Washington, that a nuclear superpower “cannot afford” to reduce its nuclear arsenal below the sum of warheads deployed by second-tier nuclear-weapon states. Alternatively, it was maintained, a nuclear superpower needs to aim for an order-of-magnitude edge in numbers of a nuclear superpower over any second-tier nuclear-weapon state. Both assumptions converged on 1,000 as the minimum acceptable number of deployed warheads to be retained by a nuclear superpower.

Apparently leveraging 1,000 warheads as a focal point, U.S. President Barack Obama asserted in his June 19, 2013

speech in Berlin that the United States “can ensure the security of America and our allies, and maintain a strong and credible strategic deterrent, while reducing our deployed strategic nuclear weapons by up to one-third.”⁷ The number of deployed U.S. warheads at the time of this speech was capped by the New START Treaty at 1,550. The Russian side, subject to the same limit, did not explicitly endorse the 1,000 warheads goal citing concerns with U.S. plans to deploy potentially robust missile defenses. However, the number 1,000 previously featured in public statements by Russian officials who suggested that 1,000 would be the absolute minimum Moscow could possibly consider if “smaller” nuclear-armed states continue to refrain from multilateral limitations talks with the United States and Russia.

The “arbitrary focal numbers” phenomenon also transpired in the debates on “unacceptable damage” from a nuclear attack. At the height of the cold-war era arms race, policymakers in the U.S. and the USSR had to make bold assumptions about the scale of the destruction that the adversary would prefer not to risk. U.S. Defense Secretary Robert McNamara defined the situation of mutually assured destruction (neither side is tempted to undertake a surprise disarming nuclear strike against the adversary) as one in which the attacker would be sure to lose at least 25 percent of its the population and 50 percent of its industrial capacity.

As the prominent military strategy expert Lawrence Freedman noted, these numbers were not just beauti-

⁶ See, for example: Krepon, Michael, *What Went Wrong with Arms Control, The Arms Control Wonk Blog*, July 30, 2013, <http://krepon.armscontrolwonk.com/archive/3853/what-went-wrong-with-arms-control>

⁷ President Barack Obama, *Remarks at the Brandenburg Gate, Berlin*, June 19, 2013, <http://www.whitehouse.gov/the-press-office/2013/06/19/remarks-president-obama-brandenburg-gate-berlin-germany>

ful, but arbitrary: "These levels [...] reflected less a judgment about the tolerances of modern societies and more the point at which extra explosions would result in diminishing marginal returns measured by new damage and casualties, the point at which – to use Winston Churchill's vivid phrase – 'all you are going to do is make rubble bounce'.⁸"

Despite the arbitrariness of large numbers, some focal points in arms control crystallized as a result of difficult negotiations and the focal points' significant power of attraction.

SALIENT POINTS

"The number that matters most in norm-setting is zero," noted one prominent arms control analyst. He continued: "This number is the clearest and most meaningful way to set norms and customary practices among responsible states. The number zero is embedded in the CTBT, the Chemical Weapons Convention, and the Biological Weapons Convention. States that do not honor the number zero become, *ipso facto*, outliers."⁹

Zero is indeed one of the most powerful focal points in arms control and far beyond this area. On the bilateral level, the US-Soviet Intermediate Nuclear Forces treaty of 1987 falls under the same zero category. This treaty completely eliminated two classes of ground-launched missiles covering the ranges between 500 and 5,500 km.

Yet however attractive zero may be as a beautiful number supposedly signifying absolute security for everyone, in many contexts it has the clear trappings of a non-equilibrium focal point. Many opponents of zero argue that it would be very hard to detect and timely punish any breaches of a zero-based norm. Analyst Michael Krepon

argues that "[b]ecause numbers of chemical and biological weapons that are greater than zero can be hidden, suspicions can only be conclusively affirmed by use, if they cannot be revealed by national technical means or intrusive treaty-monitoring regimes."¹⁰ Another critic points out that Global Zero will be achieved by default as soon as nuclear arms become redundant and/or outmoded. This may happen if a more powerful weapon of deterrence is invented or if the risk of conflict involving major global or regional players is reduced to unimportant levels.¹¹

Focal point in arms control can also take the form of a calendar date. January 1, 1967 was chosen by the Non-Proliferation Treaty (NPT) negotiators as the cutoff date pivotal for the treaty. By setting the criterion of a nuclear test conducted before this date, this point helped to resolve the non-trivial problem of who should be allowed to keep nuclear weapons under NPT.

Time focal points sometimes crystallize when negotiators face the need to reach a new agreement not just before the existing one has expired, but to commemorate a certain anniversary of another treaty. For example, the United States and Russia sought to sign a new START treaty before the May 2010 date of opening of the NPT Review Conference. In that way, Washington and Moscow wanted to present non-nuclear weapon states with a major accomplishment on the way towards nuclear disarmament – an NPT commitment of nuclear-armed nations. The treaty was indeed signed in Prague on April 10, 2010 – three weeks before the NPT Review Conference kicked off in New York.

NPT itself contained a provision mandating discussion about the extension of the treaty at a certain focal date

in the future. The treaty entered into force in 1970 for the term of 25 years thus making 1995 an important focal point when the future of NPT had to be determined.

Verification regimes in arms control provide some valuable examples of focal points. "Everything is accessible to everyone" principle is enshrined in the Antarctic Treaty of 1959. Twelve signatory states have the right to send representatives to inspect any area in the Antarctic, including any signatory's scientific bases, arriving sea vessels and their cargo.¹² In a similar vein, the Seabed Treaty of 1971 allows all parties to fully monitor one another's seabed activity beyond the 12-mile territorial waters zone.¹³

A competing focal point in the sphere of verification would imply a maximum number of permitted inspections. For example, the US-Russian New START treaty of 2010 envisages 18 annual short-notice on-site inspections (in addition to inspections carried out by national technical means) in order to verify observance of the treaty limits and conversion or elimination of delivery systems. This includes 10 on-site inspections of deployed warheads and deployed and non-deployed delivery systems at ICBM bases, submarine bases, and air bases (Type One inspections) and 8 on-site inspections at facilities that may hold only non-deployed delivery systems (Type Two inspections).¹⁴ The Open Skies Treaty of 1992 provides for an equal number of "passive" and "active" inspections for groups of participating countries. Each signatory – alone or together

⁸ Freedman, Lawrence, *Strategy: A History*, p. 170.

⁹ Krepon, Michael, *The Future of Arms Control*, *The Arms Control Wonk Blog*, August 6, 2013, <http://krepon.armscontrolwonk.com/archive/3858/the-future-of-arms-control>

¹⁰ *Ibid.*

¹¹ Tetrais, Bruno, *The Four Strawmen of the Apocalypse*, *Survival*, issue 55 no. 6, December 2013 – January 2014.

with another participant – is assigned a number of overflight inspections by other signatory nations and is entitled to the same annual number of flights over other signatories' territory.¹⁵ In its turn, the Comprehensive Test Ban Treaty requires a qualified majority of signatory nations (30 out of 51) to launch an on-site inspection of a suspected nuclear test. The exact figure of 30 votes in favor of an inspection was agreed upon as a result of a mid-way compromise between the focal figure of 50 percent (25 votes) and some nation's insistence on the two-thirds majority (34 votes). This very mode of reaching the consensus to be enshrined in the treaty also exemplified a focal point solution.

In bilateral US-Soviet and Russian arms control negotiations, any numerical solutions reached (concerning permitted numbers of missiles or warheads, details of inspections regimes etc.) reflected, apart from the sides' postures, compromises between their espoused notions of justice. The United States has regarded as fair its preponderance over any potential rival – possibly, out of belief that even in an overkill situation, advantage in numbers still matters.¹⁶ Russia centered its negotiating position on parity with United States for parity's own sake, refusing *inter alia* to consider the option of minimal counter-value deterrence that could be based, for example, on the submarine-launched component of the nuclear triad.

While questioning the need for parity, the U.S. side equally rejected minimal deterrence. In the 2010 Nuclear Posture Review (NPR) report, the Obama administration argued that "the need for strict numerical parity between the two countries is no longer as compelling as it was during the Cold War." However, it also warned against "large disparities in nuclear capabilities" that "could raise concerns on

both sides and among U.S. allies and partners, and may not be conducive to maintaining a stable, long-term strategic relationship."¹⁷

Finally, a clash of non-equilibrium focal principles has occurred in the debate on the definition of outer space. Russia prefers the borderline to have an exact numerical value: outer space begins at the altitude of 100 km above the sea level. The alternative approach championed by the United States is based on the distinction between two physical forces allowing an object to lift off the ground: aerodynamic or gravitational. According to this principle, airplanes flying thanks to the lifting power of their wings in the air would be considered travelling in the atmosphere while a missile orbiting the Earth thanks to gravitation would be regarded as an outer space object.

These principles are mutually exclusive, and each of them has clear practical implications desirable for the respective party. Deployment of weapons of mass destruction in outer space is prohibited by the Outer Space Treaty of 1967. If the U.S. interpretation of the atmosphere / outer space border is adopted, Russia will be faced with the possibility of a high-flying WMD-equipped aircraft – a prospect Moscow considers a threat to its security. If the Russian definition is accepted, the United States will be deprived of the opportunity to deploy high-altitude weapon systems that Washington believes it is capable of developing in the long run.

CONCLUSION

Focal points have so far played a visible yet limited role in arms control. For the most part, arms control is negotiation about principles – broad concepts of threat, deterrence, force structure and posture etc. – rather

than numbers. Once principles are defined, agreement on exact numbers of weapons can be reached relatively easily. Principles usually imply alternative focal points with arms control talks being essentially centered on making a choice among these points. Negotiating sides seek to substantiate the rightfulness of their respective versions of a focal point on the grounds of fairness or effectiveness. The competing focal points can be defined as "non-equilibrium," that is, allowing a shift from one to another without losing the basic characteristics of a focal point understood as a solution grounded in a certain interpretation of justice or the "beauty" of the number. This does not mean, however, that, once reached, a non-equilibrium focal point is doomed to be dropped soon in favor of a competing focal point. In fact, solutions such as the zero principle applied to intermediate ballistic missiles are resilient enough to remain in place for decades. However, the probability of them being challenged at a later time through invocation of a competing focal point is higher than the same probability for equilibrium focal points. The lack of stability of non-equilibrium focal outcomes in arms control can be explained by the equal standing enjoyed by alternative conceptions of justice.

¹² See: *Antarctic Treaty (1959)*, <http://www.atomicarchive.com/Treaties/Treaty1.shtml>

¹³ See: *Seabed Treaty (1971)*, <http://www.atomicarchive.com/Treaties/Treaty7.shtml>

¹⁴ See: *New Strategic Arms Reduction Treaty (New START) (2010)*. <http://www.atomicarchive.com/Treaties/Treaty24.shtml>

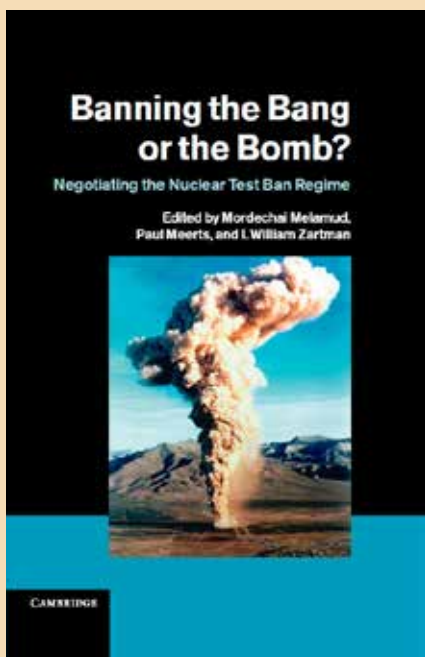
¹⁵ See: *Open Skies Treaty at a Glance*, Arms Control Association, <https://www.armscontrol.org/factsheets/openskies>

¹⁶ A scientific version of this argument was developed most recently in: Kroenig, Matthew, *Nuclear Superiority and the Balance of Resolve: Explaining Nuclear Crisis Outcomes*, International Organization, vol. 67 iss. 1, January 2013, pp. 141-171.

¹⁷ U.S. Department of Defense, *Nuclear Posture Review*, Washington, DC, April 9, 2010, p. 30, <http://www.defense.gov/npr/docs/2010%20Nuclear%20Posture%20Review%20Report.pdf>

BANNING THE BANG OR THE BOMB?

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AND ZARTMAN, I. W. (2014).
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CONTENT

While talks continue on international regime building considering nuclear materials and terrorism, the Clingendael Processes of International Negotiation (PIN) program launches a new book on the negotiations leading to the Comprehensive Nuclear-Test-Ban Treaty, which has not entered into effect, almost 18 years after completing the negotiations. What lessons can be drawn from the CTBT for future international cooperation for nuclear issues?

The Comprehensive Test Ban Treaty (CTBT), negotiated between 1994 and 1996, is the latest development in the nuclear arms control regime. It continues to serve a vital role in preserving the privileged status of the nuclear-weapon states and barring the way to proliferation. *Banning the Bang or the Bomb?* brings together a team of leading international experts who together analyze its negotiation as a model of regime creation, examining collective dynamics, the behavior of individual countries, and the nature of specific issues. The book offers practical guidance and training for future members of the Comprehensive Nuclear Test Ban Treaty Organization inspectorate to help them negotiate during an on-site inspection (OSI) in an inspected state. This is a valuable resource for researchers and professionals alike that turns an analysis of what has happened into a manual for what is about to happen.

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ORDERING INFORMATION

Banning the ban or the bomb is the result of a research project of the Processes of International Negotiation (PIN) Program of the Clingendael Institute and is published by Cambridge University Press. It can be ordered here.

PAUL MEERTS

DIPLOMATIC NEGOTIATION: ESSENCE AND EVOLUTION



This article summarizes some of the findings and recommendations of the doctoral dissertation of the author as defended at Leiden University on 4 November 2014.

The dissertation asked the question of how to further the use and usefulness of diplomatic negotiation in order to limit destructive tendencies in international politics. It presents insights that will hopefully help to evaluate these processes as an instrument in dealing with contradictions among the parties that are shaping world affairs: parties with both individual and common interests sitting around tables that separate and connect them.

Diplomatic negotiation is between cooperation and competition. It is vital for the future to enhance the cooperative element in negotiation and to diminish the competitive side. However, politics are characterized by strife and competition is not only there to stay, it has the healthy function of avoiding monopolization as well. Looking at diplomatic negotia-

tion as a global system, as a pathway to govern the world and its inhabitants, it seems sensible to strengthen it without suffocation. Striving for balance between context and process through further regime-building, while keeping the arteries of the process as open as possible, might be of help in providing the world with reasonably good state and inter-state governance.

The main proposition of the thesis, that international/diplomatic negotiation can only be a viable alternative for warfare if countries can exercise a certain amount of *control over their internal and external opponents through regime-building*, has been discussed and analyzed throughout the manuscript: first in Part I on Nature; and second in Part II on Conduct. The focal point in the first part was the connection between process and context, the balance between war and words, and the quite recent phenomenon of more violent conflicts being decided through negotiations than through victories. The second part focused on the question of to what extent the cases signalled

a more stringent control through rules and regulations, networks and constructions.

The analysis of the Westphalia Conferences in the middle of the seventeenth century showed that rulers legitimized foreign intervention in order to keep the peace in the Holy Roman Empire of German nations. The treatise on the Utrecht Peace Negotiations at the start of the eighteenth century indicated the duty of the constituents to prevent future wars through unilateral or collective actions. The Congress of Vienna at the beginning of the nineteenth century created a more or less permanent alliance of the greater powers collectively to hold the peace. The Negotiations in Paris for the Versailles Treaty, early twentieth century, tried to solve the problem of future threats of war by subduing the collective enemy for as long a time as possible. Finally the Decision Making System inside and outside Brussels, i.e. the European Union, managed to do away with internal wars by integrating a growing number of countries in one balanced construction through an international and supranational approach, thereby establishing a negotiation monopoly in the management of internal and external cooperation and competition.

Outside and between these regimes, violence remains a problem. There is no negotiation monopoly because of the relative weakness of global institutions like the United Nations Security Council, although negotiation has become a more important tool in conflict management and resolution over the centuries. On a regional scale, the progress of coop-

eration – and thereby of negotiation – has been uneven. There has been a growing hope for regional institutions to compensate for the lack of decisiveness on a global scale. For the moment, however, the European Union seems to be an enigma – an exception to the rule that regional organizations are hardly more effective than more encompassing regimes.

States remain the domain of negotiation, although they are enhancing their capacity for international negotiation as an alternative to warfare, because of growing economic interdependency, diplomatic institutionalization and the progress in international public law. The fabric of international cooperation, however, remains vulnerable and dependent on ripeness situations, as international regimes are often still too weak to create negotiated ripeness. Negotiation has become a viable instrument of decision-making, but in crisis situations it is still often more of an auxiliary instrument. The turning point where diplomatic negotiation will be strong enough to make wars redundant is still to be reached and might never come, notwithstanding the growing strength of diplomatic negotiation over the centuries.

Diplomatic negotiations start with the actors who initiate the process. *Actors* have three choices: to do nothing; to pull back; or to push forward. In other words, to freeze, to flee, or to fight. These movements are mainly determined by the factors inside and outside the context in which the actors operate. Inside or outside, three main *factors* play a role in the decision of actors to act: interests; values; and power. There are also three main phases in the negotiation *process* itself, as a consequence of these actions and factors: exploration; selection; and decision. These phases are embedded in pre- and

post-negotiation processes. As diplomatic negotiation is an instrument in managing international relations in such a way that problems can be solved in peaceful ways, it will have to be effective as a tool in international governance and conflict resolution. By effectiveness, we mean managing actors, factors and processes in such a way that outcomes can be reached at the lowest possible costs. Managing sovereign countries is problematic, unless – as has been stated above – there is a certain measure of control. This control can be exerted through over-arching international regimes.

ACTORS

Since the seventeenth century, the state has developed into an ever-stronger actor in diplomatic – that is, inter-state – negotiation processes. While in the seventeenth century the state was a tool in the hands of dynasties, with the exception of England and the republics, it progressed to become an instrument in the hands of the people, represented by their parliaments. However, in more than half of the world's nations today, the state is a *de facto* tool of oligarchic or authoritarian elites, while some – presidential – dynasties still govern. These internal differences have an impact on the two-level games in the negotiation process.

Public opinion plays a major role in democracies – and therefore parliament, the media, and public and private sectors – in the conduct and decision-making of negotiators. To sell negotiations to their own people is often a major – and unsolvable – problem. Negotiators from semi- and non-democratic countries will have to struggle less with their constituency, as they have more control over them. Control is thus a major element in dealing with internal pressure: the more control over the home front, the

more effectively political negotiators and their agents can conduct their negotiation with external parties. This was dealt with in the chapter on negotiation and warfare.

One of the findings of the thesis is that the *creativity of the diplomatic negotiator is in danger*, and thereby his effectiveness. Although the rulers were absolute in the seventeenth, eighteenth and nineteenth centuries, and in some cases also in the twentieth and even now in the twenty-first century, the space for their agents – and thereby for their ability to reach outcomes in a creative and human way – has been shrinking. The ambassadors of the seventeenth and eighteenth century were thus in a way 'Brusselized' already. Nobles with common values using a *lingua franca* that they all understood, in an age when nationalism was not yet a serious issue, had more influence on the outcomes than their rulers, who mainly decided on the formulas, but hardly on the details.

During the nineteenth century, rulers begin to intervene more and more in the day-to-day negotiation processes, while in the twentieth century, politicians started to play a more and more dominant role in the actual negotiation process. This development was facilitated by increasingly effective means of transportation and communication. Political negotiators can easily jump over the tables around which their agents try to fix the international problems of their countries, and these diplomats and civil servants can be scrutinized and controlled in a much more effective way than in the past. Furthermore, secrecy is an important element in successful negotiation, either direct or back-channel. In foregone ages, secrecy was much easier to uphold than either today or in the future. Bureaucracies and intelligence agencies

can now penetrate the table. The media are much more effective than in the past, as democracy demands transparency, and transparency in turn is needed to establish and maintain legitimacy, at least in democratic countries. All this gives rise to a less effective diplomatic negotiation process, thereby weakening negotiation as a tool in the conduct of international relations.

FACTORS

Interests are the dominant driver in international negotiation processes. Thus, situations of diverging and common interests are suitable for negotiation processes. The more diverging the interests, the more competitive the actors will be. Conversely, the more common ground the actors share, the more cooperative behaviour we can expect. Intra-institutional negotiation will often provide a framework and a level playing-field where the clash of interests will be less harsh than in extra-institutional environments. The chances for assured and mutually beneficial outcomes will therefore be enhanced. As well as interests as such, the question of stakes and priorities will modify the weight of the interests.

One example of this can be found in a comparison of the negotiations in Münster, Utrecht, Vienna and Paris. In Münster the parties were so exhausted that this ripeness facilitated much common ground and thereby substantial outcomes, which not only closed the past wars in an effective way, but also gave rise to new forward-looking regimes that are still relevant today. Utrecht, on the contrary, was a deal made by the victors and left many of the negotiating parties unsatisfied: the common ground was quite uncommon. As a consequence, new wars broke out and the conference was not much more than a pause

between wars, although the peace agreement did settle issues and does have an effect that lingers on to the present day, albeit in a negative way. Issues remain painful for those that lost, such as Spain – Gibraltar remains a bone of contention. Meanwhile, Vienna showed common ground because of the existence of a common enemy: Napoleon Bonaparte and the French Revolution. The main reason why there was an agreement at all, and an agreement that more or less stabilized Europe, was a new regime that came shortly after Vienna: the Holy Alliance. Subsequently, Paris was the consequence of a victory by the allies, not of ripeness for all the parties. The victors were exhausted and this forged common ground among them, but Germany remained outside the efforts to create commonality between the parties. As a consequence, the excluded party took revenge 20 years later, something that had been foreseen by negotiators already towards the end of the Paris peace talks.

Values and norms are embedded in culture and culture's impact on negotiation is very diverse, but in general one can distinguish between societies in which negotiation is part of daily life and those where people tend to pay a fixed price. In the first type of society, the exploration phase will take much more time to conclude than in the second. However, in inter-state negotiation, negotiators from the latter type of negotiation culture are often much more willing to start a negotiation process than those from the first type. This is because of the enormous importance of values and face-saving in the first type. The paradox is that while members of those cultures are more ready to bargain in the marketplace, they are at the same time much more hesitant to give in while operating at the diplomatic level.

Values play a decisive role in international negotiation. Values are often

overshadowed by the role of interests, but they can be as meaningful. In Western negotiation research, the emotional dimension has been underestimated for decades. Nevertheless, values are present in both 'Western' and 'Eastern' negotiation arenas. In the West, they take the form of, for example, the defence of human rights principles, the advocacy of good governance, and the promotion of democracy. In the East, it is much more about reputation, pride and honour: face-saving. Negotiating about interests is more open to trading than bargaining about values. Values are non-negotiable (at least in principle) and can thereby be a major obstacle to effective negotiation, especially if they are connected to personal or group identity.

This was the topic of the chapter on reputation and 'egotiation'. This chapter illustrated the importance of 'face', even in Western culture and even with 'rational, purposeful politicians'. The point was made that issues of non-material interest could have very negative consequences for the negotiation processes, as with the cases of Chamberlain–Hitler and Krushchev–Kennedy. The character and posture of the negotiators had a positive effect in the Gorbachev–Reagan relationship. In the Stalin–Roosevelt–Churchill triangle, things were of a more mixed nature, as was also the case with Nixon–Brezhnev–Mao. The role of 'egotiation' was notable in the internal negotiating situations: the rivalry between Nixon and Kissinger; and between Mao and Zhou Enlai. These competitive relationships in a way posed more problems for reaching viable negotiation outcomes than the interactions with the external partners.

The thesis furthermore found that in diplomatic negotiation, *the role*

and impact of power differences are probably the most important criteria for distinguishing diplomatic negotiation from other kinds of negotiation processes. It is, in other words, the political aspect of inter-state negotiation, as politics is about the use and distribution of power resources. Extra-institutional negotiations are more influenced by power differences than intra-institutional processes, and will therefore be much more risky than the latter. In other words, organizational structures around channels of negotiation will temper the impact of power, although power differences will not disappear completely and will materialize in the inclusion or exclusion of actors in the negotiation process.

PROCESS

The phases in the process are very much influenced by their institutional and cultural context. The institutional environment has a huge impact on the way in which negotiations will develop. Bilateral and multilateral negotiations in international organizations provide for more security and thereby stability than ad-hoc bargaining. Outcomes will be more assured than in negotiations outside institutions, but the processes are normally quite time-consuming. The exploration phase can be short, as partners often know each other quite well, but the decision-making can be very painful, as actors are aware of the binding and often legal character of their decision. The consequences are enormous. The post-negotiation phase, moreover, is hardly problematic.

The real problem of extra-institutional negotiation often lies in the pre- and post-negotiation phases: how to get the actors around the table; and how to ensure compliance and enforcement. To pressure negotiators to come to the negotiation table

remains the main problem. Context change is often needed, but it might only be the disaster that one wishes to avoid which can force parties to start the process. Mediators can be of great value, especially if they can be the source of a peaceful change of context through threats or diplomacy. As a consequence of insecurity and uncertainty, the exploration phase might become very time-consuming, while the selection and decision phases might be realized in a relatively speedy way.

CONTROL

An example of the role of control is the observations made in the chapter on simulated negotiation processes under the heading 'synergies', which discussed the problems that the chair will face in controlling negotiators in the meeting. Too much control will undermine the chair's position, as the participants might revolt. Not enough control will hinder the chair in the task of coming to closure in a meaningful way.

Control over diplomatic negotiations with other parties is the nucleus of inter-state negotiations, as it determines their outcomes. No control means unassured outcomes. Even

if an outcome will be reached, its implementation is insecure. Incentives for using negotiation as a tool in conflict management will thereby be weak. This enhances the chances for warfare as an alternative to a peaceful process of conflict resolution. The difficulty of reaching assured outcomes and implementation was one of the reasons for strengthening inter-state regimes during the last four centuries. Through these regimes, which culminated in international organizations in the twentieth century and supranational constructions today, sovereign states are managing their relations in such a way that less costly (that is, negotiated) solutions will become a viable instrument in international relations. This opens opportunities for more international governance through negotiation in the future, with a growing importance for negotiation and how it will be conducted. Negotiation will therefore, in this vision, become an increasingly essential part of the conduct of internal and external negotiations.

As a downside, there is the danger of gridlock. While states are in need of increasing control over internal and external negotiation processes, they need more and more bureaucracy





to exert control. Bureaucracy and control tend to enhance inflexibility, which in turn hampers the negotiation process and thereby its effectiveness as an instrument. Bureaucratic barriers will slow down the process, as we already see in the European Union. As discussed in the conclusion to the chapter on the European Union, such gridlock can be tempered by expanding the informal arena of EU negotiation. It has been noted before that progress in negotiations is often to be found 'in the corridors'. In that sense, more informal talks will not only guarantee some freedom from institutional obstacles, but will also enhance the chances for successful closure of the negotiation processes. There is the importance of informality in reaching deals: too much formality leads to mechanical processes, while negotiation is not only about procedures, but very much about creativity. Nevertheless, a strong link with the formal side of the process has to remain, as control will otherwise be lost and formalization of the outcomes will not be realized, thus making them redundant.

There are also other trends diminishing the impact of negotiation on desired outcomes. As well as the growing role of the often 'egotiating' politicians, there are multitudes of national and international civil servants, lobbyists and other non-

governmental negotiators who are slowly but surely pushing aside the diplomat as an agent in negotiation. This obstructs the process in two ways: the sheer growth of actors creates more complexity; and although complexity might open new options, it also serves to suffocate the processes. More complexity means more formal rules to manage it, and more time to come to closure. Observations were made about the future role of the diplomat as a diplomatic negotiator in competition with negotiators of other governmental and non-governmental agencies. It was observed that the distinction between diplomatic and non-diplomatic negotiators will probably wither away, foremost in strong regimes like the European Union. This is an interesting paradox: *while the regimes allow for successful diplomatic negotiation processes, they will at the same time diminish the role and the importance of the diplomatic negotiators.*

As a result, miscommunication will also be on the rise because of the erosion of diplomatic culture, as fewer and fewer diplomats are allowed to conduct international negotiation processes. Professional cultures are bridges between societal cultures. It could thus indeed be helpful if negotiators from specialized ministries sit around the table, as they do under-

stand each other, which would allow for a smoother negotiation process, but they will have to be hacked together for a final and balanced overall outcome. With a weakened role for the diplomatic services, whether EU or national, such harmonization will become increasingly difficult.

In sum, there are two trends for the future that will, depending on the situation, work against each other or strengthen each other. On the one hand, there is a growing *institutionalization* of the negotiation process, underpinned by a multitude of negotiators facilitating these processes and thereby enhancing the chances for effective outcomes. This institutionalization will result, on the other hand, in growing *complexity, formality and transparency*, thereby creating *inflexibility* in the negotiation process, which will obstruct it from reaching viable outcomes, as it is further complicated by complexities stemming from *the nationalization of international negotiations and the internationalization of national negotiations*. The processes will be more time-consuming, while in the modern world, timely closure is of the essence.

It is, of course, difficult to predict how much these two trends in diplomatic negotiation will neutralize each other.

However, as warfare is so damaging in our globalizing world, there seems to be no realistic alternative to negotiation as a global tool in governance and conflict resolution. Negotiation is an essential component of the fabric of global governance.

RECOMMENDATIONS

In order to strengthen diplomatic negotiation as an instrument in international relations, a few recommendations might be of value. Diplomats and civil servants should continue to play different roles, whereby the diplomats' role would have the helicopter's view while specializing in certain niches such as conflict management. However, the formal difference between diplomats and other civil servants working internationally should be diminished and – if possible – disappear. It would be helpful to give both roles the same status and – more importantly – to forge a common culture. One of the tools to create such a common international negotiation culture is to provide diplomats and other civil servants with common education. With the teaching of international relations studies – whether political, legal, economical or otherwise – at universities all around the world, using English as the *lingua franca* in both education and negotiation, there seems to be no serious obstacle to the rise of an overarching new diplomatic culture in negotiation.

This trend can be further stimulated through early and mid-career training of international negotiators through diplomatic academies. Since the 1970s, and for Europe since the 1990s, diplomatic academies and schools of foreign service have met to discuss enhanced cooperation. However, notwithstanding several attempts to do better, little progress

in cooperation has been made. The crux is the reform of the organization and the programme of these institutions themselves, which can only be done, of course, by their respective governments. Little investment is needed to make this materialize.

The organization of the forums facilitating negotiation processes could be made more efficient. Again, this would not demand serious investments in money and people, but there are serious constraints of a political nature. As long as countries feel that it is in their interests to cooperate, but that such cooperation diminishes their options to opt out, thereby reducing defence of their vital national interests, such reorganization and streamlining will remain a Utopia, at least as far as top-level negotiations like in the United Nations Security Council are concerned. It is questionable, however, as to what extent these top institutions really count.

Perhaps the underlying negotiation platforms are of much more importance, as they prepare for the highest level strata. International negotiations will seldom start at the top. Day-to-day bargaining processes by low-ranking and middle-ranking negotiators will prepare the

basis for negotiations at the higher bureaucratic and political levels. Without this preparatory work, the bureaucratic and political leaders would not be able to conclude their treaties. While it is difficult to reform the structures – and even more so the negotiation culture – at the highest levels, it seems to be possible at the working levels.

Finally, the issue of internal negotiation processes should not be overlooked, as internal processes are often more important and more difficult to manage than external. Just as international politics is the reflection of national politics, it might be said that international negotiation is the projection of the national negotiation processes on regional and world politics. In order to enhance the effectiveness of negotiation as an instrument in international politics, internal reforms are needed. On the one hand, this is easier than with external reforms, as there is more control over internal processes; on the other hand, however, these reforms will immediately affect the positions and interests of the bureaucracies and the political systems of a country or an international organization. Enhancing the efficiency of negotiation internally is therefore problematic.



As in the international arena, the bottom–up approach might create more chances for success than a top–down approximation. The problem remains, however, that the decisions to reform the institutions that facilitate the negotiation processes will have to be taken at the top, but they might be influenced in a positive way from the bottom. As crises are often helpful in changing a context, the current shortage of financial means might invoke more streamlining of – and cooperation between – the institutions of the state or international organization. This might in turn help to simplify the negotiation process in order to keep it manageable.

Diplomatic negotiation will remain a country's main instrument, both inside and outside international organizations, for representing its interests and dealing with the problems that it encounters. Diplomatic negotiation will become more important as globalization enhances interdependency and provokes regional and global conflicts. Interdependency is vital for negotiation. Without it, diplomatic negotiation processes could not function.

Government representatives navigate these processes in order to strengthen national interests and/or to manage and solve conflictual situations. Whether chosen or self-appointed, the negotiators and their superiors manage the power that is mandated to them. In that sense they are elite, which automatically distances them from those they represent.

Diplomatic negotiation is therefore an elitist affair and it is not easy for those who have been represented to be heard. As negotiation is about compromise and compensation, the interests of the constituency cannot, by definition, be fully materialized. Moreover, the representatives will push for their own interests, being

those of their government, their international organization, or themselves and their caucus or clique.

Democratizing diplomatic negotiation is therefore hardly possible. Diplomatic negotiation is ultimately about an oligarchy deciding for those that it represents: about them, but only insufficiently on behalf of them. The negotiators are a '*negoarchy*' of mutual understanding, with a more or less common '*negoculture*', as they could not be effective otherwise. By definition, their constituency will be unhappy with the processes and outcomes of diplomatic negotiation, while their governments might be suspicious of them in cases where they represent international regimes.

As a consequence, governments will keep the international regimes as weak as possible, while these regimes are needed to substitute trust for control in order to protect the diplomatic negotiation processes and

their outcomes. The more diplomatic negotiation processes abound, the more complexity arises, the more regimes are needed to enhance their effectiveness, and the more governments will attempt to restrict the power of the regimes.

This is the *Diplomatic Negotiation Loop*, which will restrain mankind's efforts to solve its problems in a peaceful way at a time when conflicts are multiplying and the use of force is inadequate and harmful for international society. Construction and destruction go hand in hand. Diplomatic negotiation remains the most useful tool for dealing with it. Increasing our understanding of diplomatic negotiation processes will only serve to decrease misunderstandings and increase our effectiveness in settling future disputes successfully.

This book can be freely downloaded from www.clingendael.nl/publications



I WILLIAM ZARTMAN

NEW PIN PROJECT 2015: CLOSURE: HOW NEGOTIATIONS END

“How do negotiations end?” is a subject that had eluded any research attention.¹ Yet is, after all, the basic question in the analysis and practice of negotiation. The broader question of how negotiated outcomes are determined is the underlying concern of negotiation analysis, and the question of negotiators’ behavior in obtaining closure focuses on the last lap in the race. Closure is the point where Ikle’s (1964) three-fold option—Yes, No, Keep on Talking—is collapsed into the first two; talking will continue till the end, but is immediately focused—like Oscar Wilde’s hanging—on the immediacy of yes or no. This inquiry focuses on that final phase of the negotiations. We posit that the situation at this point is that the conflict/problem and relevant proposals have been thoroughly aired in the negotiations: the preliminaries are out of the way, the negotiations have been going on for a while, the positions and interests have been made clear, everything is on the table, and in principle there is a Zone of Possible Agreement (ZOPA) although that may be up to interpretation; if there is an agreement it will be less than the parties wanted but enough to justify a signature. At this point in the negotiations, can the process be brought to conclusion, and how? What behavior is typical and required to get the parties to Yes (to refer to the title of a book that does not focus on this point in the process)? What variables are helpful in analyzing the situation? Like the broader question, there are doubtless many answers,

depending on the terms of analysis, although the search for a single consolidating answer that is meaningful is tempting. Until one is devised, answer to the question will have to be found in different analytical variables and approaches.

Two sister channels of inquiry may provide at least inspiration if not models. There is growing attention to the When question at the other end of the negotiation process. Ripeness theory, and the associated attention to readiness, address the conditions necessary for negotiations to begin. It does not, however, look into the appropriate and customary behaviors associated with the situation. On the other hand, there is a good deal of attention to explanation of how wars end. The subject is different enough so that the terms of analysis do not seem to offer much insight into the question of how negotiations end. A striking analysis (Faure 2013) of why negotiations fail is closer to the closure problem, both substantively and in its organization: since failure is overdetermined, the study examines a number of cases for specific reasons of failure and then presents a dozen functional or disciplinary answers, each using its own term of analysis. No common thread is sought, perhaps wisely.

Closure situations come in two types: negotiations that reach an agreement when Not Enough in comparison to original hopes and demand is still enough to make an agreement (Type I), and those that do not reach agreement because Enough was not enough (Type II). At what point do negotiators decide

that an agreement, of any kind, is better and more important than waiting for an agreement on specific desires, terms or issues? Conversely, at what point do negotiators decide that, despite an agreement on major issues, that agreement is outweighed by other considerations that make a successful outcome inappropriate? In the successful cases (Type I), the parties agreed even though they did not reach their stated goals or bottom lines; a partial agreement was deemed sufficient to provide a positive outcome. In the unsuccessful cases (Type II) the parties settled important issues but even that amount of agreement was not sufficient to warrant a final positive outcome. Under what conditions do parties agree to agree on what they have and under what conditions is the progress insufficient to constitute the basis for an agreement? Above all, what kinds of behaviors are characteristic of each type?

Obviously the situations are on a spectrum, with extremes at either end. There may be situations where both parties have gotten all they came for; it is assumed that such situations are rare and, for present purposes, uninteresting. There may also be situations where there is no agreement on anything, the parties are not ready to negotiate, and they may be acting for side effects (time, publicity, reputation, etc). These too are outside this inquiry. But the assumption is that in the big grey area in the middle are most cases of negotiation, where the parties do not get everything they want or thought they deserved, where red lines are breached in spots, and yet they

¹ With the one exception of the penultimate chapter in Fred Charles Ikle’s *How Nations Negotiate*, which however concentrates mainly on behavior in the main part of the process..



sense that the/an end is near and attainable, where the rising question, as the end approaches, is whether there is enough to constitute an agreement and how do the parties behave to attain it? Should one continue to negotiate to try to get more, would pushing further push agreement out of reach, is there just or not quite enough to make for a positive outcome?

A complicating problem is that while analysts know how far the parties are from a conclusion because it has happened, negotiators do not, because they are only trying to establish that point. Nonetheless, closure behavior concerns how parties act when that point comes into view, however dimly, as they are trying to establish and reach it. How do they act in trying to make it so? We are not (yet)

asking the prescriptive question, How should they behave or where should the outcome lie, but rather, How do parties act in such circumstances.

Behavior in such moments can be identified in standard negotiations terms. One set comprises the three agreement devices: concession, compensation, and construction (Zartman 2009). What type of concession behavior (moving toward each other's position on the same item) is typical toward the end—large, small, split the difference, unilateral? Does the previous concession rate change (Cross 1969)? Negotiation has been likened to two linked servomechanisms designed to gradually move into focus in their aims (Coddington 1970). How do they do this? Concessions have three functions—to alter own position, to signal willingness to other, to

attract other to own preferred point of agreement; how are these used? Are new compensations (trade-offs or exchanges on different items) being introduced? Is there a shift from concession to compensation? Is construction (reframing) introduced for the whole negotiation or for a segment of it? Who adopts these behaviors, one-sided or reciprocally? Other terms for the analysis of negotiating behavior could be used.

Three analytical contexts bring these devices together. One setting is a *game of security points* (BATNAs). Negotiators continually ask themselves (or at least they should), What happens if there is no agreement? This is an intrapersonal question asked in the large and in the small. The comparison point is one's own level of acceptability. In the large,

it refers to the whole complex of negotiations; if negotiations break down totally, does the situation go back to war/conflict and how bearable or desirable is this outcome? Does a breakdown of negotiations means that they are irretrievable, are component elements all lost ("Nothing is agreed until everything is agreed"), can the parties pick up where they left off? In the small, it does not seem likely that the same question would apply to every issue and negotiating point, concerning whether the particular issue can be decided bi/multilaterally. Thus, the security point question would seem to apply to the sum of the whole impending agreement rather than to its individual parts and would be of little help in the individual decision-shaping process. While one is unlikely to find a favorable BATNA to specific questions, one can ask whether one's side is better off with no agreement, all things considered, and use that as a guideline for specific decisions. The other context is a *game of chicken*, or rather a *game of a flock of chickens*. This is an interpersonal question, on whether the other side is likely to blink first, first on the specific issue and then on the balance of the whole agreement as it is shaping up (Goldstein 2009).

The third setting is a *game of echoes*, sensing how particular moves and then the whole outcome will ring back home in face of opposition and outright spoilers. The referent group may be internal, including the decision-makers who mandate the negotiators. Or it can be the larger body politic, including the opposition and voting public, as well as other bent on destroying the negotiating party and an agreement, believing to be better off without than with any agreement (comparative security points). These elements of negotiating behavior and its determinants

can be used to frame the analysis of behavior toward closure.

CASES OF CLOSURE

These questions are real. This inquiry is particularly relevant to the current negotiations between the P5+1 and Iran over nuclear disarmament [Perkovich]. Since total and immediate withdrawal of sanctions, and total elimination of enrichment capabilities are unlikely to be attained, how much of each is necessary for an agreement; what is the threshold of acceptability for each and how is it decided? A similar question is bedeviling the peace process between Colombia and the FARC, and also ELN, particularly in regard to accountability and transitional justice [Rettberg/Nasi]. On the Israeli-Gazan ceasefire agreement of 2008, 2012 and 2014, the question arose each time whether enough of an agreement—an exchange of promises on what not to do—was reached to constitute the basis for a ceasefire [Gunning]. On the domestic scene, the question is characteristic of collective bargaining, moving down to the very details of the items discussed, where How much is enough makes or breaks the agreement [Anstey]. The question took a different form in a number of other cases, where a major item was considered at some level and agreed to be left out for fear of derailing the other items on which agreement was in sight. The matter of Palestinian autonomy at Camp David in 1975, the Kosovo question at Dayton in 1995, the subject of internal settlement in Angola and Namibia in 1986, and the issue of Jerusalem at Oslo in 1993 were all major issues among these settled in these negotiation but were left out in the settlement, as the straw that would have broken the agreement's back [Vukovic]. How was it decided to drop these and move to agreement on the other issues?

Negative instances or Type II negotiations also abound. Closure is the name of the history of Israeli-Arab negotiations: once the inhibitions against any talks at all (the 1968 Three Nos) had been overcome, in 1973, negotiation proceeded on the return of Arab land to Egypt and Syria and peace treaties with Egypt and Jordan. But the closer the withdrawals came to the Palestine territory, the more difficult they became: when the ultimate goal of the Peace Process came into sight, it moved further and further away. Over the past half century, Greek-Turkish and Cypriot negotiations over the fate of Cyprus seem to be marked by one side—usually Greece—asking for a little bit more and thereby collapsing the agreement. Negotiations at Arusha over the opening up of the regime in Rwanda in 1993 doggedly pursued the wrong problem, as the Tutsi exiles and the genocidaires faced each other. In negotiating a friendship treaty, the French and Algerian were never able to come to satisfaction on the deep scars that they had to overcome (much like the Americans and Iranians) where the French and Germans were able to come to closure on a similar history of wounds [Rosoux]. Closure is a major issue in Chinese-Western business negotiations, where the relation is the key and the agreement itself is incidental and epiphenomenal [Faure]. Finally in this list of examples are the "Never Ending Multilaterals" in the world congresses on major global issues where ambiguity, postponements, deadlines and lowest common denominator are keys to closure [Albin/Crump]. These well-known examples out of a potentially endless list are given to illustrate the nature of the subject and the different forms it can take. A study and comparison of cases can be used to draw out inductive insights for further distilling into more generally applicable propositions.

CAUSES OF CLOSURE

In a search for an understanding of closure behavior, at least three concepts seem to be able to contribute to analysis: *approach-avoidance*, *turning points*, and *unclaimed gains*.

The first says that as parties come close to the final issue (substance) or the final agreement (procedure), progress becomes more and more difficult; the goal to which they had been working seems less and less acceptable as it is approached, in what might be called asymptotic bargaining [Pruitt]. But before the last hurdle which appears bigger and bigger as one approaches it, negotiators sometimes take stock of where they are and where they want to be, weighing these values against the fearful hurdle, and decide to go for it. As contrasted with the Israeli-Arab (Palestinian) negotiations, mentioned above, one might consider the 1992 All-White referendum authorizing deKlerk to move ahead to Memo of

Understanding and then to the final agreement on South Africa. What type of behavior is associated with either reaction, and how do negotiation leap the avoidance barrier to move on to agreement?

Turning points are stocktaking moments when negotiators break off, consider where they are and what is ahead, and then decide either to return to complete the negotiation or give it up (Druckman 1988)[Druckman]. But this does not tell when, toward the expected end of the process, the final turning point occurs and what kind of calculations go into the decision to return and pursue the bargaining or call it off in the estimate that it can go no further. It is clear that what is involved is more than a cost/benefit tally sheet but also an estimate of the chances of making progress if on returns. Similarly, much has been made of the fact that parties tend to leave unrealized gains on the table, and the concept

opens up many good questions. Does closure occur when *unassigned gains* are still on the table, avoiding contentious questions, or is it facilitated by emptying the theoretical basket of gains and distributing them [Thompson?]? Do parties close—sign or break off—leaving potential gains on the table and why, missing potential gains from the agreement either way, or do they clear the table and under what conditions? Again, a simple cost/benefit calculation is not sufficient: Are the decision made out of ignorance (why?), out of some preconceived blockage against pursuing unclaimed gains (why and within what limits?), or out of a calculation that claiming more benefits might upset the balance of mutual cost/benefit calculations?

The latter set of questions enters into another area of conceptual inquiry, the matter of *information*. Analysts have claimed that much behavior can be explained by the effects of information availability [Kydd]. In the case of closure, what is the effect of full or limited information, and can information be manipulated so as to provoke either break-off or completion? Can a party use its control over information to draw the other party to closure on its terms? Again the analysis needs to go beyond tally sheets, since the whole claim is that tally sheets are ignored, or are manipulated for effect. We know that in the beginning, negotiators withhold information on their offers and demands, as is logical for them to do; are there similar guidelines for the use of information to produce closure, at a particular point, or avoid it?

A related area of inquiry goes back to *timing*, again referring to its use as in the matter of information [Svenson]. Information refers to material that a party controls and can manipulate; timing refers to external information

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"I'm sorry, Jeremy, 'seeking closure' is unacceptable as an excuse."

that parties can seize on and take advantage of. More specifically, it concerns the way that procedural information can be used to produce a procedural outcome, closure, and with what substantive impact, on the content of the agreement? Timing after all is the whole sense of closure question: *why sign now?* One such item is sequencing, in its sharpest form whether the Big Issue should be taken early or saved for last, both choices about which logical arguments can be made. Or, stretching the notion of "last," under what conditions can closure be obtained only leaving the Big Issue or some other aspects of the conflict out entirely or postponed until later, at what price? Another aspect of timing refers to the components of ripeness: progress is negotiation is made by a continuation of the pressure of a mutual hurting stalemate (push factor) and the building attraction of a mutually enticing opportunity (pull factor). The two have at least side effects that can undermine each other: too much push can distract the pull and too much pull can find itself footless without a push to compare. How is the balance maintained to produce closure? Translating these elements into positions, closure is the point where hard positions and rigid redlines will have to be maintained to produce movement but softened to produce agreement, and flexible positions will have to be solidified on an agreeable position. These criteria are contradictory enough to be of no insight, so how can they be reconciled? A more mechanical aspect of timing concerns the use of deadlines. Under certain conditions, deadlines are known to facilitate agreement, but they may facilitate a meaningless agreement. How much can they impose substantive agreement and how much is it a matter of simply procedural agreement to sign anything in order to have signed and

satisfy the source of the deadlines, often producing Lowest Common Denominator (LCD) or framework agreements? In addition to usually understanding of deadline as an externally imposed cut-off date, deadline can also be imposed by the evolution of the conflict: It's now or never. A specific form of closure in such conditions could be to work for conflict management (truce, ceasefire) rather than the more complicated conflict resolution, leaving time under better conditions of suspended violence to work for a solution to the problem.

The key to closure may also be found in the parties themselves, more relevantly the referent body or bodies behind the actual negotiators. The line-up of sides within the home group can change to produce an end—positive or negative—to the negotiations. The focus here is on the array of parties one step back from the negotiations, as it can cut across some of the other approaches mentioned above. In the U-Vietnam negotiations, one of more members of the Vietcong Executive Committee switched to approval of an agreement with the US (Zartman 1978). Or the referent group may be the domestic audience, as in the discussions of two-level negotiations (Evans). In these views, the explanation of closure depends on managing relations within the referent or domestic group behind or underneath the negotiations. From there, however, the matter goes back to some of the angles indicated above.

ANALYSIS

A number of diverse paths of analysis have been indicated. They often cut across each other; others run parallel as simply alternative analytical tracks. Are there common

threads, one or several leitmotifs? The one(s) currently available do not lead very far beyond description, useful and necessary though that is. All approaches point to a cost/benefit calculation, within different contexts and dynamics. Beyond such cold "realist" calculations lie all sorts of psychological, historical, strategic, processual calculation of the value of agreement now compared with BATNAs and opportunity costs. Even if this is the basic calculation, it does not tell how the parties behave before that choice and what determines their behavior. At best these various contexts are only contexts, that is, they can provide a somewhat overarching analytical framework for the other conceptual lines of inquiry, such as turning points, approach avoidance, timing, etc., and even a propositional setting, but scarcely a guideline for hypotheses (conditional propositions) on how negotiators behave as they approach closure and why. For the moment, such propositions and hypotheses will await the inspiration and insight of inductive case studies.

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NEGOTIATION TRAINING AS A CONFLICT RESOLUTION INSTRUMENT

During peace talks, success and failure at the negotiation table are largely determined by the negotiation skills of the representatives of conflicting groups or the facilitation skills and expertise of the mediator. Yet in conflict resolution the importance of the stakeholders' negotiation and mediation capacity in achieving a successful outcome is often underestimated. Enhancing the negotiation skills and knowledge of parties involved in peace processes can greatly increase the chances of success.

The Clingendael Institute sees the need for negotiation training support as part of the larger international conflict resolution toolkit and has therefore, with the support of the Ministry of Foreign Affairs of the Netherlands, taken the initiative to provide negotiation training for:

- 1 Representatives of groups in conflict
- 2 Mediators

The goal of the initiative is to strengthen the capabilities of participants in peace and mediation processes. To do so, Clingendael aims:

- To enhance the quality and competences of mediators and representatives of groups in conflict taking part in negotiation processes;
- To contribute to conflict resolution capacities locally and regionally;
- To support peace initiatives of international and regional organisations.

The Clingendael Institute cooperates with international organisations and partner institutions to identify groups in conflict in need and demand of training, thereby increasing the chances for peace and complementing existing efforts. This means that the training courses are:

Demand driven

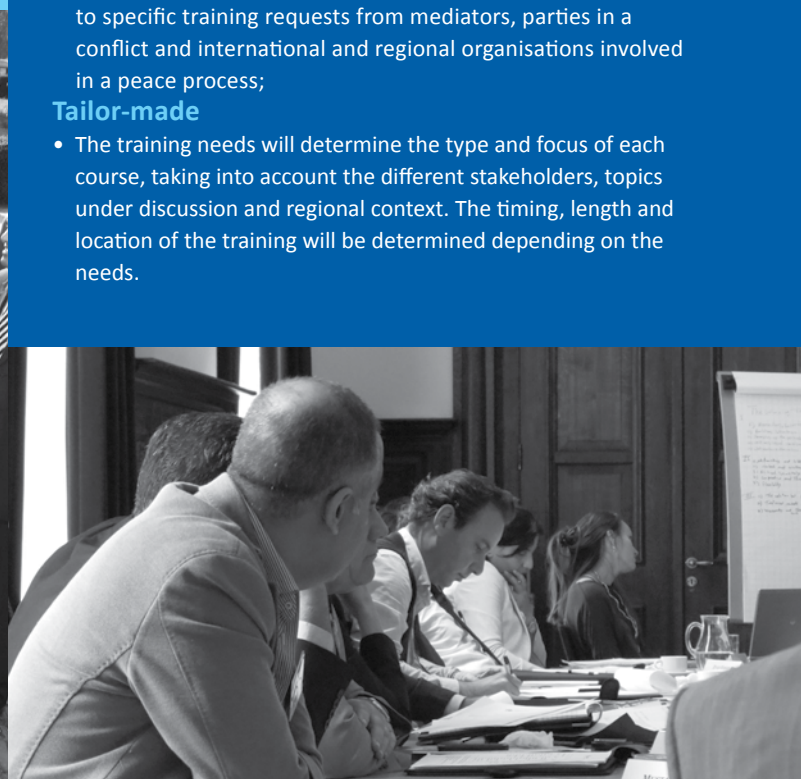
- In order to contribute to conflict resolution where it is most relevant and needed, the courses will be provided to representatives and mediators in need of and willing to receive training as identified by international organisations;

Flexible

- Clingendael has the capacity and flexibility to quickly respond to specific training requests from mediators, parties in a conflict and international and regional organisations involved in a peace process;

Tailor-made

- The training needs will determine the type and focus of each course, taking into account the different stakeholders, topics under discussion and regional context. The timing, length and location of the training will be determined depending on the needs.



The PIN Program looks forward to a number of international Roadshows and Work Shops over the rest of the year.

A PIN Panel at the International Studies Association (ISA) organized by Mikhail Troitskiy on the theme of Overcoming Negotiation Blockages was held on Ash Wednesday, the morning after New Orleans' famed Mardi Gras, where the ISA annual convention was held. The program comprised a paper by PIN members I. William Zartman (Johns Hopkins University), with Pamela Chasek (Manhattan College) and Lynn Wagner (Johns Hopkins University) on "Overcoming Blockage in Climate Change Negotiations," and Mikhail Troitskiy (MGIMO) on "A Model of Negotiation in a Stealth Conflict: U.S.-Russia Dispute over Ukraine." Sinisa Vukovic (Nijmegen University) also presented a paper on "Soft-power, Manipulation and Bias of Regional Organizations in International Mediation" and Shweta Singh (South Asian University) gave a presentation on "Negotiating the 'Intractable Kashmir'." Considering the hour and the day, there was a good audience and discussion.

The PIN Group will present a Roadshow on Mediation for the Toledo International Center for Peace (CITPAX) in Madrid on the subject of Mediation at the beginning of May. CITPAX and the Center for Economic and Social Science Research and Studies (CRESES) are designated as the academic bases of the Spanish-Moroccan Initiative for Mediation in the Mediterranean Region, and the PIN Roadshow will contribute to the effort. PIN members report on various aspects of their research contributing to the study and practice of mediation.

The annual PIN Workshop will take place in conjunction with a **PIN Roadshow at the 8th annual Montenegro Summer School for Young Diplomats 'Gavro Vukovic'**, attended by diplomats from over 40 countries in early July in Cetinje, Montenegro. The Workshop will be devoted to launching the PIN 2015 Project on "How Negotiations End" (see accompanying *PINPoints* article), and the Roadshow will involve presentations on current advances in negotiation research and studies, with an accompanying simulation exercise. Cetinje was founded in 1482 as the royal capital of Montenegro, and long remained an independent diplomatic center in the Balkans.

A PIN Roadshow with special focus on the intercultural aspects of negotiation at the Peace Academy Rhineland Palatinate at the University of Landau, Germany, in early November. The Roadshow will be held before an audience drawn from the university partners of the Upper Rhine Valley. More details will be available as the program develops.

