

PIN•Points

Processes of International Negotiation

Network Perspectives 40/2014

Remembering Nelson Mandela



The Ukraine crisis as a threat for the European negotiation web



The South-China Sea: options for negotiations



Winning at nuclear negotiations



Clingendael

Netherlands Institute of International Relations

EDITORIAL

Nelson Mandela passed away on 5 December 2013. This is the first PINPoints to be released since his death and therefore the first opportunity to take stock of Mandela's legacy in terms of negotiation processes. South Africa's transition from apartheid to an inclusive democratic system remains an astounding accomplishment and an example for everyone studying conflict resolution and reconciliation. With Mark Anstey's contribution to this PINPoints, the PIN group salutes one of the greatest negotiation practitioners ever. May his memory serve as a reminder of what can be achieved through negotiations.

On the day when news broke that Mandela had passed away, the Clingendael Institute was using PIN knowledge and insights to train the National Coalition for Syrian Revolutionary and Opposition Forces (SOC) in negotiations, with an eye on the then upcoming peace talks in Geneva. The training session was not just for the peace talks, but was also to show negotiation as a valid and useful political coordination mechanism to limit internal tension and disagreement. During an improvised session, we discussed together (the members of the SOC and trainers) what Mandela meant for the Syrian struggle and what lessons we could learn from the South African situation.

While showing their respect and admiration, the participants were also quick to emphasize that Syria's situation is different from the South African struggle. This is absolutely true. As Anstey mentions in his contribution, in South Africa there was ripeness and a mutual hurting stalemate – fundamental structural preconditions for possible negotiation

successes. These simply do not exist in the Syrian conflict. This serves as a reminder for anyone involved in what Bill Zartman calls the mediation craze in one of his two contributions in this PINPoints that having the chops of a mediator will not be enough if the conditions of a conflict cannot be changed. While an understanding of mediation processes is growing and the training of mediators is becoming normal, the old saying of carrots and sticks should not be forgotten.

Also mentioned by the Syrian participants as differences to South Africa were the pain of the struggle in Syria and the crimes committed by the Syrian regime. This seemed to suggest that the steps that Mandela needed to take to leave his hatred behind were somehow smaller than those of the Syrians. Although it is impossible to say whether this is true or not, as it is very much a perception and in no way measurable, it did offer a good opportunity to discuss how reconciliation and recognizing the opponent as human and a viable negotiation partner is a tough and difficult, but vital, choice. It is a path to be taken and to remain on level-headedly, despite opposition and obstacles, often from one's own constituency. This leads to the other misconception that needed to be addressed. The Syrian participants had the impression that Mandela was leading a monolithic and unified opposition, yet nothing was further from the truth. Staying the course of reconciliation was as much a negotiation with his own supporters as it was with the apartheid regime. This also shows the impact that leaders have on these kinds of processes. Although structural factors have to align to make solutions possible, it is up to the negotiators

to seize the opportunity and manage the process to achieve an agreement.

One other element in which Syria differs from the South African struggle is geopolitical developments, regional interventions and larger regional instability. As Anstey mentions, talks partly became possible in South Africa because of the end of the Cold War and hence the disappearance of a major source of support for the ANC. At the moment we are seeing a revival of Cold War thinking and increased rivalry between the West and especially Russia. This not only affects the Syrian conflict. In this issue of PINPoints, for example, Paul Meerts expresses concerns that the Ukraine crisis is derailing the European regime for cooperation. Mikhail Troitskiy discusses Sino-Russian cooperation, mostly as an alliance of convenience against American domination. Anthony Wanis-St John, who wrote a contribution to the PIN book *Unfinished Business* on the failure of the previous round of nuclear negotiations between the 3/EU and Iran, looks at the previous causes of failure and assesses the differences with the current round of talks. His is a hopeful contribution, but he warns that geopolitical manoeuvring, including the Syrian conflict, can cause a breakdown in talks.

Guy Olivier Faure analyses a regional conflictual situation when he describes the contested sovereignty of small island groups in the South China Sea. There is no regime to make negotiations truly work, and the conflict could easily get out of hand, with global ramifications. Whether this will actually happen partly depends on US power and willingness. The annexation of Crimea, which was



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COLOPHON

PINPoints

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PIN is a non-profit group of scholars and practitioners that encourages and organizes research on a broad spectrum of topics related to international negotiation seen as a process. The PIN network includes more than 4,000 scholars and practitioners of international negotiation. The organization is presided over by a Steering Committee, which organizes its many activities and edits the *PINPoints*.

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more or less supported by China, and contested but also accepted by the US, is seen in the region as an indication of how the global theatre is changing.

In PIN's work and PINPoints magazine, changes on the geopolitical level have been mentioned many times as causes of concern in undermining negotiation processes, because of a lack of ripeness, especially for conflict negotiations and multilateral cooperation. In his second contribution to this PINPoints, Bill Zartman offers a possible instrument to supplement or even replace some of the deadlocked negotiation processes with dialogues. Another possibility lies within the introduction of focal points in negotiations.

Focal points are elements that are introduced in negotiations to shape the remainder of the negotiations. They are not necessarily a solution, but they do determine the range of the

solutions. In climate change negotiations, the two degrees Celsius maximum temperature increase is such a focal point. The 38th parallel was such a focal point in the Korean War. The role, nature and understanding of focal points is the topic of the new PIN book project that is described by Rudolf Schüssler in this edition of PINPoints and that launches in Sep-

tember during a conference organized by PIN, CIRC and Clingendael. We hope to see you there, or at other events and training sessions. If you have any questions or comments, do not hesitate to contact us through wperlot@clingendael.nl.

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PAUL MEERTS

WILL PUTIN'S STRATEGY ON UKRAINE DISINTEGRATE THE EUROPEAN NEGOTIATION WEB?

If negotiation is war by peaceful means, then the present situation in and around Ukraine can be described as negotiation by warlike means. The pressure on Ukraine by the Russian Federation is enormous and the threat to its security and survival provides the Russians inside and outside Ukraine with a very strong negotiating position. The negotiation fabric of Europe, which is provided by – inter alia – the European Union, the United States and the North Atlantic Treaty Organization (NATO) as counterbalancing powers and the Organization for Security and Cooperation in Europe (OSCE) as an encompassing

regime, is hardly adequate for preventing a power shift that would upset the European security structure created after the Second World War and the disintegration of the Soviet Union.

In order to understand the positions of the parties, it might be useful to look briefly into the interests of the concerned factions. Ukraine itself is divided and this weakens its negotiating position to a point where it can hardly be considered as being at the table, but rather as being more on the menu – a very uncomfortable situation that is reminiscent of Po-

land before it was partitioned by the surrounding powers in 1939. Eastern Ukraine is divided over its prospects for the future, although it seems to be in favour of a federal Ukrainian state in which autonomous republics will have a high degree of self-governance, while western Ukraine might go along with this provided that the federal structure will not mean complete loss of control by the central government in Kiev, which is caught in between.

Western Ukraine has good arguments for federalization as well. Federalization would enable it to protect its



Central European heritage against the richer eastern regions, while still controlling part of Ukraine's destiny. It is telling that the western region coincides with the old borders of the Austrian–Hungarian Empire before the First World War, as well as with the regions that belonged to eastern Poland, eastern Czechoslovakia and north-eastern Romania before the Second World War. It will be central Ukraine that is hesitant to federalize, but that sees federalization as the Best Alternative to a Terrible Non-negotiated Attrition (BATNA), while the east is aware of the fact that its striving for federalization might well

be cut short because of the looming danger of being swallowed by Russia, meaning no autonomy at all.

The Russian Federation seems to be driven by its present incapacity to accept the loss of so much Soviet territory in 1991, including regions that had been part of Tsarist Russia for centuries, apart from western Ukraine, which had only been under Russian rule for half a century. Decolonization is difficult to swallow, as we saw with Great Britain and France, especially if the break-away regions were attached to the core of the country, as observed with Ire-

land. Even if the Russian moves are conscious attempts to regain parts of their lost lands, at least by bringing them under Russian influence again, it might well be that the process started by Russia's President Putin will overwhelm him and drag him into entrapment through 'egotiation'. It will be difficult to stop, but it seems to be in Putin's interest to do so. Putin still holds the steering wheel, but things could change dramatically and lead to his downfall.

The United States and NATO, which in the Russian eyes are identical twins, are not only concerned about

the Ukrainian crisis for its own sake, but even more about the danger of the crisis spreading to NATO countries with sizeable Russian minorities, such as Latvia and Estonia. If NATO allows the Ukrainian precedent to lead to the secession of Russian territories in eastern Latvia and even Riga, as well as in eastern Estonia (Narva), NATO and the United States would lose all their credibility and thereby their negotiating position. Worse still, NATO might implode, leaving other Eastern European NATO member states and non-member states (such as Finland) at the mercy of Russia and thereby of authoritarian and foreign rule. At the other end of the equation, one has to reckon with a Ukrainian scenario in Central Asia as well. Kazakhstan's northern regions have a vast majority of Russian populations too.

All this would have an even more severe impact on the European Union. The Union could then be blackmailed, as the German Federation was taken hostage – to some extent – by the German Democratic Republic. In turn, the EU would lose its negotiating position as well, and more than that. Although the EU is careful not to provoke Russia too much because of its fear of war and of course because of its dependency on Russian gas, the EU member states seem to be rather determined to stick together in a common position. In one way, the outside threat is a godsend for the EU (and for NATO) at a time when civil society has doubts about the usefulness of these organizations, fearing too much centralization and too much expenditure in the lingering financial crisis.

Outside threats create internal unity. This is true for the Russian Federation, the European Union

and NATO. In a way this strengthens their negotiating positions in the Ukrainian crisis. We have already noted that this threat has had an adverse effect on Ukraine itself, but is also very detrimental to the OSCE, which contains all of the actors mentioned above, so theoretically it should be the negotiating organization that could bridge the gaps and bring the parties together. As noted in PINPoints # 28/2007, however, the OSCE can only deal with those issues that the main powers and most powerful international organizations allow.

Although Russia is an integral partner of the OSCE and actually the power that took the initiative for the creation of its predecessor (the CSCE, with the Helsinki Final Act in 1975), it is telling that it did not prevent OSCE monitors from being taken hostage in eastern Ukraine. The OSCE, the pan-European negotiation network to deal with these kinds of crisis situations, is powerless. It proves again that negotiation will only be effective if major powers decide to move in the same direction, and this will only happen if their interests converge. This convergence can, in the case of the Ukrainian crisis, only materialize if these powers foresee or experience so much damage to their own interests that they will stop the present developments.

A new cold war between Russia and the West is unlikely as there is – a godsend again – too much mutual interdependence to allow for it, and interdependence fosters inter-state negotiation. Negotiation therefore remains an essential ingredient in managing today's crisis. Nevertheless, it will be a difficult bargaining process. It is well known that negotiating with the Russians is tough, as was analyzed in PINPoints #

36/2011. This analysis also showed, however, that in the end the Russians will balance the advantages and disadvantages in the present crisis. The question then remains of to what extent today's events are an ad-hoc hiccup or a structural problem.

Looking back over the centuries, we see Russia throwing itself into Central Europe (such as in 1813 and 1945) and outside Central Europe (in 1917 and 1991) in a kind of regular tide. The crisis in Ukraine might signal a new flood, but it might be an extremely short one, as Russia – and more importantly its political and business elite – has so many vested interests in a reasonable relationship with the rest of Europe, North America and Central and East Asia, that going much further than annexing the Crimea seems unlikely. Following this reasoning, which is the most common opinion among Western policy-makers and politicians, the current crisis is a hiccup. It does depend, however, on the Ukraine accepting the loss of the Crimean peninsula, in exchange for Russia respecting the integrity of Ukraine. A bigger flood might still be on the charts, considering the writing: the strong rhetoric of Russia and its geostrategic focus on Eastern Europe, the EU and NATO, as described above. Perhaps the only structural way to avoid Russia coming back into Europe in the way it did in the past is by a change towards true democracy. Yet this can only be done by the Russians themselves. Any obvious Western attempts towards democratization in Russia might backfire and trigger the flood.

BANNING THE BANG OR THE BOMB? NEGOTIATING THE NUCLEAR TEST BAN TREATY

Although it has not yet entered into force, the CTBT has created its own reality that is useful for its eventual implementation and for subsequent negotiations through the process of its construction and implementation. This book analyzes the CTBT regime negotiation as a model of regime creation. The chapters in this book relate to issues representing past, present and future aspects of the Treaty related negotiations. It turns from analysis of what has happened into a manual for what is about to happen. The purpose is to throw new analytical light on the initial process as a case of regime building (Part I) and to draw new lessons from the very realistic trial runs used for training inspectors (Part II).

This book analyses the negotiation processes associated with the establishment of the Treaty, its Organization (CTBTO), and its on-site inspection procedures. It examines two phases of CTBT negotiations: the multilateral negotiations for regime creation in the mid 1990s and the currently ongoing negotiations in the policymaking organs. It goes on and studies the future function of inspector-inspectee negotiations associated with carrying out the on-site inspection element of the verifications regime.

Part I presents a study of the task of translating the general consensual mandate of the CD Ad Hoc Committee into a Treaty, beginning in 1994, a challenge that took two years of negotiations. This evolution is presented from several angles in Part I. This part covers the larger historical picture of international efforts to pursue arms control and the core issue of intrusive inspections that stood as the major obstacle but was finally overcome, and it provides a first-hand view of the actual negotiations led in the CD in Geneva during 1995–6 from the position of the chair. Further, it explores the impact of the wide variety of participants at the domestic and international levels as actors in international negotiation processes.

Part II deals with the particular characteristic of the second-level negotiations required for the verification regime building and management involved in treaty implementation. One group of chapters in Part II addresses problems of the nature of regime-building around the issue of verification with a view to seeking ways and means to establish the authority of the treaty mechanism.

The final group of chapters in this Part concerns the subject of negotiation during on-site inspections - the act where the regime's "rubber hits the road" - rarely analyzed as negotiations in the literature, analyzing the need for negotiations, both inside the team between experts as well as between the inspection team and the inspected state representatives, underscoring the encounter that create an unproductive asymmetry. Analysis of a table-top exercise is presented (the outline provided in an Appendix), its specific characteristics and the special importance of this role-play tool for inspectors and the organization.

A Lessons Identified chapter wraps up this volume presenting some salient characteristics of the CTBT regime development that can be of assistance in negotiations and in post-agreement negotiations for future agreements.

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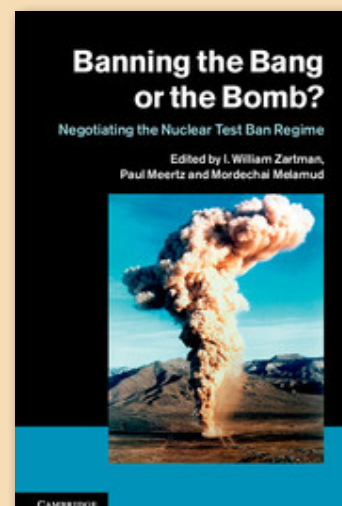
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Simulation of CTBT on-site inspection, By Paul Meerts and Mordechai Melamud



ANTHONY WANIS-ST JOHN¹

WINNING AT NUCLEAR NEGOTIATIONS

As negotiations with Iran on its nuclear capabilities came closer to their 20 July deadline, it appeared likely that negotiators would come to an agreement at the very last moment. In my contribution to Guy Olivier Faure's edited volume *Unfinished Business: Why International Negotiations Fail*², I explored the negotiations between the E3/EU³ and Iran over its nuclear programme. These negotiations, which began optimistically in 2003⁴, resulted in some immediate short-term gains in the form of interim agreements to freeze temporarily uranium enrichment, but ultimately failed to conclude a comprehensive agreement regarding Iran's mastery of the nuclear fuel cycle. The International Atomic Energy Agency (IAEA) was seeking greater cooperation from Iran under the Nuclear Non-

Proliferation Treaty (NPT) in order to assess whether Iranian nuclear activities were for peaceful, civilian uses (permitted under the NPT), or for the purpose of developing nuclear weapons (prohibited under the NPT). Mastery of the nuclear fuel cycle is inherently dual use. Iranian compliance with IAEA inspections is therefore critical in reassuring other countries of its peaceful intentions⁵. In my chapter 'Nuclear Negotiations' in Faure's volume, I noted at least three reasons why the E3/EU negotiations had not succeeded: 1) 'construal' problems; 2) an incremental negotiation process; and 3) a zone of possible agreement that was far too narrow⁶. The US preference to remain aloof from negotiations and pursue coercive diplomacy from the beginning of the process served as one bookend of the negative out-

come, while Iranian political turmoil and the persistence of hardliners in the 2009 Iranian elections provided the other bookend. In the past, the most constructive US stance had been to offer direct negotiations if Iran 'fully and verifiably suspend[ed] its enrichment and reprocessing activities'⁷. Although US participation in negotiations at that time might have proven beneficial, such preconditions amounted to asking the Iranians to give everything up before direct negotiations would even begin.

The Obama administration entered the White House in 2009 while Track II talks with Iran were already taking place under the auspices of the Pugwash Conferences on Science and World Affairs⁸. The US held official back-channel talks with Iran at least during 2013 and seemed to take a lead role in nuclear diplomacy with Iran⁹. A 'Joint Plan of Action' (JPOA) on Iran's nuclear program, announced in November 2013, has the US as one of the direct parties to the negotiation¹⁰, and there is more moderation among the new political leaders in Tehran since Iran's 2013 election¹¹. In addition to the participation of the UK, France, Germany and the EU High Representative (that is, the E3/EU), China and Russia are part of the deal, effectively creating a wide international coalition on one side: the so-called 'P5+1'¹². The incrementalism remains in place – and is likely to persist – as long as trust is absent and as long as some internal constituencies among the P5+1 powers and in Iran oppose any compromise.

¹ Associate Professor, and Director, International Peace and Conflict Resolution Program, School of International Service, American University. I gratefully acknowledge the research assistance of Suzanne Ghais, doctoral candidate at SIS.

² See Guy Olivier Faure (ed.), *Unfinished Business: Why International Negotiations Fail* (Athens, GA: University of Georgia Press, 2012).

³ The UK, France and Germany, plus the EU High Representative.

⁴ Statement by the Iranian Government and Visiting EU Foreign Ministers, 21 October 2003, available online at http://www.iaea.org/newscentre/focus/iaea/iran/statement_iran21102003.shtml.

⁵ Report by the Director General to the IAEA Board of Governors, 'Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran', GOV/2003/75, 10 November 2003.

⁶ Anthony Wanis-St John, 'Nuclear Negotiations: Iran, the EU (and the United States)', in Guy Olivier Faure (ed.), *Unfinished Business: Why International Negotiations Fail* (Athens, GA: University of Georgia Press, 2012).

⁷ US Secretary of State Condoleezza Rice, 'Remarks on Iran', 31 May 2006, transcript available online at <http://www.nytimes.com/2006/05/31/world/middleeast/31cnd-ricetext.html?pagewanted=print&r=0>.

⁸ Laura Rozen, 'Revealed: Recent US–Iran Nuclear Talks Involved Key Officials', 29 January 2009, available online at http://thecable.foreignpolicy.com/posts/2009/01/29/americas_secret_back_channel_diplomacy_with_iran

⁹ Thomas Erdbrink, 'Praise in Iran All the Way to the Top, Where Efforts Reportedly Preceded a President', *New York Times*, 24 November 2013, available online at <http://www.nytimes.com/2013/11/25/world/middleeast/in-iran-mainly-praise-for-nuclear-deal-as-a-good-first-step.html?ref=nuclearprogram>.

¹⁰ Joint Plan of Action, Geneva, 24 November 2013, text available online at http://eeas.europa.eu/statements/docs/2013/131124_03_en.pdf.

¹¹ For a possible precursor to the JPOA, see the Pugwash document 'Main Points of a Possible Agreed Framework', 4 June 2013, available online at http://www.pugwash.org/reports/rc/me/Iran_Moscow_2012/Iran_AF_proposal_update.htm.

¹² The term 'P5 + 1' refers to the five permanent members of the Security Council (the US, UK, France, Russia and China) plus Germany.



THE ZONE OF POSSIBLE AGREEMENT

However, the other two factors that I identified have changed in significant ways. The prior negotiations' failure can at least be partially traced to Iranian insistence on its expansion into all parts of the nuclear fuel cycle, and E3/EU and US insistence on prior renunciation of key aspects of the cycle – specifically the enrichment of uranium for use as a nuclear fuel. The Iranians have consistently declared their intention of achieving and maintaining self-sufficiency in atomic energy, and their communications to the IAEA convey a deep sense of grievance regarding past dealings with the West on this issue. The zone of possible agreement, however, now seems considerably wider. The P5+1 now acknowledges

that an Iranian civilian nuclear programme is a *fait accompli*, and instead of trying to 'close the barn door after the horse has bolted', the emphasis in negotiation is on increased Iranian cooperation with the IAEA, as well as technical steps to diminish the dual-use potential of the Iranian nuclear programme. There is a gap between the number of centrifuges (that enrich uranium) which Iran wants to retain and the number the P5+1 would accept. Additional concessions and creativity would be required to bridge such a gap.

OFFER CONSTRUAL

I argued that negotiators had paid insufficient attention to how their counterparts would perceive offers and moves taken during the negotiations. Specifically, the E3/

EU negotiations with Iran seemed to offer evidence that negotiators suffered from several psychological barriers to information-processing and decision-making: divergent construal and reactive devaluation. As partisans in a long-standing conflict pattern, Iran, the E3/EU and the US were inclined to view their own actions and offers as reasonable, while denigrating those from the other side¹³. In the prior negotiations, the E3/EU demands for Iranian denuclearization were clear, concrete and immediate, while the trade and sanctions' concessions offered to Iran were both ambiguous and to be delivered in a remote future. Iran's cooperation with the IAEA demands for information and access to nuclear facilities was temperamental at best. The US absence from the negotiation table also contributed to the fuzziness of E3/EU attempts to reach a final deal, since key components of any such deal would involve reduction

¹³ See, for example, Christer Jönsson's chapter 'Psychological Causes of Incomplete Negotiations', in the *Unfinished Business* book; and Lee Ross and Andrew Ward, 'Psychological Barriers to Dispute Resolution', *Advances in Experimental Social Psychology*, Vol. 27 (1995), pp. 255–304.

and elimination of US sanctions on Iran. While this was impossible five years ago, it is now part of the architecture of the current interim arrangement¹⁴.

The current negotiation process is now predicated on very concrete offers by the US and the EU in exchange for equally concrete measures to be taken by Iran. Modest relief from the sanctions and increased trade are already taking effect, while the Iranians have quickly moved to reduce the quantity and degree of uranium enrichment. US sanction relief will include repatriating US\$ 4.2 billion of Iran's overseas frozen funds, facilitating Iran's oil trade to the EU, and granting US trade licenses for civil-aviation spare parts, which are badly needed in Iran. Iran has already stopped enriching uranium above '5% U-235' as well as diluting and converting its more highly enriched stocks of uranium, among other compliance activities¹⁵.

As the current agreement (the JPOA), like the one before it, is an interim arrangement, it is meant to create space for more negotiations rather than to be an end in itself. If the JPOA does not result in a comprehensive agreement, US and EU sanctions can (and probably will) be reinstated and the Iranian nuclear capabilities can (and probably will) be rebuilt. On the other hand, the de facto recognition of the Iranian civilian nuclear capability and the immediate relief from sanctions

have at least the potential to create the goodwill necessary for a comprehensive deal that makes the Iranian nuclear programme as 'proliferation-proof' as possible.

INCREMENTALISM AND NON-LINKAGE

There are numerous bilateral and multilateral problems that are going to be neglected while Iran and the P5+1 concentrate on their nuclear contention. The Syrian civil war is just one of many regional issues on which the US and the EU continue to oppose Iran. In the absence of a solid linkage strategy that resolves every issue at once, the parties seem to have accepted working on one major controversy while continuing to be adversaries on the others. Each issue, however, if not resolved, could derail the JPOA, while progress on any of them could be part of a virtuous cycle of collaboration. This is the essence of incrementalism in negotiations. On the other hand, the crisis in Iraq with the ISIS attacks in June and July 2014 seem to at least temporarily align US and Iranian interests in Iraq.

INTERNAL AND EXTERNAL OPPOSITION

Besides incrementalism, the other factor that has not changed is the external opposition to any nuclear deal. Saudi Arabia, other Gulf countries and Israel are all opponents of these negotiations, in part because of geopolitical realities: Iran, for example, is on the opposite side of

Saudi Arabia in the Syrian civil war; Hezbollah – always a latent threat to Israel from the northern border with Lebanon and now active in the Syrian civil war on the side of Syria's Assad government – is supported by Iran; while Israel consistently decries any negotiation with Iran on the nuclear issue as outright capitulation.

The way in which the negotiations are framed is part of the management of both external and internal opponents. The Obama administration has successfully stymied efforts by lawmakers to impose new sanctions on Iran, but to reassure this group, the administration's congressional testimony is characterized by tough talk about Iran and promises of issue linkage that are probably not feasible in the short term. Still, the US has for the moment kept both external and internal opponents of real nuclear diplomacy sidelined. It remains to be seen how well Iran manages its own internal opponents and sceptics of nuclear diplomacy, but the early compliance is promising.

CONCLUSION

In summary, several major obstacles that were in the way of the last negotiations towards a comprehensive arrangement have been lifted, while others remain in place. The US is now directly invested in the negotiations, the offer construal problem seems to have been ameliorated by the exchange of specific relief from sanctions for specific acts of cooperation on the fuel cycle, and the zone of possible agreement seems slightly larger while the parties seem more realistic about their demands. These are extraordinarily promising developments that do not by themselves guarantee success, but they certainly strengthen the chances of de-nuclearizing diplomacy between the P5+1 and Iran.

¹⁴ White House Office of the Press Secretary, 'Summary of Technical Understandings Related to the Implementation of the Joint Plan of Action on the Islamic Republic of Iran's Nuclear Program', 16 January 2014, available online at <http://www.whitehouse.gov/the-press-office/2014/01/16/summary-technical-understandings-related-implementation-joint-plan-action>.

¹⁵ Testimony of Wendy R. Sherman, Under Secretary for Political Affairs, 'Written Statement before the Senate Committee on Foreign Relations: Iran Policy and Negotiations Update', Washington, DC (4 February 2014), available online at <http://www.state.gov/p/us/rm/2014/221217.htm>. Also see Report by the Director General to the IAEA Board of Governors, 'Status of Iran's Nuclear Programme in Relation to the Joint Plan of Action' (20 January 2014), GOV/INF/2014/1, available online at <http://www.iaea.org/Publications/Documents/Board/2014/govinf2014-1.pdf>, and subsequent reports.

RECONCILIATION AS PREVENTIVE NEGOTIATION

Post-conflict situations are precarious. Crises of commitment and capacity drive the shift in attitudes required for peace agreements between adversaries. But sustaining these shifts into longer-term peace-building processes is difficult, especially where structural conditions limit capacity to distribute resources and opportunities in ways that meet needs and aspirations across stakeholder groups. The tipping point is reached when one or more parties believe violence will yield greater benefits than continued efforts within a shaky peace. In such contexts how might reconciliation between groups with a long history of conflict be achieved? What kinds of conditions must be negotiated to develop and sustain peaceful relations between parties to carry them jointly into a non-violent future? Is reconciliation actually negotiable? If yes, under what circumstances? These questions are at the core of the next PIN book project.

In the context of an avalanche of texts on the subject of reconciliation, this book makes a unique contribution in three respects. Firstly it seeks an articulation between the notions of negotiation and reconciliation. Both subjects reflect expanding bodies of theory and research but the interaction of the two remains relatively unexplored. Secondly it gathers contributions from both scholars and practitioners in the fields of both negotiation and reconciliation – theory and

practice are inextricably linked. As scholar-practitioners the editors of this text are both from nations wrestling with issues of social and political reconciliation – South Africa and Belgium. These states do not share a lot of common features. However, they both reflect long term struggles to develop and sustain a strong national identity. Their common, but diverse experiences raise important questions about the prospects for negotiated accords and deeper processes of reconciliation, and the links between them. Finally, the purpose of the book is exploratory and pragmatic rather than to offer a normative or prescriptive view. The intention is to raise and address questions about the practical limits of the notion of reconciliation when applied on a societal rather than an individual level. Some provocative questions can indeed be raised. How can negotiators deal with such an ambitious goal? Can reconciliation be detrimental to peace and/or democracy? Is reconciliation always possible, desirable or even necessary in all circumstances?

There is much at stake. We consider that without a fundamental clarification, the notion of reconciliation may turn out to be counter-productive. Beyond a theoretical interest, this question has a direct impact for practitioners; a better understanding of the issue is actually a *sine qua non* condition for more efficient interventions.

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MARK ANSTEY

MANDELA'S LEGACY OF NEGOTIATION



South Africa's four Nobel Peace Prize winners – Albert Luthuli (1960), Desmond Tutu (1984), and F.W. de Klerk and Nelson Mandela (jointly, in 1993) – were all involved in seeking a peaceful end to apartheid. Interestingly, however, even as Luthuli's commitment to non-violent resistance was being recognized, Mandela was among those persuading the ANC of the failure of 50 years of such tactics, and the need for a campaign of armed struggle and targeted sabotage to end racial repression. Part of Mandela's legacy to negotiation is reflected in his understanding that sometimes the temperature must be raised to induce another to negotiate, but this

is common to many political struggles. What set his leadership apart were the choices he made once the heat was on, to bring about a peaceful outcome in a context of escalating violence. These were not choices of opportunism in a crisis. They reflected the deeply held set of values that he had espoused 30 years earlier – that a resolution to South Africa's conflict would depend less on defeating his oppressors than on creating a society without repression. He understood that 'push' strategies targeting whites would harden resistance, and that greater prospects lay in 'pull' strategies that were responsive to their fears. He recognized that offering

partnership to his erstwhile oppressors in negotiating a future in which they could feel secure was his most powerful means of persuasion.

Mandela's tactics of escalation earned him a sentence of life imprisonment at the conclusion of the Rivonia Trial in 1964. Yet as a prisoner of principle for the next 27 years, he remained integral to the African National Congress (ANC)'s campaign against apartheid, a beacon for national and international mobilization, and when conditions eventually ripened, he resumed organizational leadership to negotiate South Africa into a liberal democracy. It was a campaign against oppression that was brought to a slow boil within and beyond South Africa's borders, but by the mid-1980s its heat was intense. Mandela will be remembered as one of the world's great statesmen; a man of deep principle, able to put aside his own interests in pursuit of justice; and, when opportunity eventually arose, to use justice to negotiate the end of a pernicious system of racial separatism – and remarkably, when civil war seemed inevitable, to do it within a frame of reconciliation that he had signalled 30 years earlier.

Differences informing the content of a negotiation may be difficult, but these must be dealt with within a complexity of interpersonal and intergroup dynamics, which are triggered as parties try to persuade one another into a deal that serves their interests. Power asymmetry may see weaker parties unable to convince stronger ones that negotiations are

even necessary. Conflict escalation dynamics may see parties entrapped in their own posturing and rhetoric, irrationally eschewing negotiation opportunities for more contentious tactics. Tensions within constituencies may limit the capacity to engage in negotiations across an identity divide, as well as limiting the space for concession exchanges and later stability. Negotiators require competence in persuading opposition groups in direct interface situations, as well as a capacity to understand and leverage wider intergroup dynamics – deals are premised in the ability to frame proposals in a manner that has resonance with both one's own constituency but also an opponent's. In managing these complexities through time, Mandela demonstrated his mastery of negotiation processes.

As the leader of a liberation movement without a capacity to defeat a regime founded on an ideology of racial separatism, Mandela's mission was to persuade the regime that its beliefs were wrong, and as a consequence its policies and practices, and then to bring about a radical change in its behaviour and beliefs. Simply to seek the violent defeat of the regime would have been counterproductive, confirming the fears and perceptions of those supporting it, and evoking violent resistance. Persuasion is the core skill of both effective leaders and negotiators. Both are goal-driven processes, and both involve the conscious use of power to change the behaviour and beliefs of others to particular ends. Mandela's was a life of persuasion – as a lawyer, a warrior-activist, a prisoner, a political actor and a human rights activist. He led through negotiation. It was decades, however, before his oppressors could be

convinced to consider negotiations, and it took wisdom to entertain their cautious overtures when he must have realized that they emanated from a regime in trouble, and when a refusal to enter discussions might have seemed a better option.

Before his imprisonment, Mandela persuaded the ANC's leadership to take the struggle against apartheid to a new level; during his trial, he offered a vision for change in South Africa that over time rallied people internationally and across ideological divides to his cause; during his imprisonment, he served as a beacon for mobilization and, despite long years of incarceration, managed the first phase of negotiations with the regime without compromising himself or the cause; and after his release, he guided negotiations into liberal democracy for South Africa, and initiated a process of nation-building based on reconciliation. He did not do this alone of course. He did so in interaction with his own team, and eventually across an identity divide with the regime's team, which was seeking to survive its own courageous decision to relinquish power. Moreover, he did so within a particular political context. His consistency of vision, ability to recognize the opportunities offered by changing conditions, his skills in mobilization and organizational building, and his capacity to engage generously with an opponent that had treated his people and himself cruelly over a long period set him apart as a great leader – and a great negotiator.

PRINCIPLED DIRECTION

The Rivonia Trial occurred long before South Africa's conflict was ripe for resolution. Mandela was removed

from society in the early stages of his campaign and conditions were not yet ripe for change in the manner that they were 30 years later. Yet he and other ANC leaders understood the importance of principled vision, and of political martyrdom – the time was riper for mobilizing an escalation in struggle tactics than for an end to apartheid, but struggles need direction and anchors for mobilization purposes. What Mandela left in the public domain in 1964 was a vision for the future and an identity for the ANC as a principled organization that was concerned with justice for all. His statement during the course of the Rivonia Trial inspired several decades of national and international mobilization and informed the negotiation strategy of the ANC in the transition period:

During my lifetime I have dedicated myself to this struggle of the African people. I have fought against white domination, and I have fought against black domination. I have cherished the ideal of a democratic and free society in which all persons will live together in harmony and with equal opportunities. It is an ideal I hope to live for and to see realized. But my Lord, if it needs be, it is an ideal for which I am prepared to die¹.

LEVERAGING CHANGING CONDITIONS: RECOGNIZING RIPENESS

Mandela understood that a social system can be maintained unilaterally only if there is compliance and, in the absence of free consent, through coercion. Yet coercion is only feasible if those in charge have the power needed to do so, and to keep doing so. Power-holders pass laws to achieve order and afford regime legitimacy, but as Edmund Burke (in 1777) famously observed:

¹ Nelson Mandela, *Long Walk to Freedom* (Randburg: MacDonald Purnell, 1994), p. 354.

'People crushed by laws have no hope but by power. If laws are their enemies, they will be enemies to laws; and those who have much to hope and nothing to lose, will always be dangerous more or less'. In complex multi-stakeholder societies, power is seldom so concentrated in the hands of any one party that it can act unilaterally. If they are to be functional, plural societies require ongoing mutual accommodation among their interest groups. In this reality, intergroup relations move through unending phases of conflict, competitiveness and cooperation – and if violence is to be averted, negotiation is the means through which they work things out.

Demographics, political and economic conditions, weak internal organization among opposition groups, and ambivalence in the international community saw power firmly in the hands of South Africa's Nationalist Party in 1964 – but not moral power. For a time it appeared that the regime's control was unshakeable. Yet things changed. After a period of growth, South Africa's economy stalled in the 1970s in the context of demographic changes, thus hardening international sentiment by the 1980s, combined with a tidal wave of internal dissent. Conditions may have changed but the principles for which Mandela had gone to jail had not. They informed his response to government overtures for talks from 1985; his approach to negotiations during the transition years between 1990 and 1994; and his presidency of national reconciliation. They ensured a political negotiation that was lifted beyond crude concessionary exchanges of expedience; they informed the Bill of Rights in the

Constitution; and they gave hope and built commitment to South Africa's new democracy among not only Mandela's followers, but also his opponents and erstwhile oppressors.

Mandela contributed to, but of course did not create all the changes that eventually persuaded the apartheid government to initiate secret 'talks about talks' with him and the ANC in exile in 1985. His skill lay in understanding the changes that informed this choice and his responses. A critical moment arose in 1989 with the collapse of the communist empire, removing an important source of ideological and financial support for the ANC. South Africa's government saw opportunity in this, thinking that it would weaken opposition groups. The pace quickened in the 'talks about talks', and at the end of 1989, the ANC publicly declared the terms under which it would enter negotiations with the government through the Harare Declaration, before in February 1990, President de Klerk declared the release of Mandela and other political prisoners, unbanned the ANC and other political organizations, and invited them to negotiations to determine a way forward for South Africa.

The key to progress was a shared recognition that while the ANC was unable to defeat the regime militarily, the regime was increasingly unable to control the townships and was economically in a downward spiral. After a series of reforms that deepened divides rather than healed them, the South African government had come to realize that the future of whites in South Africa depended on securing a future for its black population. Unilateralism had run its course, negotiation would be required, as well as responsiveness to the terms demanded by those the government had repressed.

Relations were in a moment of ripeness – a mutually hurting stalemate. Parties have to recognize such moments, of course, and use them. If either misjudges its power and believes that there are better prospects for victory through coercive means, they may be entrapped in a spiral of escalation that negates the negotiation option. South Africa was fortunate to have leaders in the regime and in opposition groups who had the wisdom to see and use the opportunity for talks.

BUILDING AND SUSTAINING INTERNAL COHERENCE

As Tom Lodge points out, Mandela did not start his political career as a 'broad church' activist². He was initially resistant to working with communists, Indians and whites, instead seeing the struggle in terms of black liberation. His position softened, however, through experience of others' commitment to ending apartheid and his experience of the humanity of some whites, even among those who removed his freedom. Through small gestures of respect and kindness, even among his persecutors and jailers, he came to recognize that '*deep down in every human heart, there was mercy and generosity. No one is born hating another person because of the colour of his skin, or his background, or his religion. People must learn to hate, and if they can learn to hate, they can be taught to love, for love comes more naturally to the human heart than its opposite*³'. This recognition of a core of decency in all men informed his mission of reconciliation and how he framed the struggle. Negotiating on behalf of a constituency is difficult at the best of times, but it is especially so if one is unable to communicate freely with that constituency and if it is a 'broad church' embracing a wide cross-section of

² Tom Lodge, *Mandela: A Critical Life* (Oxford: Oxford University Press, 2006).

³ *Mandela, Long Walk to Freedom*, p. 615.

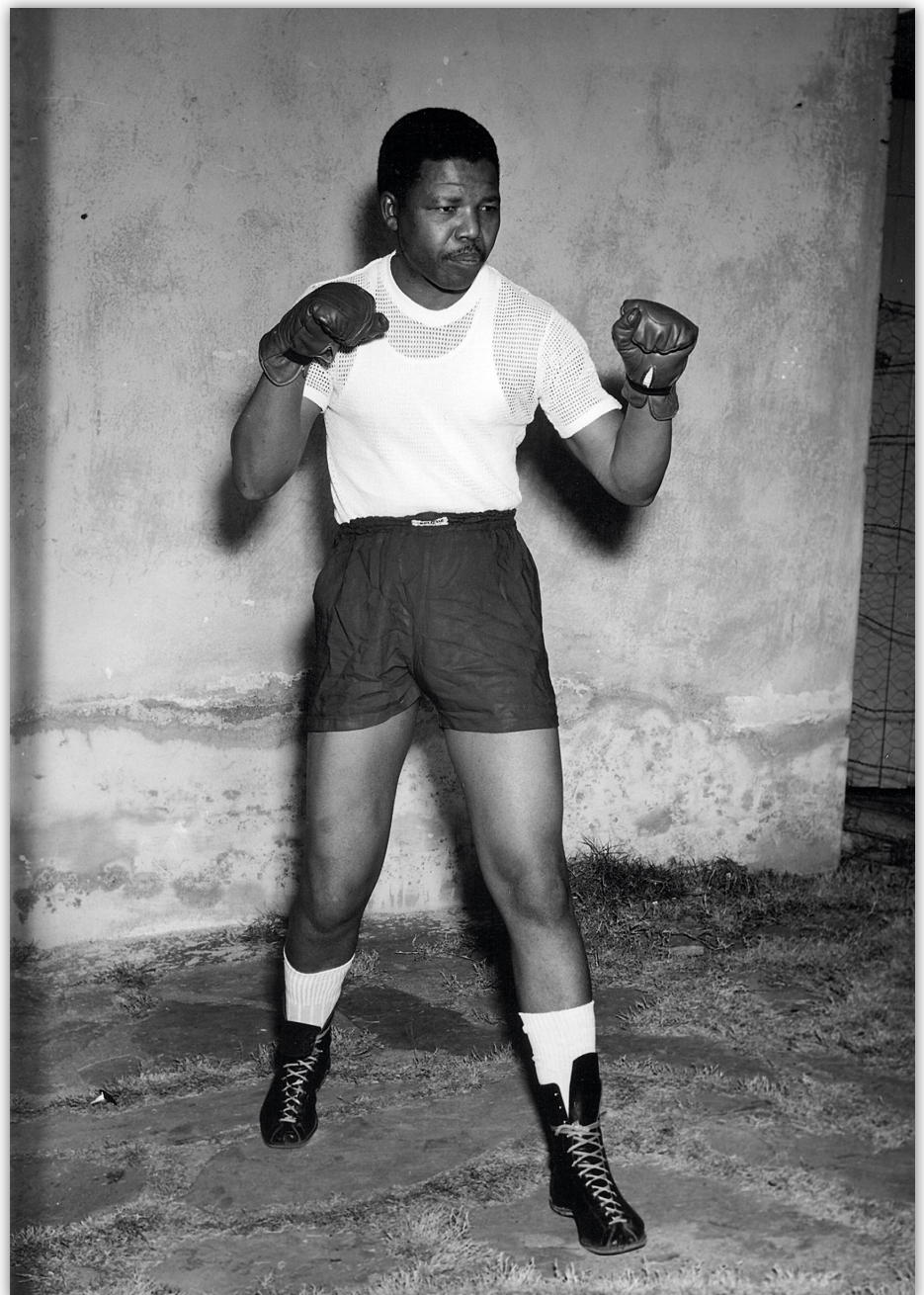
identity groups with a unified cause but uneasy ideological compatibilities. It is testament to Mandela's status as a leader within the wider struggle that, despite his long incarceration, South African President P.W. Botha secretly reached out to him in 1985 to 'talk about talks', and it is testimony to his wisdom and personal integrity that he reminded his jailers that he could not negotiate as a prisoner and certainly not without the mandate of his party, most of whose leaders were in exile. Communication was eventually enabled by the nationalist government through Mandela's lawyer, George Bizos. The government was also using channels to engage in exploratory talks with ANC leaders in exile. They were difficult steps, wide open to division between leaders who were physically separated and unable to communicate directly with one another, and to gaps between leaders in exile and resistance groups on the ground that were involved in the popular upsurge and were sustaining the energy for change.

The ANC based its struggle on building a broad non-racial movement embracing nationalists, communists and capitalists, tribal groupings, peaceniks and soldiers. Potentials for division are higher within sides that comprise a wide spectrum of identity groups sharing a broad objective but that are unsettled in terms of appropriate strategies, not least the use of violence. The ANC's core mobilizing document, the Freedom Charter, was sufficiently open to allow each such grouping to find some identity with it. The fragility of widely inclusive coalitions is often exposed at the moment of an offer to negotiate, but continues throughout a process. Effective leadership demands of leaders the capacity not only to negotiate powerfully with an opponent across a conflict divide,

but to simultaneously negotiate tensions within one's own side to ensure internal coherence. The framing of priorities, the shaping of demands and proposals, and each stand on principles and exchange of concessions with an opponent may foster internal tensions and division. Movement without a mandate can see a leader quickly discredited as a non-trustworthy representative. Achieving a clear mandate, however, may be as complex a task as doing a deal with an 'old enemy'. Parties within a side have to find themselves before they can enter coherent agreements

with others, and quick deals across the table may prove unworkable if they create internal divisions within sides.

Unable to communicate directly with the ANC leadership in exile or leaders of the struggle in the country, Mandela was vulnerable when the regime initiated 'talks about talks' with him while he was still incarcerated. He did not misstep. When he was released in 1990, his speech was far less conciliatory than many whites had hoped, but he knew that he first had to reassure his people



that he had not sold out on the struggle or the principles for which he had been incarcerated in 1964. He had to convince them that no personal deal had been struck to secure his freedom.

THE CRITICAL ISSUE OF FRAMING: INCLUSIVENESS AND RECONCILIATION

Across North Africa and the Middle East, recent uprisings have been driven by demands for the removal of regime leaders. In Tunisia, Egypt and Libya, these demands met with quick success; in Bahrain, Yemen and Syria, however, they did not. Rapid change in the first group has translated into (relative) political stability; in the latter there has only been continuing violence, repression and tragedy. Campaigns directed 'against' a longstanding despot or dominant group may temporarily enable the unity that is necessary among rebels for regime change, but in victory competing ideologies and interests are laid bare, and stability remains elusive.

The struggle of the ANC, as Mandela defined it in the Rivonia Trial, was not a struggle against whites or particular heads of state, but a struggle 'for' a common justice. This enabled the emergence of a 'broad church' ANC, a coalition with other opposition groups and with international support across ideological boundaries. This is what opened the door for the regime to participate in the design of a polity that ended apartheid, and offered a future to everyone. Premising change on the elimination of particular leaders or identity groups leaves them no future – only the options of fight or

flight. By the time Mandela engaged in negotiation with the regime, he had philosophically embraced the idea that inclusiveness must extend to those who had voted for and actively implemented the system of oppression of which he had been a victim. In short, it is not simply inclusiveness within a side that matters, but inclusiveness in searching for solutions and in decision-making: 'To make peace with an enemy, one must work with that enemy, and that enemy becomes your partner'⁴.

Mandela came to see his oppressors as just as entrapped as he was: *[...] the oppressor must be liberated just as surely as the oppressed. A man who takes away another's freedom is a prisoner of hatred; he is locked behind the bars of prejudice and narrow-mindedness. I am not truly free if I am taking away someone else's freedom, just as surely as I am not free when my freedom is taken from me. The oppressed and the oppressor alike are robbed of their humanity*⁵.

What was remarkable, of course, was the lack of bitterness with which he approached the task of negotiating a democracy and then the nation-building mission that lay ahead. This comes through in philosophical terms, but was an act of selflessness. He knew as he left prison that if he did not free himself from bitterness, he would remain psychologically a prisoner. Internal shackles would limit his capacity to help free both the oppressed and their oppressors in South African society, perpetuating rather than ending their conflict. South Africa was freed in many senses because Mandela and other key figures who had spent many decades in jail or in exile framed their struggle as one of 'justice for all' rather than simply a crude defeat of their oppressors. It is

one thing to mobilize internal coherence for a struggle and negotiation with another during a deep conflict, but it is another to do so in a manner that offers security to, and achieves support from, an opponent.

The consistency of Mandela's vision over 30 years confirms its philosophical foundations, but it was also reflected pragmatism. His observations that killing the white parts of the zebra would as surely mean the end for its black parts were carried through in the shape of the deal achieved in 1993 and beyond. He understood that while political control could be quickly transformed, economic changes would be slower; that a sunset arrangement retaining white skills for a period would be necessary for stability in the public service; and that if white capital took fright and fled, it would have very negative consequences for the economy. His reaching out to the white population through the national sport of rugby is powerfully captured in Clint Eastwood's film *Invictus*.

Mandela understood that peace processes are premised on power – on a capacity for coercion but coupled with a deep commitment to clearly defined principled goals that make not only claims on an opponent, but offers. In Dudley Weeks' terms where negative power is focused on removing power from others, positive power offers it⁶. Mandela's strategy empowered his oppressors to free themselves by participating in the negotiation of a new system and a dispensation that would protect all into the future. Coercive strategies may have value for getting the attention of an adversary, but a long-term peace requires not just its compliance, but its commitment to any new system. Mandela understood that to have long-term prospects as a platform for nation-

⁴ Mandela, *Long Walk to Freedom*, p. 604.

⁵ Mandela, *Long Walk to Freedom*, p. 617.

⁶ Dudley Weeks, *The Eight Essential Steps to Conflict Resolution* (New York, Penguin Putnam, 1992).



building, closure of the difficult political negotiations between 1990 and 1993 would require responsiveness to the fears of those conceding power, and recognition of the courage of those making this concession.

Mandela's commitment to inclusiveness saw the flexible accommodation of a defiant Buthelezi at the eleventh hour before voting in 1994. He responded to the fears of resistant whites with the offer of a Truth and Reconciliation Commission on the basis of a confessional amnesty, in response to fears among elements in the armed forces that they would be hung out to dry by their political masters, for whom they had enforced apartheid policies. Mandela maintained reconciliatory focus when the popular leader Chris Hani was assassinated by right-wingers in a deliberate effort to polarize race relations in 1993, reminding angry black supporters that while it was a white man who had murdered Hani, it was a white woman who had led the police to his killers. With the

spectre of violent breakdown upon them, Mandela and F.W. de Klerk rekindled negotiations.

CONCLUSION

Mandela's legacy of negotiation is extraordinary – and a legacy that his successors and wider South African society are struggling to live up to. He provided principled direction for the wider struggle; he understood the need to raise the temperature to get the attention of his oppressor and rally support to the cause; he understood and used changing conditions effectively; he was able to work the interfaces between his constituency and his enemy with integrity; and he was able to frame the negotiation process in a manner that reduced resistance and offered his opposition security into the future. He moved flexibly between the roles of warrior-activist and negotiator-conciliator. He understood the importance of his role as a prisoner of principle in the wider mobilization strategy of the ANC. As an activist, he helped to build his

organization for the long struggle. As a philosopher, he brought wisdom to a struggle that in its closing stages could have seen a collapse into civil war, but instead was delivered through negotiation and the ballot box. He understood power dynamics – when to step up pressure, when to take a stand of principle, when to offer an opponent a back door, and when he had enough power to leverage a negotiation but not a defeat of an opponent. Most importantly, he understood and lived out a strategy of reconciliation. This cannot be done unless it is directed from a set of deeply held personal values.

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GUY OLIVIER FAURE

THE SOUTH CHINA SEA: OPTIONS FOR NEGOTIATION



With the Spratly and the Paracel Islands, the South China Sea offers a huge potential for resources to be shared and, as a consequence, for future cooperation. At the same time, the important number of stakeholders and their relative power asymmetry make any partnership or collaborative action extremely difficult, if not unlikely. The issue is territorial sovereignty over a dusting of islands and reefs, not only for what they are physically, but mainly for the importance of their potential natural resources and for their strategic position. The wealth that they represent tremendously increases the competition to possess them, and the more that this wealth goes from virtual to tangible, the more conflict is aggravated between some of the region's countries. The fact that one of the parties to the current dispute, China, weighs more alone than all the others put together does not invite trust, but rather generates a growing fear. However, at a certain stage, all of the countries that are directly or indirectly involved will

have to desist from the conflict and engage in a cooperation where the effects should be extremely positive. This article deals with the complexities of the dispute and the ways towards a possible cooperation.

The *Spratly* Islands are located at the southern end of the South China Sea, within the 200 nautical miles exclusive economic zones of Vietnam, the Philippines, Malaysia and Brunei, and within the extended territorial claims of China, Taiwan and Vietnam. Their potential to be the cause of World War III has been seriously considered by international relations experts such as Samuel Huntington. The Spratly Islands consist of over 700 islets, coral reefs, cays and sea mounts that are spread over 425,000 sq km of sea, but the total land area is no more than 4 sq km. The Spratly Islands have considerable natural resources: oil; gas; and seafood. Oil and gas reserves in the region are estimated at 17.7 billion tons, thus more than Kuwait's or Qatar's reserves. These islands

are also important because of their situation in the South China Sea, which has almost half of the world's merchant-fleet tonnage and nearly one-third of its crude oil transit. By controlling the Spratlys and the related sea area, a country would gain an invaluable strategic position.

The *Paracels* are a group of around 30 small islands, sandbanks and reefs in the northern part of the South China Sea (Quan Dao Hoang Sa in Vietnamese and Xisha Qundao in Chinese). This archipelago lies roughly 200 miles equidistant from the Vietnamese and Chinese coastlines. The Paracels are not inhabited on a permanent basis, but have a potential for oil and gas development. Their surrounding waters are particularly rich in fishing resources. Sovereignty over the Paracels has never been precisely established throughout history: Chinese cultural artefacts dating back to the Tang Dynasty have been found off the Xisha Islands; and during the fifteenth century the Vietnamese established commercial activities such as fishing on the Hoang Sa (Golden Sandbank) Islands, although Vietnamese fishermen had probably already harvested these seas for centuries. The Paracels are claimed by China (the PRC), Vietnam and Taiwan. Before the Second World War, the islands were part of French Indochina and served as a weather station. During the war they were occupied by Japan but returned to France, then transferred to the newly independent South Vietnam. The South Vietnamese kept the weather station and maintained a small garrison there until 1974,

when they were attacked and driven out by Chinese armed forces who have remained there ever since. Nowadays, China has established an administrative centre on the largest island, Woody Island, and has put all of the Paracels under the administrative authority of China's province of Hainan.

Map of the South China Sea



Source: China Tourist Maps, available at <http://www.chinatouristmaps.com/china-maps/china-sea-maps/south-china-sea-map.html>.

AN UNCLEAR AND TURBULENT HISTORY

The Spratly Islands form a much more complicated case, because it involves many stakeholders, includ-

ing China, Vietnam, the Philippines, Malaysia, Taiwan and Brunei, and because it addresses overlapping areas of claimed rights.

China maintains that the islands, which it calls the Nansha Islands, were discovered by Chinese navigators during the Han dynasty in the third century AD, used by Chinese fishermen for centuries, were labelled

as Chinese territory during the Yuan dynasty (in the thirteenth century) and have been under the administration of China since the fifteenth century. As a result, China contends that it has indisputable sovereignty over

the South China Sea and its islands. This position has been held by the Chinese government as being based on historical facts and international law. Nowadays, China is asserting its sovereignty over the Spratlys through an intensified presence at sea, with both naval and paramilitary fleets of vessels.

Other stakeholders, however, contend that China's historical claim to the islands is weak, and particularly the undefined 'nine-dotted line' claim (because of its design, this is also sometimes called the 'U-shaped line' or the 'cow's tongue line'). As shown on a Chinese map issued in 1947, which depicts dotted lines made of nine segments, this delimitation line is not continuous, and includes most of the region's islands and also areas such as Natuna archipelago, which other nations do not generally consider to be in the South China Sea. China's underlying claim is ambiguous and thus strongly contested. China's strong military presence has furthermore made it a key player in the Spratly Islands disputes.

Vietnam contends that Chinese records on Qianli Changsha and Wanli Shitang are in fact records about non-Chinese territories. The Chinese records do not constitute a declaration and exercise of sovereignty, and China did not declare sovereignty over the Spratlys until after the Second World War. In Vietnam's understanding of international law, a state must effectively occupy a terra nullius (land belonging to no one) to express valid claims. Vietnam argues that it has occupied the Spratly and Paracel Islands since at least the sixteenth century, when they were not under the sovereignty of any state, and that it exercised sovereignty over the two archipelagos continuously and peacefully until they were invaded by the Chinese

armed forces.

Vietnam currently occupies 31 islands, which are organized as a district of Khanh Hoa Province. In July 2012, Vietnam's National Assembly passed a law demarcating Vietnamese sea borders to include the Spratly and Paracel Islands. In 1974, while taking over the Paracel Islands from South Vietnam, China claimed most of the islands of the South China Sea, including the Spratlys. In 1975 after the reunification of Vietnam, Vietnamese forces occupied several of the Spratlys that had previously been administered by South Vietnam. China responded by sending troops to seize the Vietnamese Spratlys in 1976. Then, in 1988, China and Vietnam engaged in the first naval battle, whereby 70 sailors were killed in the standoff at Johnson Reef and a number of small Vietnamese boats were sunk. The intermittent war over the Spratlys continued: in 1992, China seized twenty Vietnamese cargo ships heading to the Spratlys from Hong Kong; and in 1994, China and Vietnam had another standoff over a section of international waters that appeared to have a significant undersea oil reserve. In the meantime, Vietnam made several concessions to Indonesia and Malaysia to settle territorial disputes over the southern Spratlys.

The Philippines contends that these islands were terra nullius, as there was no effective sovereignty over them until the 1930s when France and then Japan took possession. After the Second World War, when Japan also renounced sovereignty under the terms of the San Francisco Treaty, no specific beneficiary was mentioned as taking over. Therefore, the Philippines argues that the Spratly Islands became terra nullius and available for annexation.

In 1956, a private Filipino citizen, Tomas Cloma, unilaterally declared a state on 53 features in the South China Sea, calling it 'Freedomland'. As Taiwan moved to occupy the main island in response, Cloma sold his claim to the Philippines' government, which annexed de jure the islands in 1978 as part of the Philippines' territory, calling them Kalayaan. Since 2013, the Philippines has filed a number of diplomatic protests to Chinese actions concerning what they label as the West Philippines Sea, including the establishment of a new city to administer almost all of the disputed territories. The Philippines refuses to stamp new Chinese passports that include maps of the questionable nine-dotted line shown as Chinese territory, and Vietnam has joined the Philippines in this refusal. Moreover, the Philippines has a mutual defence pact with the United States that could strengthen its position if the conflict escalates.

Taiwan, another major party to the disputes, has a position quite similar to that of China and claims all of the islands in the Spratly region. Since 1956, Taiwan has maintained a garrison on the largest island, Itu Aba. Like China, its claims to the Spratlys is based on its affirmation that the islands were discovered by Chinese navigators, used by Chinese fishermen for centuries, and have been under the administration of China since the fifteenth century. Later, the Kuomintang sent a naval expedition to the islands and took formal possession in 1946. Taiwan thus believes that the islands belong to Taiwan and not to the PRC. Its main concern besides sovereignty is also that China alone, or China and Vietnam together, might gain a monopoly over the South China Sea.



Map of Competing Claims in the South China Sea



Source: Nam Viet News, available online at <http://namvietnews.wordpress.com/chinas-rise-is-a-big-reason-to-ratify-the-law-of-the-sea-convention/refuting-chinas-nine-dash-claim/>.

A GROWING NUMBER OF STAKEHOLDERS

Malaysia claims three islands and four rock groups among the Spratly Islands, and has been involved in the disputes since 1979. It currently has control over three of the islands. Malaysia's case is based on the fact that the islands are part of its continental shelf, which under the Law of the Sea Convention gives it rights to the islands. Malaysia was also the earliest oil operator in the South China Sea.

Brunei claims the Louisa Reef in the Spratly region, close to its coastline. Brunei's position is also based on the Law of the Sea. It states that the southern part of the Spratlys is actually part of its continental shelf and therefore belongs to its territory. Brunei has only recently involved itself in the Spratly disputes.

The United States has the issue of freedom of navigation among its priorities. The South China Sea is a strategic corridor, through which oil and many other vital resources flow from the Middle East and South-East Asia to Japan, Korea and China. The freedom and safety of navigation are crucial concerns for the United States, as US Navy and Air Force military bases in East Asia and the Indian Ocean are connected through the South China Sea. In August 2012, the US Senate voted for a resolution declaring that China's recent actions to impose its control unilaterally on the disputed parts of the South China Sea 'are contrary to agreed upon principles with regard to resolving disputes and impede a peaceful resolution'. The US has a 'national interest in the maintenance of peace and stability, respect for international law, freedom of navigation, and unimpeded lawful commerce in the South China Sea'. The US does not, however, take a position on territorial claims, but presses all of the parties to clarify and pursue their claims in accordance with international law.

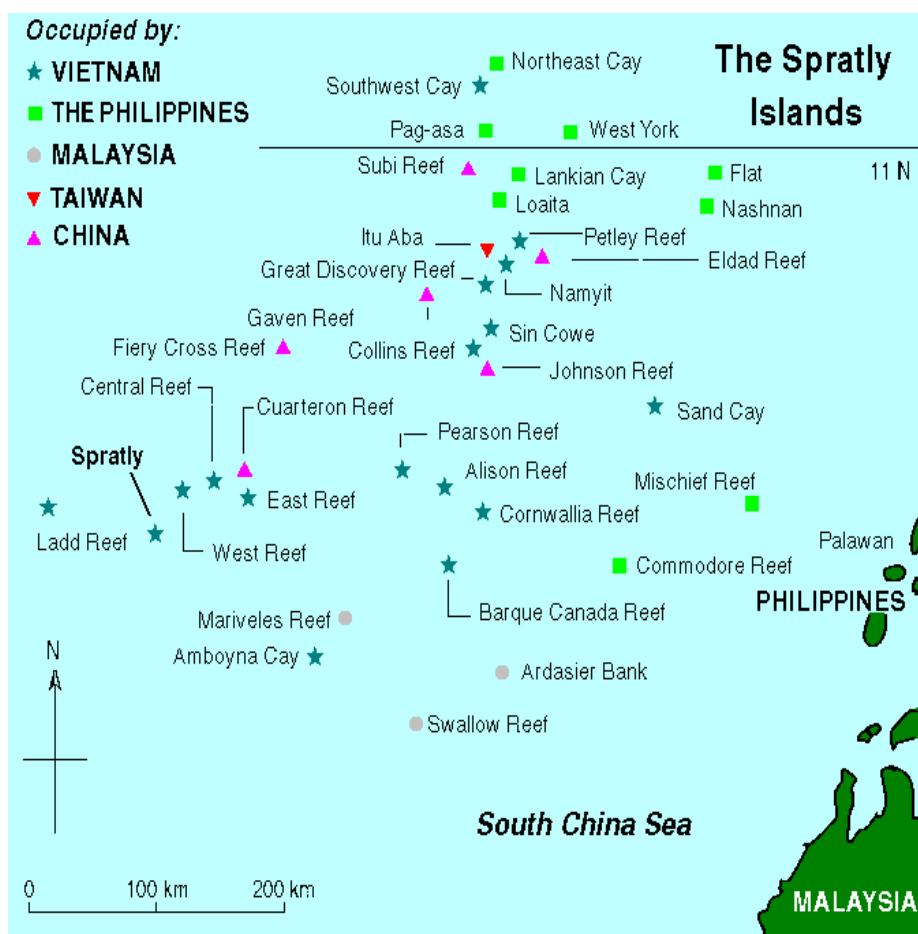
Japan, similarly to the United States, has a vested interest in the resolution of the Spratly disputes because of the shipping lanes, which supply Japan with 70 per cent of its imports from the Middle East. Moreover, Japanese companies are involved in exploration projects for potential resources in the disputed region. Japan has thus recently

been led to reconsider radically its policy of disengagement, and this new trend has been accelerated by the Senkaku/Diaoyu Islands dispute.

Many members of the Association of South-East Asian Nations (ASEAN) are directly involved in the current disputes. They are strongly concerned about what they perceive as US indecisiveness, lack of interest, hesitancy, self-restraint, or its timid attitude with regard to the PRC's tactical moves. They tend to feel that the US is not doing enough to counterbalance China's growing assertive power. Most ASEAN members are anxious about the US administration's quick acceptance of China's decision to set up a new Air Defence Identification Zone between China and Japan, which could one day be extended to South-East Asia. Washington even alerted US commercial airlines to comply in order to avoid accidents, although the US Air Force has not been asked to do so. Korea and Japan have refused to submit to this new unilateral rule.

Russia, after the Soviet Union's disintegration, did not maintain a major influence in the South-East Asia-Pacific region, while still supporting Vietnam's claims against China. Although Sino-Russian ties are deepening, at least when facing the United States, Russia has softly but persistently disapproved of Chinese encroachments and is now forging a deeper military-political relationship with Vietnam. In 2012, Russia announced its interest in regaining a naval base at Cam Ranh Bay in Vietnam, to facilitate its maritime energy projects and probably to maintain a better check on China. Russia is also helping Vietnam to build a submarine base. In return, China has repeatedly asked Moscow to stop oil and gas explorations in the South China Sea.

Map showing Occupation of the Spratly Islands



Source: GlobalSecurity.org, available online at <http://www.globalsecurity.org/jhtml/jframe.html#http://www.globalsecurity.org/military/world/war/images/spratmap.gif%7c%7c%7c>.

thus wrapping up the island like the leaves of a cabbage. Deprived of ways to get basic supplies, the former occupiers have to abandon the island, and – with so many layers of security around it – will not find it easy to come back.

The Philippines has accused China of building up a massive military presence in the Spratlys. In early 2012, the Philippines and China engaged in a maritime stand-off, with each accusing the other of intrusions in the Scarborough Shoal. Chinese and Philippine vessels refused to leave the area for a number of weeks, leading to harsh rhetoric. In July 2012, China formally created the city of Sansha, an administrative body with its headquarters in the Paracels, which was meant to control the Paracels and the Spratlys. Both Vietnam and the Philippines protested against this initiative. China has also signed contracts with foreign companies to explore energy resources in the disputed waters and has conducted military exercises in the Spratly area as a display of strength, thus generating an even more negative image of China. The soaring Chinese military budget and the modernization of the PRC's naval fleet and air force have spread considerable anxiety in the region, especially with the new Y-20 transport aircraft and the J-20 and J-31 stealth fighters. China now has the world's second-highest military budget behind the United States. The Philippines has warned China that it will take the dispute over the Spratly Islands to the International Tribunal on the Law of the Sea (ITLOS) in an attempt to limit the contested area. China has rejected this arbitration principle, but the Philippines has nevertheless declared that it will still take the case to the ITLOS. Vietnam has joined the Philippines on this issue.



PLAYING POWER ASYMMETRY

Since the 1980s, most of the disputing parties have engaged in a race to back up their claims to sovereignty by occupying some of the islands or by placing landmarks. According to their circumstances, parties have even built structures on rocks that are sometimes completely submerged at high tide, thus trying to maintain a physical presence on these islets. On other occasions, a major player such as China has played asymmetrically by resorting to so-called 'cabbage strategy', which consists of surrounding the contested islands with a huge number of vessels such as fishing boats, marine surveillance ships, administration ships and warships,

South-East Asian parties are not united regarding the sovereignty issue, but they are trying to build a common front, at least in order to minimize the size of the contested area and thus increase their leverage. However, while maintaining a common position gives the South-East Asian claimants a legal and diplomatic advantage over China, these countries have few concrete means to oppose China's moves. One way to compensate for this weakness is to get the United States involved in the disputes, but China strongly objects to such an initiative.

US INVOLVEMENT

On the issue of sovereignty, the United States has no particular interest in the contested islands, but this is not the case for the issue of rights over the maritime space. The US considers China's interpretation of the freedom of navigation in an exclusive economic zone to be far more restrictive than the US interpretation. However, as the US has not signed the Convention of the Law of the Sea, it does not have such a strong legal basis to discuss international maritime rights. The United States has, however, restated its commitment to defending the Philippines and has developed its links with Vietnam.

In its new strategy of regional assertiveness, some Chinese official voices have questioned Japan's sovereignty over the island of Okinawa, which is home to 25,000 US troops. The latest session of the Shangri-La dialogue in Singapore has shown that there is thunder in the air and that the point is nothing less than a security issue. The current trend therefore explains the new American military and diplomatic 'pivot' or 're-balance' towards the Asia-Pacific region, which is intended to meet vital

US economic and strategic interests. While demonstrating a renewed concern for what is going on in this part of the world, the United States has never clearly defined what its vital interests are. It is expected that when the 'rebalancing' of forces from the Atlantic to the Pacific is complete, 60 per cent of US military assets, including the Navy, will be based in the region – a 10 per cent increase from current levels. Beijing strongly objects to this 'pivot' strategy, stating that it makes China bound to take parallel initiatives. Having also read its Clausewitz, the Chinese government knows well that concentration of forces is usually a determining variable and it therefore maintains its military growth policy.

STRATEGIC FUZZINESS

China has never stated precisely and officially what the 'nine-dotted line' means, the extent of its claims in the South China Sea, and what rights it claims within the disputed areas. China's lack of transparency makes the current situation most uncomfortable for all the countries in the maritime region, and for the United States. Even Singapore, which is not a party to the disputes, has urged China to clarify its claims regarding the current ambiguity.

Since 2002, the Chinese decision-making system and international moves have been more and more difficult to understand and any global trend harder to infer. Some analysts of China's strategy and tactics regarding the Spratly Islands tend to think that given China's limited capability to take and hold so many islands, the current pattern of implementing hot-and-cold tactics is meant to throw the other contenders off balance until China is able to enforce its claim through intimidation or force. The emergence

of hawkish actions and speeches is part of Beijing's 'good cop–bad cop' tactical ploy to influence diplomatic negotiations over the disputed territory. The so-called 'salami tactics' that China tests on the other parties through aggressive actions, then backing off when it meets significant resistance, are typical illustrations. Furthermore, China's ambiguity on the extent and nature of its claims might be another tactical ploy to avoid having to come to an agreement before it is strong enough to get what it wants by force through *fait accompli*.

Other analysts stress that sovereignty is a particularly sensitive issue for the Chinese government in the current political period and requires domestic consensus. The various decision centres, such as China's Ministry of Foreign Affairs, the State Oceanic Administration, the People's Liberation Army and the military–industrial complex, have diverging objectives. Within these constraints, the priority is to maintain a stable environment that is propitious to China's economic development. China's strategy is still focused on continental defence. Chinese initiatives in the South China Sea area should be seen as primarily defensive and as serving a delaying purpose, thus keeping China's options open.

The South China Sea disputes may possibly not be solved without addressing the other maritime disputes in the East China Sea and the Yellow Sea. For over half a century, China has been the target of a policy of geostrategic containment that aims to limit its ambitions in the region. China still strongly resents being encircled. Such a perception might make these maritime border disputes more difficult to settle because of these underlying strategic considerations.

Major Trade Flows of Liquefied Natural Gas (LNG) in the South China Sea, 2011



Source: US Energy Information Administration; PFC Energy, available online at <http://www.eia.gov/countries/regions-topics.cfm?fips=scs>.

Ultimately, with regard to US–China relations, in the case of a crisis, either side might believe that displaying and possibly using its conventional forces would confer bargaining leverage. One could play on the other side’s fear of escalation, thus illustrating the Schelling formula of competition in risk-taking. If each of the parties values more what is at stake than the other, it might be willing to tolerate a higher level of risk. The region might thus be heading for an open confrontation.

OPTIONS FOR PEACE AND COOPERATION

All the countries that are part of the Asia–Pacific region face the same dilemma. Asian countries depend on China’s economic development, but they seek security aid from the US. This ‘Asia paradox’ has led to the following reality: countries of the region are developing closer economic links, while political conflicts among them have been increasing, especially between China and its neighbours.

Even if it does not lead to a Third World War, the Spratly Islands

disputes have far-reaching implications. Resolution of these disputes would not only impact upon the distribution of sovereignty and exploration rights, but would also affect the magnitude of future economic cooperation and security issues.

Some negotiation attempts have already been made. In 1992, an ASEAN declaration, endorsed by China, underlined that Spratly-related territorial disputes would only be resolved by peaceful means. In 2002, China and the members of ASEAN signed the ‘Declaration on the Conduct of Parties in the South China Sea’, which aims ‘to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned’.

Recent events show that Vietnam and China have clearly failed to stick to the agreement. Furthermore, ASEAN’s latest attempts to discuss new options for resolving the disputes appear to have left the coalition still divided. No accord on the thorny issue of sovereignty had been reached at the end of the discussions. However, the various parties agreed to send a scientific team to the disputed islands to assess their resource potential and environmental conditions, which is already a first step towards more cooperation.

To resolve disputes and regulate issues, the United Nations adopted the Law of the Sea Convention (UNCLOS) in 1982. The UNCLOS aims to establish coastal boundaries, erect an International Seabed Authority to regulate seabed exploration that is not within territorial claims, and to distribute revenue from regulated exploration. The UNCLOS also

contains parameters for a country's continental shelf (article 77). The continental shelf is defined as the underwater portion of a country's coastal land mass, including the seabed as well as the subsoil of the shelf. The deep ocean floor, however, is not considered part of a country's continental shelf.

In another domain, the UNCLOS confirms that all ships should be given the right to conduct innocent passage (unarmed, with no unloading of goods or people, etc.) on all territorial sea beds (Part II, Section 3, Subsection A, Articles 17–19). Ships are allowed within twelve nautical miles of the coast of a country, as long as they are not a threat to that country's national security. The third important part of the UNCLOS is Part VI, which provides backing to claims from Brunei, Malaysia and the Philippines, as it stipulates that justification is based on proximity, not history. Therefore, in the case of arbitration, China's, Taiwan's and Vietnam's historical claims would not have a very solid legal ground.

The International Court of Justice (ICJ) could also serve as a channel to resolve the Spratly-related disputes. In order for the ICJ to hear a case, however, all disputants must previously agree to ICJ arbitration. China has repeatedly refused to take this conflict-resolution route, given that its territorial claims far exceed anything established in existing international maritime law.

The extent of the Chinese claims, with the fuzzy 'nine-dotted line' limitation that includes waters not considered by others to be in the South China Sea, nurtures a high degree of confusion and anxiety. This generates tensions and instability in the region, but also leaves enough room for flexibility in future

negotiations. China has systematically tended to favour bilateral negotiations on the Spratly Islands' issue, whereas the other countries have pushed for multilateral negotiations or international mediation. History plays a major part in Chinese and Vietnamese cultures, much beyond legal considerations, and as a result the existence of the UNCLOS has not deterred these two countries from sticking to their historical claims.

The dispute over the Paracels and the water rights attached to them is a bilateral matter between China and Vietnam, and bilateral negotiations should obviously be the appropriate procedure. Likewise, the dispute over Scarborough Shoal and its waters is a bilateral matter between China and the Philippines, and could be resolved in a similar way. The Spratlys and their related waters are claimed wholly or partly by Brunei, Malaysia, the Philippines, Vietnam, Taiwan and China, and these disputes are therefore of a multilateral nature. As such, the resolution of the Spratly Islands' disputes requires a multilateral mechanism involving all the claimants. However, Chinese experts believe that there are hardly any grounds in international law for multilateral solutions to such disputes. Furthermore, according to them, if these disputes had to be settled multilaterally with the involvement of parties not directly concerned (in this case the US), it would only lead to chaos in the fragile international order.

It is also important to know what China means by 'negotiating' and how broad the scope of the discussions can be. China's starting position is not to negotiate on the issue of sovereignty, but rather to press for the following approach: first to accept that sovereignty belongs to China; and then the claimants could

jointly develop the resources with China through bilateral discussions. Strategically, the absence of a settlement gives China, as the party with overwhelming hard and soft power, growing prospects to assert its control over the situation.

An essential strategic dimension of China's approach is to maximize the size of the contested area. China's puzzling 'nine-dotted line' covers most of the South China Sea. China's recent interventions against the Philippines at the Reed Bank and against Vietnam's survey ships were conducted close to the Philippine and Vietnamese coasts. Given its overwhelming strength, China is likely to ensure that its own interests prevail. Facing the 'divide and conquer' Chinese strategy that is implemented through bilateral talks, the South-East Asian claimants are at least trying to minimize the size of the maritime territory at stake.

The Chinese 'cabbage strategy' – with its repeated incursions in contested areas – is enacted through 'salami tactics'. Each one of its moves is not supposed to trigger a dramatic reaction that could turn into an open conflict. What happens is an enduring nibbling process, which still has heavy consequences in the long run. Furthermore, if an open conflict erupts, the responsibility is easily placed on the counterpart.

From a geopolitical point of view, if the South China Sea becomes dominated by China, or if South-East Asian countries fall under Chinese dominance, there would be significant effects on the balance of power in the Western Pacific. This would raise high concerns from other major powers such as the US, Japan and even India. Given the nature and complexity of the current situation and the actual balance of

power, no legal procedure seems to be able to lead to a global accord. China's ratification of the Law of the Sea Convention was simultaneously completed by a special provision on the South China Sea's maritime domain, which is a most unusual practice in international negotiations. This provision states that 'this law shall not affect the historical rights that China enjoys', making any agreement-to-be political and thus most unlikely. Rising nationalism will render it difficult to find sufficient political support for the necessary painful compromises on sensitive issues such as sovereignty.

The situation may simply not be ripe for resolution. No evidence exists that the parties are ready to meet at the negotiation table, given the ongoing political situation in China and furthermore the need to focus on other more urgent problems. The best hope under the present circumstances may be that any future disputes do not elicit a violent confrontation as has happened in the past.

Informal tools may be used to explore ways to limited settlements, such as

the South China Sea Annual Informal Meetings, which are held in Indonesia on managing potential conflicts in the South China Sea. Initiated in Bali in 1990, these meetings have been attended by government officials in their private capacities. Technical experts have worked on aspects of maritime cooperation, security and resource development in the South China Sea. Representatives from both China and Taiwan have participated since 1991, at least maintaining a dialogue, although the outcome has so far been far from convincing.

The creation of a Joint Resource Development Authority has been strongly suggested by Chinese representatives. However, the Chinese concept of 'joint resource development' is understood as bilateral cooperation in disputed areas, while ASEAN claimants still insist on a multilateral joint development format.

Providing that China, Taiwan and Vietnam leave aside their 'historical' claim to the maritime territory, a political settlement based on the underlying

principles of the Law of the Sea could be reached through negotiations. The prerequisite, however, is enough political will on all sides. Perhaps the current mutually hurting stalemate is not hurting enough to push the parties to a more conciliatory attitude. However, if the situation escalates into a military confrontation, all parties' interests would be hurt, since the political and economic costs of war would be higher than any single party is currently willing or able to bear. Furthermore, relations in the region are generally cooperative and everyone benefits from this context. The establishment of an overall multilateral organization in charge of managing resource exploration and exploitation in the Spratly Islands' region could be negotiated as a first and enticing step towards a broader agreement that moves away from the zero-sum game that is the current framing. The likelihood of conflict in the South China Sea would then, at least, be drastically reduced.

NEW BOOK PROJECT ON FOCAL POINTS

As introduced elsewhere in this issue, PIN launches its new book project this September with a conference at CIRC in Denmark. Convenor of this project is Rudolf Schüssler. Two other projects have reached the end phase and are close to being published. Bill Zartman's Arab Spring project is expected to be published late this year under the title: *Intifadat: Negotiations under the shadow of social movements*. Also scheduled for publication this year is the book edited by Mark Anstey and Valerie Rosoux on reconciliation (for more information, please see the announcement in this PINPoints).

CLINGENDAEL POLICY BRIEFS

PIN has started publishing Clingendael policy briefs. In principal two are scheduled per year. The first one has appeared in March and was written by professor Zartman about policy options for several Arab spring countries (Tunisia, Morocco, Egypt and Syria). Still planned for this year are a policy brief about necessary negotiations skills for weapon inspectors and the role of justice in international negotiations.

TIM MASSELINK

The PIN team at Clingendael has been strengthened with the addition of Tim Masselink. Tim is an organisation psychologist by training. Before joining Clingendael he worked on EU affairs for the Dutch Ministry of Economic Affairs. Within the Academy he is responsible for intercultural communication and EU affairs training. Tim is also an accomplished negotiation trainer, especially on negotiation behaviour.

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MIKHAIL TROITSKIY

THE SINO–RUSSIAN PIVOT AND AMERICAN POWER

The ties between China and Russia have recently been receiving increased attention from international analysts against the backdrop of a crisis in Moscow's relations with the West. Russia's apparent readiness to rupture its relationship with the European Union and the United States over Ukraine can only be explained by Moscow's hopes to compensate for these losses by upgrading its relations with Beijing. Russia expects such an upgrade to involve both increased trade and mutual investment with China and enhanced cooperation in the field of security.

DEBATING THE 'MYTH'

American pundits have long been discussing the prospects for Sino–Russian partnership. Dmitri Simes and Leslie Gelb expressed grave concerns about the possibility of a full-fledged Sino–Russian alliance. They called on the United States to prevent it from materializing and warned against 'triangular diplomacy' whereby 'Moscow and Beijing could dangle the prospect of a potential alliance or ad hoc cooperative arrangement with the other to gain leverage over Washington'¹.

Samuel Charap and Ely Ratner im-

PLICITLY disagreed with that argument by criticizing the Obama administration for its overzealous attempts to reassure China in the aftermath of the Crimean crisis. Arguing that Russia has few bargaining chips to woo China and that Washington went too far in positing similarity of interests between China and the United States, Charap and Ratner considered Obama's intensive outreach to China in early 2014 an overreaction².

A far more numerous group of astute US observers pushed that argument further, by suggesting that the Sino–Russian rapprochement has always been transactional and that there is no way for it to evolve into a meaningful strategic alliance. Washington analyst and long-time observer of Russia Andrew Kuchins called such an alliance 'a myth'³. Kuchins used this term as a title for his review of a monograph by Australian–British international affairs expert Bobo Lo, who, in his turn, characterized the Sino–Russian relationship as merely an 'axis of convenience'⁴.

More recently, US Army War College Professor Stephen Blank argued that, for Russia, China's growing power overshadows all other strategic

threats. According to Blank, this imposes clear limits on the Sino–Russian rapprochement, even if Moscow never publicly admits to harbouring such concerns⁵. Blank sided with another expert on Russian foreign policy, Jeffrey Mankoff, who called Sino–Russian cooperation 'mostly tactical'. Mankoff explained:

The two countries approach the world from quite different vantage points. China is a rising power, with a fast-growing, export-driven economy eager to benefit from globalization. Russia is a stagnating petro-state seeking to insulate itself from the forces of change. Moscow touts its partnership with Beijing mostly to prove to the rest of the world that Russia still matters, while China views it as a low-cost way of placating Russia⁶.

All of these (and many other) authors have pointed out that China puts enormous value into its economic engagement with the United States. Indeed, the availability of the US market and investment capital has fuelled China's economic growth over the last two and a half decades. According to this viewpoint, Beijing will be hedging its bets when considering participation in any anti-US activity, and will certainly turn down any proposals for direct confrontation with the United States.

However, while containing many useful indicators and highlighting important trends, these analyses do not fully capture the salience of the

¹ Leslie H. Gelb and Dmitri K. Simes, 'Beware Collusion of China, Russia', *The National Interest*, July/August 2013, <http://nationalinterest.org/article/beware-collusion-china-russia-8640>.

² Samuel Charap and Ely Ratner, 'China: Neither Ally nor Enemy on Russia', *The National Interest*, 2 April 2014, <http://nationalinterest.org/commentary/china-neither-ally-nor-enemy-russia-10168>.

³ Andrew Kuchins, 'Sino-Russian Myths', *Survival*, vol. 51, no. 5, November/December 2009, pp. 185–192.

⁴ Bobo Lo, *Axis of Convenience: Moscow, Beijing, and the New Geopolitics* (London: Chatham House; and Washington, DC: Brookings Institution Press, 2008).

⁵ Stephen Blank, 'The Context of Russo-Chinese Military Relations', *American Foreign Policy Interests: The Journal of the National Committee on American Foreign Policy*, vol. 35, no. 5, October 2013, pp. 243–253.

⁶ Jeffrey Mankoff, 'The Wary Chinese–Russian Partnership', *The New York Times*, 11 July 2013, available online at <http://www.nytimes.com/2013/07/12/opinion/global/the-wary-chinese-russian-partnership.html>.

key factors shaping the Sino–Russian partnership. These are not only common perceptions of international security challenges, but also procedures, including negotiating routines, that largely determine the proximity of Moscow and Beijing in the international arena. This proximity cannot be explained by classical realist-style concepts that have difficulty accounting for the issue of mutual trust that is embedded in the procedures of engagement. The realist perspective also underestimates the impact of the low-intensity yet persistent commonality of strategic aspirations of two or more states. In the case of China and Russia, the common aspiration is balancing US power on the global scale – a goal that serves not only as a driver of the Sino–Russian partnership, but also as a useful means of mutual reassurance for Moscow and Beijing.

MITIGATING ‘DEMOCRATIC UNPREDICTABILITY’

There are a number of important ways in which the processes of Russia’s relations with the United States are different from those underlying Sino–Russian relations. First, there is little or no policy-making uncertainty generated by electoral cycles in the two countries, so both sides believe that they are not susceptible to the negative consequences of such cycles. In post-Mao China, top national leadership has been changing once a decade. This has been happening not through free and competitive elections, but rather as a result of an intricate bureaucratic selection and promotion process and a shared understanding among the Chinese political elite of the inviolability of the informal two five-year terms’ limit on the chairman’s tenure. Although Rus-



sia formally remains a democracy, elections with unpredictable results have not been held there since 2000. The presidential term was extended in 2011 to six years, with Vladimir Putin having started his first term (in the current sequence) in 2012. Given Putin’s high approval ratings, which have never fallen below 60 per cent, it would be a safe bet to predict that he will remain the dominant figure in Russian politics at least until 2018 or, if he so chooses, until 2024. The low risk of change in political leadership implies that the high-ranking bureaucrats surrounding the top political leaders – both in the government and major state corporations – are

set to remain in place in the medium to long term. This clearly pertains to the largest oil and gas companies – Rosneft and Gazprom in Russia, and CNPC and Sinopec in China – as well as the biggest state-controlled banks in both countries⁷.

Second, there are no serious two-level games in Chinese and Russian politics. Foreign policy-making in both countries seems almost unaffected by competition for influence among branches of government and a variety of non-state actors. This is a result of the substantial concentration of power in the hands of the executive branch in both Beijing and Moscow. Despite the presence of constraints on presidential authority in the Russian Constitution and formally

⁷ Mikhail Troitskiy, ‘The Building and Unraveling of Security Communities’, *Carnegie Europe Blog*, 7 July 2013, available at <http://carnegieeurope.eu/2013/07/09/building-and-unraveling-of-security-communities/gdzc>.



democratic elections to the lower chamber of Russia's parliament, the actual control over parliament by the pro-Kremlin party eliminates all risks of legislative opposition to presidential foreign policy (or any other) initiatives. Business communities in Russia and China strongly depend on the regulatory power and goodwill of their government and have limited avenues for effective lobbying in the parliament. As a result, leadership in both countries appears unhindered in making grand foreign-policy decisions, such as the annexation of Crimea, a move that almost certainly aroused widespread (if muted) concern and discontent among the Russian business community, which ultimately has to pay the price of sanctions imposed on Russia by the West.

The absence of the 'election factor' and struggle for policy-making roles among government bodies in Moscow and Beijing are in sharp contrast with the principal operational modes

of the US political system. Both Russian and Chinese leaders have repeatedly complained about the unpredictability of policy-making in the United States that arises from both the regular change of elected officials and bargaining – indeed sometimes an all-out tug-of-war – between the executive and legislative branches of government. Moscow has claimed that only Congressional guarantees could alleviate Russia's concerns about US missile defence projects. Senior members of the Russian government routinely criticize the United States for refusing to honour Washington's purported commitment not to enlarge NATO after the end of the Cold War. Even if such a commitment had in some form been extended to Mikhail Gorbachev by the George H.W. Bush administration some time in 1989 or 1990, the subsequent Clinton administration would not have wanted to accept any responsibility for these promises. In their turn, Chinese commentators have a long record of deriding dysfunctionality

in US politics and economic policy caused by the inability of the US president and Congress to find mutually acceptable compromises on the debt ceiling, taxation, free trade and a number of foreign policy issues.

There is also, however, usually high unpredictability of decision-making in unbalanced and monopolized political systems. It arises first and foremost from the whims of unconstrained leaders, which in the long run bodes ill for both the system and its counterparts. Politics in unbalanced systems is usually opaque: unaccountable leaders often indulge in ideational constructs or manipulative instincts, little information is publicly released, and informal tasking is widespread. As a result, virtually no one outside the government can explain or predict the course of action of the country in question. Indeed, it can be argued that the main adhesive force keeping security alliances and security communities together derives from the mutual transparency of decision-making in member countries. It is not necessary – and in many cases is detrimental – for the decision-making procedures to be transparent to those outside the alliance or community. But the 'insiders' are only fully reassured of mutually benign intentions when they have a satisfactory grasp of the motivations and processes behind major foreign policy decisions in the counterpart country.

Having declared their common intention to counterbalance the United States in 1997⁸, Moscow and Beijing have remained markedly sensitive to the possibility of the other side's foreign policy priorities being revised. In 2009–2011, China was eyeing the US–Russia 'reset' with significant concern. Beijing mistrusted Dmitry Medvedev as he pursued 'reset' with the US in his capacity as Russian

⁸ See *Russian–Chinese Joint Declaration on a Multi-polar World and the Establishment of a New International Order*, adopted in Moscow on 23 April 1997, available online at <http://www.fas.org/news/russia/1997/a52--153en.htm>.

⁹ For example, former US Treasury Secretary Henry Paulson recalled receiving information in the aftermath of the August 2008 war in Georgia about Russia's proposal to Beijing to begin massively selling US Treasury bonds in the hope of unravelling the US financial system, which was already under stress by late 2008. See Henry Paulson, *On the Brink: Inside the Race to Stop the Collapse of the Global Financial System* (New York, NY: Business Plus, 2011), p. 161.

¹⁰ Minxin Pei, 'How China and America See Each Other and Why They Are on a Collision Course', *Foreign Affairs*, March/April 2014, available online at <http://www.foreignaffairs.com/articles/140755/minxin-pei/how-china-and-america-see-each-other>.

¹¹ 'Address by the President of the Russian Federation Vladimir Putin to the Federal Assembly', 18 March 2014, available at <http://eng.kremlin.ru/news/6889>.

president; China clearly preferred to believe that Vladimir Putin was the one really calling the shots in Moscow even during Medvedev's presidency. In a similar way, the Russian leadership and mainstream experts have never stopped trying to convince their Chinese counterparts to side unequivocally with Russia in taking on the United States, and were often annoyed by China's ambiguity and positioning as a 'developing nation with limited global ambitions'⁹.

MEANS OF REASSURANCE

Moscow and Beijing, however, have undertaken to reduce unpredictability in mutual policies and ensure sufficient decision-making transparency – even in the absence of formal rules – by cementing trust and undertaking a number of costly signals – measures that would generate significant losses for one side should it try to rock the relationship or disturb the other side.

Over the last fifteen years, Moscow and Beijing have reassured each other of the commonality of their overarching declared foreign policy goal: balancing the United States in the international arena. The first type of costly signals exchanged by Moscow and Beijing included rhetorical anti-Americanism and symbolic moves *vis-à-vis* the US, such as efforts to convince third states of the waning influence of the United States (and the West in general) and to recruit these states into the counterbalancing coalition. Such rhetoric and action have been useful as means of testing each other's intentions and reaffirming mutual support.

The second type of costly signals between Russia and China has been an extensive exchange of information between the sides on the topic of mutual interests. If such exchange

indeed occurs, it is happening behind the scenes with hardly any evidence available to non-vetted observers. However, there are a number of facts that indirectly confirm this hypothesis.

Each side clearly possesses plenty of valuable information collected by electronic and other means. It is also likely that the information available to one side often complements that available to the other. There is no reason why at least some of this information cannot be shared with a partner that has credibly committed itself to counterbalancing a common rival. Members of NATO have established formal structures and procedures to exchange sensitive information. Such sharing has always remained one of the pillars of the alliance, especially during periods when the perception of a common outside threat was fading away (such as between 1991 and 2014). In a similar way, information-sharing between China and Russia could be (and very likely is) a powerful signal of mutually benign intent, as well as of the willingness to continue down the path of counterbalancing the United States and its allies. This exchange both signifies and reinforces trust in relations between Moscow and Beijing.

CONCLUSION

In the absence of formal collective defence commitments and despite a number of contradictions between China and Russia, Beijing and Moscow are seeing eye-to-eye on the key contemporary global issue: the role of the United States in the world.

Both China and Russia are fixated on American power – as opposed, for example, to their own security, which arguably can be ensured even in a world dominated by the United States. The Chinese policy-making

community firmly believes that US policy in (and – possibly – also beyond) Asia is driven by Washington's determination to contain China¹⁰. Russian approaches are very similar, and a long list of grievances about Russia's treatment by the United States over the past two decades was presented by President Putin in his 'Crimea address' to the Russian Federal Assembly in March 2014¹¹. As long as the primary foreign policy goal of both Moscow and Beijing remains to balance US power on the global scale, the two sides will be attracted to each other by a potent force. Only if and when one of them resolves to reconcile itself with a world in which the United States is the only superpower (or the US objectively ceases to be such), will the Sino-Russian international policy coordination begin to fade away and mutual suspicions cease. This coordination of balancing postures *vis-à-vis* the United States plays a key role in sustaining the quasi-alliance between Russia and China.

For the moment, both sides have credibly committed to counterbalancing US influence despite diverging regional aspirations – with China focused on the maritime spaces and islands to the east and south, and Russia on post-Soviet Eurasia. As of June 2014, Moscow was bracing for a frontal assault against the United States, accusing Washington of anti-Russian policies across the former Soviet area, while Beijing seemed unprepared for abrupt shocks in relations with Washington. At the same time, China was reaping clear benefits from a crisis in US-Russian relations, as American diplomats and the military were reaching out to China in the hope of hindering Beijing's continued rapprochement with Moscow.

MORDECHAI (MOTI) MELAMUD

TO VERIFY OR NOT TO VERIFY: A MAJOR ISSUE IN THE DEVELOPMENT OF WMD ARMS CONTROL REGIMES



As an important mechanism by which states can be assured of the desirability and feasibility of a disarmament or arms control regime (ACDA, 1976), the creation of a verification system is one of the foremost issues to be tackled in negotiations for an arms control treaty. It gets attention already at the pre-negotiation phase. A verification regime is an important part of arms control treaties, functioning as a confidence-building measure, ensuring that treaty requirements are actually implemented by each member state, and also as a deterrent against potential violators (Butler, 2000, p. 12). Verification assures implementation, and assured implementation enhances the validity and thereby the effectiveness of the negotiation process for a treaty. As

stressed in the Verification Yearbook 2000 by VERTIC: 'ever since the term arms control was "invented" in the 1960s, verification has been a vital consideration in decisions about whether or not to negotiate particular treaties and how to cast them once the decision was made to proceed' (Findlay, 2000, p. 15). 'Trust but verify' is thus a motto underlying many arms control treaties negotiations¹. Yet despite verification's crucial importance in arms control regimes, verification is sometimes an impediment to the negotiation of these regimes. Verification is described by Linton Brooks² as the most difficult part of negotiations, as based on his experience negotiating the Strategic Arms Reduction Treaty (START)³, or, as bluntly referred to by the Center for Strategic

and International Studies (CSIS) regarding the cause for a delayed negotiation, 'It's verification, stupid' (CSIS, 2009). Indeed, the existence of a verification regime would be a substantial aid in assuring potential treaty parties of the value of the regime and of other parties' compliance (or non-compliance) with it, thus reducing the risk of signing on to an agreement that would worsen their standing; yet an incompetent verification regime that might provide a false sense of security could be much more harmful than a treaty without verification. Since the technical challenges for reaching the elusive 'effective' level of verification and the differing opinions of what that would actually constitute are daunting, verification often becomes an impediment to the conclusion of arms control treaties.

¹ This well-known expression, which was made famous by former US President Ronald Reagan (who used the phrase at the signing of the Intermediate-Range Nuclear Forces (INF) Treaty and on many other occasions), is a translation of the Russian rhymed-proverb: *Доверяй, но проверяй (doveryai, no proveryai)*, allegedly used by Lenin.

² Linton F. Brooks is an independent consultant on national security issues, a senior adviser at CSIS; he is a former US Ambassador and former Under-Secretary of Energy for Nuclear Security, and Administrator of the National Nuclear Security Administration (NNSA). See online at <http://csis.org/expert/linton-brooks>.

³ START was a bilateral treaty between the United States and the USSR on the reduction and limitation of strategic offensive arms.

Verification is indeed a most crucial element in an arms control or disarmament treaty, yet as a highly technical aspect of the negotiation process, it can be explored and designed in the very early stages



Mikhail Gorbachev (left) and Ronald Reagan signing the Intermediate-Range Nuclear Forces (INF) Treaty, December 8, 1987.

of the treaty negotiation process – even without the political agreement and will that are necessary for the negotiation process itself – thus affecting (or being affected by) the political aspect of the negotiations. Indeed, the conclusion of a substantial multilateral effort to explore verification aspects prior to an official treaty negotiation process has historically been an extremely useful model. When the technical details are thoroughly explored before political negotiations begin, different solutions and options are generated, which later enhance the ripeness of the negotiation process. Ripeness as a concept of the nego-

tiation process includes more than just political will, but is a state that requires parties to perceive the negotiation process as one that could possibly conclude with a negotiated solution⁴.

This article presents the idea that in arms control and disarmament negotiations, which are heavily reliant on the verification regime aspect of a treaty, the perception of the technical possibility or capability of verification by the parties would strongly support the achievement of ripeness. The development of a verification rationale and the technical details of the verification regime at a very early stage of the negotiation process, or even prior to it, can therefore be a meaningful step towards getting negotiations off the ground and reaching an agreement.

VERIFICATION AND ITS PERCEIVED ROLE IN ARMS CONTROL AGREEMENTS

Verification encompasses the gathering of information (monitoring) about treaty implementation by member states, and analysis of this information in order to make judgements about the parties' compliance with the terms of an agreement or treaty. The information may be provided by the parties to the agreement themselves, or it could be obtained by remote technical means, or by inspectors in the field (Melamud, 2000). Based on the information gathered and the technical analysis of its meaning, specifically designated persons or bodies are charged with passing compliance (or non-compliance) judgements. Verification of international agreements is usually implemented by an

⁴ According to Zartman, 'If the parties to a conflict (a) perceive themselves to be in a hurting stalemate and (b) perceive the possibility of a negotiated solution (a way out), the conflict is ripe for resolution (i.e., for negotiations toward resolution to begin)' (Zartman, 2000, p. 228, Proposition 2).



international body that is specifically established for this purpose.

Some of the relevant means for verifying disarmament or arms control agreements for weapons of mass destruction (WMD)⁵ are well understood and known to be largely effective (for example, the International Atomic Energy Agency (IAEA) safeguards), but they are rarely full proof. Verifying chemical or biological disarmament is complicated because of the widespread presence of precursors to chemical and biological warfare agents in the civil and commercial industries. In the nuclear case, the potential for diverting materials from a civil nuclear power programme into military uses is a complicating factor that will always

affect civil nuclear-power generation, and has a major bearing on progress towards a nuclear-weapon-free world (Milne, 2002). Verification methods related to nuclear disarmament are especially challenging issues because of their relation to national security interests.

Effective verification – generally understood as the ability to detect non-compliance that would be militarily or politically significant and in time to take corrective action – became one of the key criteria for the establishment of arms control regimes during the second half of the twentieth century. The importance of verification has been recognized by the UN General Assembly (UNGA), and the need for effective verification has consistently appeared in many UNGA resolutions on the establishment of arms control treaties since the end of the Second World War.

The first resolution adopted by the UNGA during its first session on 24 January 1946 'established a commission to deal with the problems raised

by the discovery of atomic energy'. This resolution included already at this early stage all the seeds for the verification requirements as they were developed in later years by the international community in trying to curb the development and proliferation of WMD, including the requirement for verification that appears in the Terms of Reference: 'The Commission shall make specific proposals [...] (d) for effective safeguards by way of inspection and other means to protect complying States against the hazards of violations and evasions' (UNGA, Resolution 1(I), 24 January 1946). In 1959 under the title 'Prevention of the wider dissemination of nuclear weapons', a UNGA resolution suggested considering appropriate means, 'including the feasibility of an international agreement subject to inspection and control' (UNGA, Resolution A/RES/1380(XIV), 20 November 1959). In 1997, the UNGA reaffirmed 'the critical importance of, and the vital contribution that has been made by, effective verification measures in arms limitation and disarmament agreements and other similar obligations' (UNGA, Resolution A/RES/52/3, 1997). In this resolution, the UNGA also reaffirmed its support for the sixteen principles of verification (non-exhaustive list) drawn up by the Disarmament Commission in 1988 (UNGA, 15th Special Session, A/S-15/3, pg. 49) The second of the sixteen principles states that 'Verification is [...] an essential element in the process of achieving arms limitation and disarmament agreements'; and its ninth principle states that 'Verification arrangements should be addressed at the outset and at every stage of negotiation on specific arms limitations and disarmament agreements'. The list includes principles relating to the employment of different techniques, and the development of procedures to be implemented in accordance with international law,

⁵ The term WMD was defined in 1948 by the UN Commission for Conventional Armaments by defining weapons that do not fall within its jurisdiction: 'weapons of mass destruction should be defined to include atomic explosive weapons, radioactive material weapons, lethal chemical and biological weapons, and any weapons developed in the future which have characteristics comparable in destructive effect to those of the atomic bomb or other weapons mentioned above' (UNSC, Resolution S/C.3/32/Rev.1, p. 2, 18 August 1948).

all to be relevant within the context of the specific agreement; it already envisaged the possible establishment of a special organization to implement the verification and refers to the sensitivity of this implementation and the avoidance of abuse. All of these principles can be found in one way or another as part of actual verification regimes in later agreements and treaties. A UNGA resolution that was adopted recently and titled 'Towards a nuclear-weapon-free world: accelerating the implementation of nuclear disarmament commitments' calls upon all states to support 'the development of appropriate nuclear disarmament verification capabilities and legally binding verification arrangements, thereby ensuring that such [fissile] material remains permanently outside military programmes in a verifiable manner' (UNGA, Resolution A/RES/67/34, Para. 8, 4 January 2013).

The above examples of the UNGA's references to verification show that the notion of verification and its importance in arms control agreements was on the agenda during the second half of the twentieth century and remains so today. The key properties of a verification regime – namely, inspection, control, effective safeguards and compliance – can be traced through UNGA resolutions on WMD mechanisms to be negotiated, thus illustrating the importance that is attached to this concept in the development of international means to prevent proliferation.

VERIFICATION AS A SUBSTANTIAL CONTRIBUTION IN THE PRE-NEGOTIATION PHASE

As already included in the sixteen principles of verification mentioned above, the existence of a concept for a particular treaty's verification

regime already before official negotiations begin, or its development during the pre-negotiation phase, can prove to be very meaningful in allowing the negotiation to proceed and eventually to reach conclusion. While there may, of course, be other issues that carry weight in postponing a negotiation process or procrastination therein, the actual negotiation towards resolution cannot begin without some scheme, even if minimal, or the accepted exclusion of a verification regime. Verification issues go hand in hand with political motivation along the road towards reaching an international arms control treaty; even if the political will is there, the under-development of a verification regime may be an impediment on the way to finalizing a treaty (see the example of the fissile material treaty below).

The development of a verification regime occurs at different stages of the development of a treaty regime, and a survey of central arms control treaties, as presented below, shows the different manifestations along a general spectrum, ranging from 'Trust, but don't bother to verify' (which relieves the negotiating parties from the burden of developing an agreed verification regime), through diverse methods and timelines for developing a verification regime, all the way to dragging the pre-negotiation stage out (as long as no good solution for the required verification is found) without a foreseen resolution.

The **Biological Weapons Convention** (BWC) was the first multilateral disarmament treaty to ban the production and use of an entire category of weapons. Starting in 1969, the Eighteen Nations Disarmament Committee (later to become the Conference on Disarmament, CD) conducted negotiations on the text of the Convention on the Prohibition

of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (known as the BWC), which entered into force in 1975. In conjunction with the 1925 Geneva Protocol, the BWC banned member states from developing, producing, or possessing biological weapons. Based on a report of the Disarmament Committee, the UNGA, in a resolution titled 'Question of Chemical and Bacteriological (Biological) Weapons' commends taking steps towards the prohibition of biological weapons, their development, production and stockpiling. The resolution stresses the importance of verification and commends the international verification measures in order to provide 'an acceptable system that would ensure the effective implementation of the prohibition' (UNGA, Resolution A/RES/2662(XXV) 5, 7 December 1970). Yet the eventual convention that was concluded following the negotiation process contained no such mechanism to verify compliance of the states parties. This was a result of the recognition that the technical methods available at the time were not sufficient for implementing an international verification regime, and the available procedural methods were too complex. This resulted in a status of 'trust but do not bother to verify' for the BWC, thus paving the road for a reasonably fast process of negotiation on the treaty's text. The member states were not, however, fully satisfied with this situation, and the search for an appropriate verification regime has continued since the entry into force of the BWC. A group of governmental verification experts (VEREX) was established at the Third Review Conference in 1991 to identify and examine potential verification measures from a scientific and technical standpoint (VEREX, 1993). Then, at a special conference in September 1994, the states par-



Jawaharlal Nehru

ties agreed to establish an ad-hoc group of the states parties in order to negotiate and develop a legally binding verification regime for the BWC. Although scientific developments have brought in new methods that may help in developing verification techniques, the complexity of such a regime, technically and procedurally, and particularly its anticipated intrusiveness ward off states parties from reaching a decision on any manner of implementation. The draft protocol developed by this ad-hoc group was rejected in 2001 by the US (under the Bush administration), which also holds the view that the BWC is non-verifiable (Bailey, 2002; Findlay, 2006). Another effort on BWC verification was the Trilateral Agreement in the form of a Joint Statement on Biological Weapons by the governments of the United Kingdom, the United States and the Russian Federation, which was issued after a meeting in Moscow of senior officials

in September 1992, although this arrangement ceased to exist in April 1996 (Kelly, 2002).

Included within the BWC was the stipulation that countries commit themselves to negotiating an international treaty banning chemical weapons. Such a convention had been the subject of nearly twenty years of negotiations within the Conference on Disarmament in Geneva, but '[u]nlike the BWC, the negotiators of the chemical weapons ban reached an understanding that this ban would be subject to international verification. To this end, trial inspections of both industrial and military facilities were undertaken, starting in late 1988' (OPCW, 1997). The realization of a treaty text was thus contingent on the trial inspections to prove the usefulness of the verification concept. The **Chemical Weapons Convention** (CWC) entered into force in 1997 and a fully functioning implementing organization, the Organization for the Prohibition of Chemical Weapons (OPCW) based in the Hague, is currently in operation, in charge of the treaty's elaborate verification regime.

The **Treaty on the Non-proliferation of Nuclear Weapons** (or NPT) is the most widely adhered to arms control agreement. The NPT entered into force in 1970, adopting as a verification mechanism the IAEA's safeguards system. According to the NPT, nuclear-weapon states are obliged not to transfer nuclear weapons, other nuclear explosive devices, or their technology to any non-nuclear-weapon state (NPT, Article I). Non-nuclear-weapon states parties, while bestowed by the treaty with the right to peaceful uses of nuclear energy, undertake not to acquire or produce nuclear weapons or nuclear explosive devices and to conclude agreements with the IAEA for the application of IAEA safeguards to verify their non-

proliferation commitments and that their peaceful uses are not diverted into military uses (NPT, Article III). A contributing factor to the NPT's relatively swift negotiation process was the fact that the IAEA was already a working organization with safeguards protocols to ensure peaceful uses of nuclear technology since long before the NPT was negotiated⁶.

In efforts to prevent the spread of nuclear weapons, the international community undertook to conclude an agreement preventing nuclear testing. The UN General Assembly's decision from 1959 to mandate negotiations on a test-ban treaty called for 'discontinuance of nuclear tests with effective international control' (UNGA, Resolution A/RES/1380(XIV), 20 November 1959). Intensive efforts to negotiate a Comprehensive Test-Ban Treaty (CTBT) were carried out from 1958 to 1963. These efforts involved complex technical problems with verification and the difficulties of reconciling deep-seated differences in approaches to arms control and security, which included seismological methods for monitoring the underground environment that were thought to be inadequate, and difficulties in reconciling varied approaches to arms control verification techniques, mainly the former USSR's resistance to on-site inspections (Richards and Zavales, 1996). The negotiations resulted in the **Partial Test-Ban Treaty** (PTBT) (or **Limited Test-Ban Treaty**, LTBT), which prohibits nuclear explosions in all environments, not including underground. As a result of the difficulties mentioned above, the PTBT does not provide for international verification, but it is understood that each party may do so by its own national technical means. The PTBT was signed and entered into force in 1963 and was the first major multilateral arms control agreement of the Cold War. The

⁶ The second pillar of the NPT, according to Article VI, states that all states are obliged to 'pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament' and calls for a future verifiable complete disarmament, but this provision has no verification component to it in the NPT.

problem of negotiating an agreed verification regime to ensure compliance with a complete ban on nuclear weapon tests in all environments proved to be intractable at that time⁷, but the goal was pursued further, and the next step in negotiations towards the sought-after comprehensive test ban was the accomplishment of the **Threshold Test-Ban Treaty** (TTBT), which was signed in July 1974, establishing a threshold on underground nuclear weapon tests by prohibiting underground nuclear explosions with a yield exceeding 150 kilotons (Ifft, 2009). The **Peaceful Nuclear Explosions Treaty** (PNET) was a companion treaty, which applied the same threshold to peaceful nuclear explosions that were being explored at the time, such as for constructing canals, etc. These two treaties already contained protocols about limited verification arrangements that include the interchange of information about tests and possible on-site inspections, based on the verifying party's national technical means, to be carried out during the planned test. For many years, neither the US nor the former USSR ratified the TTBT or the PNET, but in 1976 each side agreed to observe the 150-kiloton limit, pending ratification. In 1987, after a series of six rounds of negotiations, the US and the USSR agreed to revise the PNET Protocol to include more effective verification provisions that were based on technological advancement since the 1970s. Another series of six rounds of talks, which took place between 1987 and 1990, resulted in the signing in June 1990 of a new protocol that provides for an enhanced regime of verification. The TTBT and the PNET, with the new verification protocols, entered into force on 11 December 1990. This achievement – of the

agreement on a verification regime for the TTBT and PNET – was an additional landmark on the road to the desired comprehensive test-ban treaty; although not a full test-ban but a verifiable partial control on nuclear tests. The search for an acceptable verification regime for a full test-ban was still developing.

In 1954, India's Prime Minister Jawaharlal Nehru became the first statesmen to call for a 'stand still' agreement on nuclear testing, and this concept was in the background of the PTBT, TTBT and PNET negotiations (as described above). While these other international treaties on nuclear test-bans were negotiated based on the understanding that a verification regime for a comprehensive test-ban is not yet achievable, the search for such a regime was being studied all along. In July 1976, long before the political negotiations on the **CTBT** started in 1993, the Conference of the Committee on Disarmament in Geneva created an international Group of Scientific Experts (GSE) to specify the characteristics of an international monitoring system to provide the groundwork on verification for a CTBT. The CTBT, more than any other international treaty, is dependent on a diverse number of scientific and technological methods for its exceptional verification regime. Although the concept for a monitoring system had already been suggested in 1958 by a British scientist, Sir William Penney, it was discarded then for not being reliable and sensitive enough. Critics of that proposal contended that the system's limitations were not strongly presented, and the idea of deliberate evasion was not discussed (Richards and Zavales, 1996). The regime developed by the GSE over the period of two decades responds to the concerns raised regarding the original proposal from 1958. It is based on 24/7 moni-

toring of the whole globe by an International Monitoring System of 321 stations. These stations provide data to an International Data Centre (IDC) in Vienna, which characterizes all signals in order to detect any signal that may point to non-compliance. An on-site inspection mechanism is provided for by the treaty, along with allowed techniques and procedures. Based on the GSE's positive results, the CTBT negotiations started in 1993 and were concluded in 1996 (Melamud, Meerts and Zartman, 2014). The CTBT has not yet entered into force, however, as it is still waiting for eight specific states to ratify it (according to a provision in Article XIV and Annexe 2 to the Treaty).

Parallel to the efforts to conclude the CTBT, nuclear weapon-free zones (NWFZ) have been established around the globe. The first of these regional agreements was the **Treaty of Tlatelolco**, defining Latin America and the Caribbean as a NWFZ, which was opened for signature in 1967. Verification for this treaty is based on the IAEA's safeguards, which the ratifying states had the obligation to join, while a regional organization, OPANAL, is in charge of overseeing compliance with the treaty. While adherence by all regional states was necessary for the treaty's entry into force, any party could have brought the treaty into force on its territory at any time after its ratification by waiving the provision described in Article 28. It took Argentina 26 years and Brazil 27 years (in 1993 and 1994, respectively) to become full parties to the Treaty of Tlatelolco after accepting the special waiver in Article 28. These two states, with the most advanced nuclear programmes in Latin America and the potential to develop nuclear weapons, remained outside the treaty's purview for a long time, and became full parties to the treaty only after they decided to

⁷ See the discussion at <http://www.state.gov/t/isn/4797.htm#treaty>.

give up their military nuclear option and when they were able to reassure themselves that the other nation would also be in compliance. This was achieved by reaching the Quadripartite Agreement⁸ of 13 December 1991 involving Argentina, Brazil, the Agency for Accounting and Control of Nuclear Materials (ABACC)⁹ and the IAEA for the application of IAEA safeguards and additional, strengthened, bilateral verification provisions, which were a requirement for Argentina and Brazil to cover their mutual concerns before fully applying the Treaty of Tlatelolco on their territories. This example demonstrates the high significance that states confer on verification arrangements and their completion before fully embracing a non-proliferation and arms control treaty.

A Conference on Disarmament (CD) mandate was drawn in 1995 for negotiating a **Fissile Material Cut-off Treaty** (FMCT), with the objective of negotiating a treaty to ban the production of fissile material for nuclear weapons. According to the mandate, the treaty was to be 'non-discriminatory, multilateral and internationally and effectively verifiable' (Shannon Report, CD/1299, 24 March 1995). This was based on a 1994 UNGA resolution, recommending the negotiation of an 'internationally and effectively verifiable treaty banning the production of fissile material' (UNGA, Section L, p. 15, in UNGA A/RES/48/75, 7 January 1994). The CD is still at the stage of pre-negotiation on the FMCT, which has been in stalemate for many years because of diverging views, technical difficulties, as well as political linkages. One issue that is delaying the negotiation is the question of whether the future

treaty will cover existing stocks of fissile materials (targeting the stocks held by the nuclear-weapon states, which could be used for construction of future nuclear weapons) or only future production starting from the cut-off of the treaty's entry into force. Each scenario would require a very complex verification regime that has yet to be developed, because of the extreme technical complexity and necessarily high levels of intrusiveness. IAEA safeguards' methods may be relevant for part of this regime, but the management of stocks on a global scale is to date an unsolved issue. Notwithstanding the scope of a FMCT when it is agreed, the verification regime is a major issue and may have different objectives and implementation methods depending on the achieved agreement's scope. In any case, dwelling on FMCT verification is a complex mission even from a technical aspect, and if negotiations are to conclude successfully, this mission should be undertaken as soon as possible.

Parallel to the political developments regarding the FMCT pre-negotiation phase, work is being done by different agencies on developing a concept for a FMCT-applicable verification regime. One example is the **International Panel on Fissile Materials** (IPFM), which was founded in January 2006 to deal with developing verification concepts for a FMCT. This is an independent group of arms control and non-proliferation experts from eighteen countries, including both nuclear weapon and non-nuclear weapon states, the mission of which is 'to analyze the technical basis for practical and achievable policy initiatives to secure, consolidate and reduce stockpiles of highly enriched

uranium and plutonium'. According to the group, 'successful development of nuclear weapon and fissile material verification procedures and technologies will likely require more such collaborative R&D efforts' (IPFM, 2009). This group (and other existing national initiatives) is reminiscent of the GSE, except that in this case it is not mandated by the CD as an official international research group, although it underscores the need for progress in the search for a verification regime in order to advance the FMCT negotiations.

A Nuclear Weapons-Free World (NFWF) is an objective for which much public and political pressure has been wielded for many years, but the concepts of verification for such a treaty are still far from fully developed: 'Not surprisingly, verifying, monitoring and enforcing agreements on the path towards a world free of nuclear weapons will be complex and challenging' (Hinderstein, 2010, p. xx). Parallel to the political issues to be dealt with on the way to a NFWF, the issue of verification is of high priority, and it is clear that verification is an important requirement for a future Nuclear Weapons Convention to establish a NFWF (Scheffran, 2010; Burroughs, 2010). The drive towards a NFWF can be found in UNGA resolutions relating to accelerating the implementation of nuclear disarmament commitments (UNGA, Resolution A/RES/67/34, 4 January 2013), which tie these commitments to Article VI of the NPT and are targeted at the nuclear-weapon states. As the UN Secretary-General Ban Ki-moon said in an address on 24 October 2008: 'the nuclear-weapon States, to fulfil their obligation under the [Nuclear Non-Proliferation] Treaty to undertake negotiations on effective measures leading to nuclear disarmament [...] could pursue this goal by [...] negotiating a nuclear-

⁸ The Quadripartite Agreement is described in the IAEA document INFCIRC/435; see online at <http://www.iaea.org/Publications/Documents/Infcircs/Others/inf435.shtml>.

⁹ The ABACC was established as a bilateral agency for verification between Brazil and Argentina in 1991.

weapons convention, backed by a strong system of verification, as has long been proposed at the United Nations' (NTI, 2013).

A NFWF verification regime presents a new challenge for verification experts that will require attending to the issue of dismantling existing nuclear weapons and their delivery systems, thus requiring verification and monitoring methods that have not yet been fully studied. This issue is being studied by different agencies: 'policy-makers and technical specialists try to devise effective elements of a viable warhead dismantlement verification regime' (Fuller, 2010). One example is the Open-ended Working Group, which was established in Geneva in 2013 to develop proposals to take forward multilateral nuclear disarmament negotiations for the achievement and maintenance of a world without nuclear weapons

with the contribution of international organizations and civil society, including an action plan for a NFWF: 'to attain the goal of nuclear disarmament in a universal, time-bound, non-discriminatory, phased and verifiable manner' (UNGA, Resolution A/AC.281/2, 9 September 2013). Such verification measures have so far only been developed on a bilateral basis between the US and the USSR (Russia today) for some nuclear arms reduction agreements, but will need significant upgrades in order to become part of an international verification regime.

The importance of the verification regime has been stressed by China's representative to the CD, who noted in 2006:

Due to the complex nature of verification of outer space activities, [...] currently it is extremely

difficult to negotiate a verification provision. For the time being, to put on hold the verification issue until conditions are ripe, and to negotiate a treaty without verification provisions, could be a practical alternative (Writz, 2012).

This comment was made in relation to negotiations on the treaty for the Prevention of an Arms Race in Outer Space (PAROS), which is still deadlocked in the CD (NTI, 2014). It suggests a way out that is similar to that chosen during the path to the nuclear test-ban treaty, where partial arrangements (PTBT, TTBT and PNET) were reached that excluded verification arrangements while postponing the final agreement, including an accepted verification regime (the CTBT), until acceptable scientific solutions were achieved by the GSE.



CONCLUSION

A verification regime for detecting non-compliance is a fundamental element of a weapons control treaty. This principle became a common understanding during the second half of the twentieth century and the notion of verification, as can be seen in the UNGA resolutions quoted above, continuously developed. Since the mid-twentieth century, negotiations for any WMD arms control agreement have included the requirement for the agreement to be verifiable.

Nevertheless, on a practical level, it became evident that negotiating a single treaty containing both the basic treaty objectives and commitments and the details of the verification regime may cause a long delay before negotiations can actually start (about twenty years in the case of the GSE's work on the CTBT). The CTBT case provides an example of the development of intermediate, partially or non-verified, treaties that only partly cover the target concept. The alternative approach, which was demonstrated very successfully by the NPT, is to include the basic political commitments in an 'umbrella' treaty and to rely for a verification regime on secondary agreements such as the IAEA safeguards agreements, or proposed additional treaties (such as the CTBT and FMCT) in the expectation that their verification regimes will be 'effective measures in the direction of nuclear disarmament' (NPT, preamble and Article VI). This approach separates the largely political from largely technical aspects and allows for an adaptable verification system (Carlson, 2005).

Indeed, some treaties were eventually developed without verification mechanisms, while deferring the development of a verification regime to be based on future developments

in relevant techniques. The research and technical capabilities required for the development of a specific verification system may take a very long time in some cases, but without an agreement on the type and function of the verification regime (or its absence), a negotiation process for a weapons control treaty may not reach ripeness, as demonstrated by the case of the test ban. In this case, intermediate agreements were achieved that did not fulfil the sought-after 'effective verification' for a comprehensive test ban until technical developments provided the technology for an acceptable verification regime, thus making possible the conclusion of the CTBT. The above examples demonstrate the variety of circumstances, which are spread on a spectrum from a decision to 'trust, but don't bother to verify' (the BWC) through diverse methods and timelines for developing a verification regime, all the way to dragging out the pre-negotiation stage without a foreseen resolution (the FMCT).

However, the cases of the BWC, PTBT, TTBT and PNET demonstrate that – notwithstanding the practical decision to aim for a treaty text lacking a verification regime for technical reasons – the hunt for verification options continues even after the treaty's entry into force. It can also be seen from these examples that – as the years went by towards the beginning of the twenty-first century – perceptions of the verification regime as a required element in arms control agreements developed and matured. This can be seen in the development from a notion of 'effective safeguards by way of inspection and other means', as was defined in the 1946 UNGA resolution, all the way to the sixteen principles of a verification regime that were acknowledged by the UNGA in 1997, and the detailed verification concepts of the treaties

signed towards the end of the twentieth century (such as with the CTBT and OPCW).

This development was obviously backed by scientific developments during the second half of the twentieth century and the research done about their application to verifying non-proliferation and arms control treaties. When referring to the technology revolution, Findlay lists relevant technical developments having a marked effect on verification, and states: 'If these developments together do not constitute a verification revolution, then they at least represent large evolutionary leaps in many directions' (Findlay, 2000, p. 20). The development of monitoring and verification concepts is usually entrusted to expert groups that have been and are being created specifically for a negotiated agreement. The GSE international team for the study of CTBT verification proved that it was indeed most useful to conduct preparatory scientific and technical analysis prior to political negotiations; similar efforts such as the VEREX for the (already signed) BWC or IPFM, or the (future) FMCT, followed. In many cases it can be seen that similar concepts are relevant for the verification regimes of different arms control treaties and that there is some overlap in the work of these groups, which repeat studies that have already been done. Therefore the establishment of an international, multilateral apparatus or institution to coordinate research and development for verification methods may help in moving quagmired arms control treaties forward, as proposed by Dahlman: 'an International Scientific Network (ISN) to engage the global scientific community to explore how scientific and technological developments can support nuclear disarmament and non-proliferation' (Dahlman, 2013). Such an ISN may

standardize the development of verification regimes by setting principles and standards that are based on experience from previous cases. These will be used by all sub-groups established to develop verification for any arms control treaty, thus avoiding possible overlap of efforts or loss of 'institutional memory'.

This review of the role of the development of verification regimes in non-proliferation and arms control treaties demonstrates the progress made during the second half of the twentieth century, both in the concept of international verification and in the study of application of scientific methods to verification regimes. It became obvious during this period that a verification regime is a prerequisite for any effective arms control and disarmament agreement. Although the practical development of a verification concept and regime for a treaty may be a long process, a treaty negotiation process may either be prolonged while waiting for the right verification concept to be included in the final treaty documents, or the 'trust, but don't bother to verify' concept may be utilized initially while the search for an applicable verification concept continues, based on international groups of experts.

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I. WILLIAM ZARTMAN

THE MEDIATION CRAZE



Inauguration ceremony, Turkey, 2012

Mediation is the flavour of the times these days. Since the UN's World Summit in 2005, mediation has been rediscovered from its position in the UN Charter as a major means of settling disputes (Chap VI, art. 33, ¶1) and elevated to a position of choice within the UN and beyond.

Within the UN, the World Summit's Report was picked up in 2008 by Under-Secretary-General for Political Affairs B. Lynn Pascoe, who created a whole new apparatus to promote mediation: a small Mediation Support Unit (MSU) with a capacity to provide technical assistance to Special Representatives and Envoys of the Secretary-General (SRGR/SESG) and other mediators for the UN; a standby team of mediation experts ready to fly on-site to aid

the principal mediators; and a mediation network of supporting institutions – academic and NGOs – was established. In 2010, 35 member states and seven regional organizations formed a Group of Friends of Mediation under the initiative of Finland and Turkey, and introduced a resolution to 'strengthen the role of mediation in the peaceful settlement of disputes, conflict prevention and resolution' (A/RES/65/283 of 28 July 2011, followed by A/RES/66/291 calling for biennial consideration of mediation). In response, UN Secretary-General Ban Ki-moon issued a comprehensive Report on the Role of Mediation (A/66/811, 25 June 2012).

The Secretary-General's report contained a pocket-sized *Guidance*

*for Effective Mediation*¹ (available at the website www.peacemaker.un.org) that summarizes best practices. It also mandated the creation of an Academic Advisory Council for the Department of Political Affairs (DPA), whose members currently are: Nimet Beriker (Sabanci University, Turkey); Mely Caballero-Anthony (Nanyang Technological University, Singapore); Peter Coleman (Columbia University, US); Monica Herz (Catholic University of Rio, Brazil); Jean Paul Lederach (Notre Dame University, US); Laurie Nathan (Pretoria University, South Africa); Peter Wallensteen (Uppsala University, Sweden); and I. William Zartman (Johns Hopkins University, US). The Council meets once or twice a year to review mediators' needs and to work on solutions, and the focus of the upcoming meeting in September 2014 is 'Dialogue'.

The spirit caught on. An inauguration ceremony was held by Turkey in 2012 where Wallensteen, Zartman and Fen Osler Hampson (Carleton University, Canada) participated and an annual conference on mediation is now held. Around the same time, Finland held its own ceremony. The presentation of the *Guidance for Effective Mediation* at the UN, where Deputy-Secretary-General Jan Eliasson presided, was carried to Washington, where former Under-Secretary-General Pascoe participated. At the same time, Spain and Morocco announced a joint initiative on the promotion of mediation in the Mediterranean, with high-level meetings in Madrid and Rabat, at

¹ United Nations, *Guidance for Effective Mediation*, available at the website www.peacemaker.un.org.

which Hampson, Wallensteen and Zartman have participated. The focus is mainly on research and training on mediation, carried out by the Centre *d'Études et de Recherches en Sciences sociales* in Rabat and the Toledo International Centre of Peace in Madrid. Moreover, PIN has proposed to hold road shows in both institutions. In December 2013, the Catholic University of Rio launched a project to foster mediation among the BRICS countries (Brazil, Russia, India, China and South Africa) and more broadly the Global South, which members of the UN Academic Council attended. A World Mediation Summit at the *Universidad Politécnica* of Madrid is organized for 1–4 July 2014 by the World Mediation Organization, which is run out of Berlin by David Erdman (mail@worldmediation.org), with an edited book to follow.

In the field of research, attention for mediation has also flourished. Princeton University and Oslo University held a workshop in May 2014 on 'Minefields of Mediation: Involvement, Process and Outcomes'. Papers will be published in issues of the journal *International Negotiation*. As is well known, much has been written recently about mediation. For example, PIN's *Sage Handbook on Conflict Resolution* contained an excellent review article by the late Jacob Berkovitch. The challenge is to say something new and significant; the task is to bring the comprehensive knowledge that already exists to the attention of national audiences not aware of it and of the practitioners who often see little need to read analytical material, having invented the practice, personally, themselves.

I. WILLIAM ZARTMAN

CONCEPTS: DIALOGUE¹

National Dialogue can refer to many things as long as they involve two parties (dia-) talking (-log), but all of them involve some, usually loose, form of negotiation. Dialogue is much in the news these days, in part because of its use with some effect in countries of the Arab Spring. It is well established in usage, however, and fills an important gap when the conditions for more formal negotiations are not present.

Dialogue, as discussed here, is an informal confrontation among a broad range of stakeholders in a conflict, operating over an extended period without fixed membership quotas or votes and ending in a consensual conclusion rather than a formal decision². Despite the name, national dialogues are rarely two-party negotiations, but rather multi-party encounters, without fixed sides or even fixed parties. Dialogue is a sort of 'internal track II', when institutional relations' governance become bogged down, but unlike the usual track II, the dialogue generally does

not involve an external mediator. Other definitions include 'a dynamic process of joint inquiry and listening to diverse views, where the intention is to discover, learn and transform relationships in order to address practical and structural problems in a society'³, an 'argumentative interaction of political and social elements of society in an institutionalized or non-institutionalized setting (outside constitutional and interest pressures) in order to confer on sociopolitical questions which regard the whole of society'⁴, an event 'to provide spaces and instruments for reconciliation, develop joint visions between former enemies, and slowly evolve an understanding of the needs, perceptions and perspectives of the "other"⁵, 'a negotiating mechanisms intended to expand participation in political transitions beyond the political and military elites'⁶, or a semi-public forum in which 'representatives from key political and civic groups are invited to discuss and develop a plan for the country's future'⁷. As can be seen, characterizations focus on the Gestalt

¹ For previous Concept articles, see PINPoints 38 (2012) *Alliances*; 33 (2009) *Partners*; 32 (2009) *Risks*; 30 (2008) *Cooperation*; 29 (2007) *Nash's Bargaining Solution*; 28 (2007) *Demonization*; 24 (2005) *Mutually Enticing Opportunities*; 18 (2003) *Toughness Dilemma*; 14 (2000) *Negotiability*; and 11 (1997) *Ripeness*.

² For a fuller discussion, see Harold H. Saunders, 'Dialogue as a Process for Transforming Relationships', in J. Berkovitch, V. Kremenyuk, and I.W. Zartman (eds), *The SAGE Handbook of Conflict Resolution* (London: Sage, 2009), pp. 376–390.

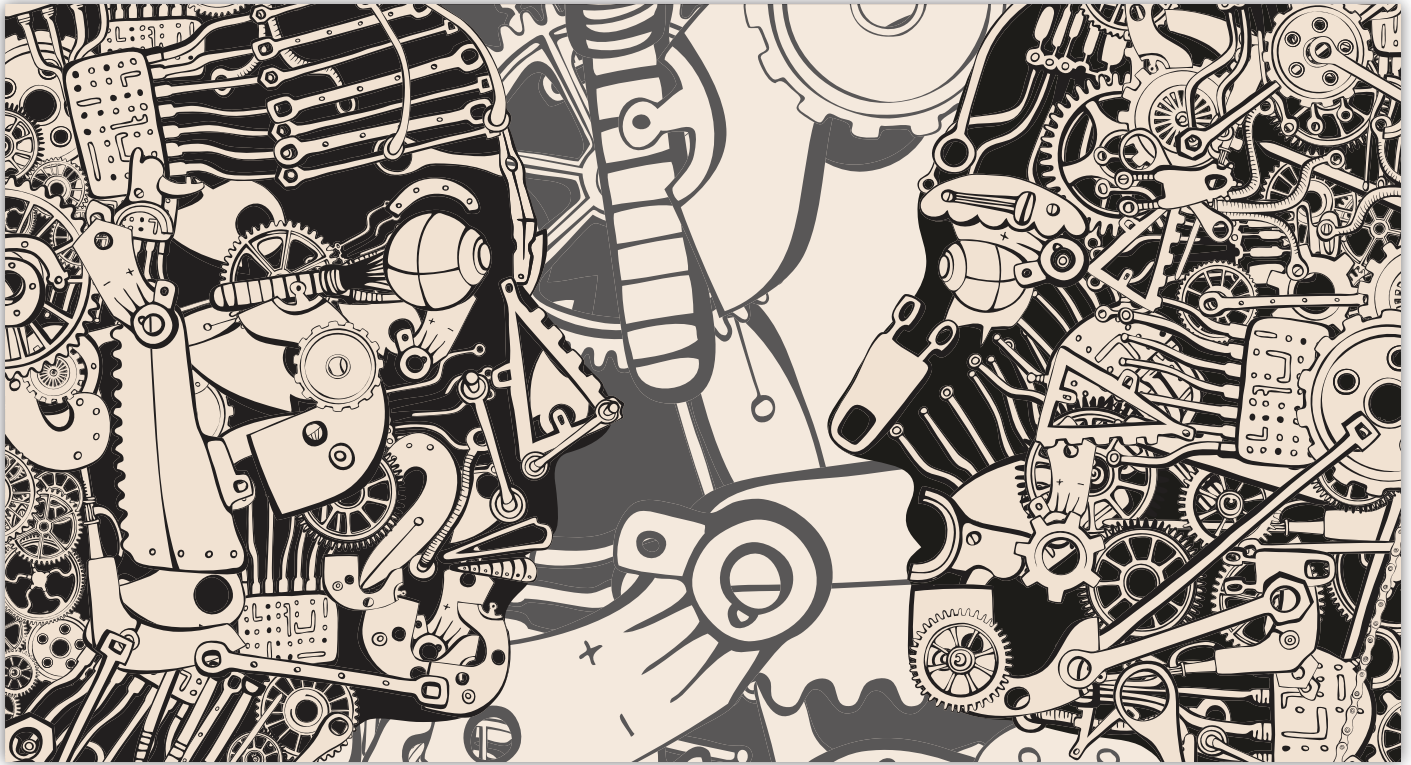
³ Maria Jessop and Alison Milofsky, *Dialogue: Calming Hot Spots Calls for Structure and Skill* (Washington, DC: United States Institute of Peace, 2014), available online at <http://www.usip.org/olivebranch/dialogue-calming-hot-spots-calls-structure-and-skill> (last accessed 12 May 2014).

⁴ Jens Heibach (2011), 'Der Nationale Dialog als Instrument zur Konflikt Regelung und politischen Transformation am Beispiel der arabischen Welt', *International Politics and Society*, Friedrich Ebert Stiftung, No. 4/2011, online at http://library.fes.de/pdf-files/jpg/2011-4/09_a_heibach_d.pdf (12 May 2014).

⁵ Hannes Siebert, 'National Dialogue and Legitimate Change', *Accord*, No. 25 (London: Conciliation Resources, 2014), pp. 36–39, available online at http://www.c-r.org/sites/c-r.org/files/Accord25_NationalDialogueAndLegitimateChange.pdf.

⁶ Katia Papagianni, 'National Dialogue Processes in Political Transitions', *Civil Society Dialogue Network Discussion Paper No. 3* (Brussels: European Peacebuilding Liaison Office (EPLo), 2013), available online at http://www.hcdcentre.org/uploads/bx_news/National-Dialogue-Processes-in-Political-Transitions.pdf.

⁷ Michael Lund and Carlos Santoso, 'Section 4.8 National Conferences', in *Democracy and Deep Conflict* (1998).



[shape] of the encounter, with little indication of its structure or process. Its purpose is to get away from the numerical formality of membership and votes to allow a free exchange of ideas heading toward consensus. There are many other dialogues that fall outside this specific use. Notably, two-party diplomatic discussions are often termed dialogues, particularly when there is no pre-constituted agenda or expectation of a formal accord. For example, Russian and US foreign ministers held dialogues over events in Ukraine, even resulting in the shaky Geneva agreement of May 2014.

Dialogue can have a number of tasks, both substantive and procedural. It can focus on the generation of new ideas and undiscovered points of common understanding, away from formal instructions and established agendas and positions, to be then conveyed to official bodies for considera-

tion or as instructions. Dialogue can establish decision-making structures and timetables for formal institutions and act as a review process for their performance. It generally does not replace formal institutions, but rather precedes, parallels, guides and monitors their work. As such, dialogue has no constitutional standing, but rather stands for the whole body politic, above or alongside institutions that have been functioning inadequately. If constituted institutions functioned properly, there would be no need for extra-institutional dialogue.

CHARACTERISTICS

Nonetheless, for all its informality, there are a number of specific elements associated with dialogue that pose a challenge to its nature: mandate; agenda; membership; decision rules; structure; process; and outcome. All of these items require a decision, which has to come either

from within or from some outside source: within poses the question of legitimacy and authority; while without makes the dialogue subject to the authority of the institutions that the dialogue is trying to reform.

The mandate is the authorization for dialogue to take place and cover specific subjects. The range of authorizations spans from a self-declared purpose and scope to a delegation of power and subjects from the state, the latter often exceeded by the dialogue once under way. Once created, it must be able to convene itself and set its *agenda*. The dialogue's effectiveness depends on maintenance of its autonomy from constituted authorities, but also on its informal authority over them in substance.

The question of *membership* or participation is more complicated. While the dialogue must have the authority to include those it wishes, that question is a circular matter: who is to decide who is to be included? Usually dialogue begins with a core group, which poses again the authorization question, but that group then faces

⁸ Stephen Stedman, 'Spoiler Problems in Peace Processes', in Paul Stern and Daniel Druckman (eds), *International Conflict Resolution after the Cold War* (Washington, DC: National Academies Press, 2000); and David Lanz, 'Who Gets a Seat at the Table?', *International Negotiation*, Vol. XVI, No. 2 (2011), pp. 275–295.

the matter of inclusion: should it continue to operate exclusively in order to be able to arrive at consensus, or should it seek to include the widest participation possible, including recognized troublemakers and spoilers?⁸ As is frequently the case with the inclusion question, the widest involvement is advisable, with the aim of drowning the spoilers in the crowd, but irreconcilables can be left out if their exclusion does not allow them to upset the consensus.

As one moves from the initial questions, the *decision rule* is the property of the dialogue, but again, how does it decide the decision rule? The assumption has been a rule of consensus, consensually adopted, again a circular matter, but despite the aspiration of harmony, deep rifts and polarities may well appear, as they presumably incapacitated the formal institutions, by inclusion or exclusion. As with membership, the dialogue or its organizers must decide how to handle divisions if the consensus rule gets stuck.

The *structure* and *process* of the dialogue also fall within the decision and agenda concerns. Plenary session or dialogue organizers must provide a structure to the proceedings, for which *Robert's Rules of Order* may be too formal and plenary sessions may be too cumbersome. Many of these questions point to an inner organization – in the absence of an outer organization – of the participants to guide proceedings beyond simple talk (*-log*) to a conclusion. The final

question, then, is the desired *outcome*, the form it will take, the target to which it will be delivered and the controls that the dialogue will wield to assure its impact. With the outcome, dialogue re-enters the formal world, either taking it over or submitting its findings to institutionalization.

INSTANCES

Dialogues have been important elements with varying success in the course of the Arab Spring in Tunisia, Yemen, Libya, Syria and Egypt⁹. When the National Constituent Assembly (NCA) in Tunisia slowed down its drafting process and was challenged as illegitimate for overrunning its mandate by forces outside the Assembly, a self-constituted Quartet of civil society organizations – the labour union, business association, lawyer's guild, and human rights organization – convened the National Dialogue, which worked with the NCA to produce the Tunisian Constitution in April 2014. As part of the succession of Ali Saleh in Yemen through the Gulf Coordination Council (GCC)'s initiative in November 2011, the government – with the assistance of UN Special Representative Jamal Benomar – appointed a Technical Commission to organize a National Dialogue Conference of civil society organizations and political parties in March 2013, which set a path for national reconciliation and an end to regional rebellions with partial success by January 2014. In Libya, the government appointed a National Dialogue Preparatory Commission of

civil society organizations in August 2013 to draft a National Charter of Principles for the new state, but this commission was unable to secure the participants' agreement, despite repeated calls by organizations throughout the country. In Syria, Bashar al-Assad invited political parties to a so-called 'dialogue' towards the beginning of the uprising in October 2011 and presented them with their conclusions when they arrived, with no impact. In Egypt, the Muslim Brotherhood's Freedom and Justice Party (FJP), in alliance with the Salafist Party of Light, railroaded its own membership into the constitutional committee and then, after the election of Mohammed al-Morsi as Egypt's president, continued to railroad its own programme over repeated calls from at home and abroad for dialogue with the secular opposition.

Two decades earlier, a similar experiment with dialogue was undertaken in eleven largely French-speaking African countries under the name of the Sovereign National Conference (*Conférence Nationale Souveraine*, CNS)¹⁰. The process began in February 1990 in Benin, ordered by the authoritarian president who it then unseated, and continued in Gabon, Congo-Brazzaville, Mali, Niger, Burkina Faso, Togo, Zaire (Congo), Central African Republic and Chad by October 1993, while spreading to Ghana in August 1991. At the same time, a similar process was going on in the Conference for a Democratic South Africa (CoDeSA)¹¹. Participants ranged from nearly 1,000 (in Togo and Chad) to 3,000 (in Zaire) and the conferences lasted from ten days (Benin) to seventeen months intermittently (Zaire). In almost all cases, a new constitution was prepared and new elections were held. In five cases the authoritarian ruler, skilled in running elections, won re-election,

⁹ I am grateful to Katherina Francesca Prügel for these cases. See also I. William Zartman (ed.), *Intifadat: Negotiating a Social Movement* (Athens, GA: University of Georgia Press, 2015).

¹⁰ I am grateful to Ayeda Wondimu for these cases. For more information, see I. William Zartman, 'Security, Stability, Development and Cooperation in Africa: A Regional Expression of a Global Policy Network in Formation', a case study for the UN Vision Project on Global Public Policy Networks (GPP) (Berlin: Global Public Policy Institute, 1997), available online at http://www.gppi.net/fileadmin/gppi/Zartman_Regional_Expression.pdf.

¹¹ Timothy Sisk, *Democratization in South Africa* (Princeton, NJ: Princeton University Press, 1995); and I. William Zartman, 'Negotiating the South African Conflict', in Zartman (ed.), *Elusive Peace: Negotiating an End to Civil Wars* (Washington, DC: Brookings Institute, 1995).

¹² Zartman, 'Security, Stability, Development and Cooperation in Africa'.

but in another five cases alternation was the result, although in all these cases except for Benin, a military coup followed some time later, reversing the authoritarian overthrow¹².

The major characteristic of the CNS and related dialogues was that they claimed sovereignty in the name of the people, as represented by civil society organizations that had often previously been operating under repression from the authoritarian regime, and then proceeded under their own rules, with a ranging de-

¹³ Harold Saunders, *A Public Peace Process* (New York, NY: St Martin's Press, 1999).

¹⁴ James Voorhees, *Dialogue Sustained: The Multilevel Peace Process and the Dartmouth Conference* (Washington DC: United States Institute of Peace Press for the Kettering Foundation, 2002).

bate, often resembling a Truth and Reconciliation process. Unlike the Arab situation, the authoritarian ruler was part of the process in a number of cases and, in half the cases, the authoritarian ruler returned to office through a mastery of skills in winning elections over an unpractised opposition¹³ (with Syria being the sole Arab example). Other examples could be cited, including the Afghan preliminary *Loya Jirga* [Grand Assembly] in Bonn in December 2001, and the Tajik dialogue process, which involved some 50 sessions running parallel to official government negotiations with the militant opposition, both of which are inheritors of the Dartmouth Conferences of semi-official dialogue between the USSR and the US during the Cold War¹⁴.

CONCLUSION

As shown, dialogue is a special instance of negotiation with its own characteristics and skills. It is increasingly practised at the moment, although perhaps this is a temporary bubble and its successes are uncertain. Its lasting effects are even less impressive, but it would be poor history and improper analysis to attribute events twenty, ten or even five years later to the course of one months-long encounter. Nonetheless, dialogue deserves deeper study, since little is known about its typical course and even less about the skills needed to guide it to a good conclusion.

WILBUR PERLOT

VISIT TO THE 26TH SESSION OF THE HUMAN RIGHTS COUNCIL

On 19 and 20 June I had the opportunity to visit the 26th session of the Human Rights Council. For two days he followed the Dutch delegation and observed their activities.

A session of the Council lasts three, sometimes four, weeks. The Human Rights Council has 47 members. Only those members can vote or amend resolutions. However, in the week leading up to the adoption of a resolution, other UN members, NGOs and UN agencies try to influence the decision making process. Next to the regular reports to the Council on the human rights situation of certain countries of concern, there are interactive dialogues focusing on human rights violations in for example Syria and thematic resolutions. All

these documents lead to many frantic negotiations, informal consultations, strategy sessions, etc.

Although the plenary room is not the place to observe for the most important action, at any moment there are diplomats in the main room talking to one another; having whispered chats, while looking around, seemingly checking who might be listening in. These moments of interactions create a scene of secrecy. If you observe and pay attention well enough, it is possible to quite clearly see what for example an adversary is up to, to whom they are talking and what your next move should be.

The most important goal with any resolution is normally speaking to

get it accepted by consensus by the 47 Council members with as many co-sponsors as possible, no amendments and no vote. Of course a text of a resolution should reflect desirable outcomes, but compromise making is inevitable. Otherwise the text itself is strong, but the manner of adoption is weak. If a Council member asks a vote on a resolution it can be adopted with a normal majority in favour of the text, the same is true for amendments. A resolution is tabled one week ahead of the adoption, after which changes to the text are only possible through amendments. Signing up for co-sponsorship is still allowed after tabling, however co-sponsors signing on to the resolution before tabling appear on the document itself, which is considered of significance in the UN.



It is one of the many informal rules during the process. Agreed language, coming from other UN resolutions, should preferably not be renegotiated. However, countries opposing such a resolution will do their utmost to undermine the outcome in other UN fora. Where possible, one should support like-minded countries, especially when negotiations get tough. Similarly, introducing amendments to a resolution of a like-minded country is a major no go and should only be used in emergency cases. Even making a statement of disappointment towards the resolution of a like-minded country is a heavy diplomatic weapon.

Some of the informal rules are regional specific. At some point the delegation of Eritrea reminded the delegation of Somalia that African countries do not submit resolutions about another country if that country is in disagreement with the contents of the resolution. The resolution under discussion was a resolution drafted by Somalia about the human rights situation in Eritrea, a resolution that was adopted and the only one to make news headlines in the Netherlands. During the exchange between the two delegations, some of the formal rules became apparent.

Somalia organised a public informal consultation after tabling the resolution, which in itself is quite unusual. The goal of a consultation is to see where everyone stands as regards to the resolution and to negotiate specific passages with an aim to reach consensus and gain co-sponsors. An informal consultation normally last between 1 and 2 hours. In this case Somalia had scheduled two sessions of an hour in two different rooms. Many delegations were discussing this with one another, assuming a mistake and doubting which one in the programme would actually take place. However, it was Eritrea who gave a whole different interpretation. While listing to the problems the country had with the resolution, most of these were procedural in nature. One of the issues was that Somalia had to organise two informal consultations and that two sessions after one another in different rooms would not count...

For this kind of work it is good to have the procedures and content in order. It allows manoeuvrability and playing with the rules. Being able to quote a significant number of relevant UN resolutions works well in creating a position for the negotiations and making counterarguments more dif-

ficult. As in any negotiation, personal skills are an important factor in the process, but in the multilateral setting the context, the jargon and the procedures rule the day.

The observations will infuse the Clingendael Academy's skills training on multilateral negotiations. Expect a few negotiation simulations to emerge from the visit, such as negotiating the resolution 'protection of the family' and a resolution on the elimination of violence against women. The next seminar of international negotiation is scheduled for 10 to 13 November. In the meantime, ten general tips to ponder and chew on:

1. Cherish your victories;
2. Strategize!; (and reach out to like minded countries/individuals that can lend support).
3. Know the playing field;
4. Don't make it personal (and don't read this sentence thinking 'of course'. It happens to us all!);
5. Keep an eye on the prize;
6. Know the jargon;
7. Play (by) the (informal) rules;
8. Let the system work for you;
9. **MANAGE YOUR STRESS LEVELS!**
10. Learn how to read lips.

RUDOLF SCHÜSSLER

FOCAL POINTS IN THEORY AND NEGOTIATION: PROSPECTUS OF A CONFERENCE



Thomas Schelling

In negotiations, an intricate web of the parties' mutual expectations, and expectations about expectations, draws the parties towards or away from agreement. Sometimes the dance of expectations is on the table, visible in overt proposals, and sometimes it has merely a shadowy existence in the heads of the agents. Early in the history of game theory and modern strategic thought it was understood that some proposals, ideas, or circumstances function as attractors for expectations in negotiations. If these items are simple, unique and conspicuous for all sides, and are expected by all to be conspicuous for all, they are called salient or focal points. Defined in such a wide way, focal points are ubiquitous in negotiations. The formula 'land for peace' of UN Security Council Resolution 242 and the 1979

Peace Treaty between Israel and Egypt is a focal solution, as are the many numerical focal points in international negotiations, such as the 1 per cent GDP contribution that was promoted by a group of countries in the negotiations concerning the EU's 2007–2013 financial framework. More abstract and more general focal points are the 'even split solution' between different positions and simple ratios for voting thresholds.

Thomas Schelling (winner of the 2005 Nobel Prize in economics) in the 1960s spearheaded theoretical reflection on the role of focal points in strategic thinking and negotiations.¹ His approach was mildly game-theoretical, introducing formal concepts but refusing the thorough mathematization that has become characteristic of modern neo-classical economics and game theory. Subsequent research has been less reluctant in this respect. In game theory, the strategic role of focal points has mainly been investigated for simple matrix games of coordination. It is still somewhat of a puzzle for theories of economic rationality how 'economic men and women' can coordinate in even the simplest matrix games with no difference of interest but multiple Nash equilibria. Experimental game theory has shown that they can do so by choosing focal equilibria if such equilibria exist, a fact that is also known from everyday life and international negotiation practices.

For all who care about Schelling's initial concerns, these developments harbour some dissatisfaction. Theoretical reflection and experimental studies have not focused on the role of focal points in real negotiations for several decades now. Most importantly, no array of questions from the analysis of real negotiations has apparently been investigated on the basis of models or experiments. PIN has discussed this problem for a while now and agreed to try to do something about it. The result is a conference on 'Focal Points in Theory and Negotiation' to be staged on 20 September 2014 at – and in cooperation with – the 'Centre for Resolution of International Conflicts' (CRIC) in Copenhagen. At the conference, research on the role of focal points in international negotiations will encounter theoretical models and considerations of rationality, as well as experiments. This will hopefully kick off renewed interest in the issue of focal points in negotiations, as one conference cannot cover all of the ground that remained untilled in the past.

MAIN PRELIMINARY QUESTIONS

Returning to Schelling's old agenda signals that significant questions remain unanswered. What are these questions? Of course, nobody can aspire to formulate an authoritative list, because research interests can differ widely. Nevertheless, it is possible to specify some interesting questions whose answers are insufficiently known. Three questions, or

¹ Thomas Schelling, *The Strategy of Conflict* (Cambridge, MA: Harvard University Press, 1960).

rather clusters of questions, might provide a starting point for discussion without restricting an open search for further issues. The first question is the most basic: what is a focal point?

At first approximation, as already endorsed by Schelling, offers or outcomes are focal points if they express simple, prominent and often formulaic positions that catch the imagination of negotiators or their principals. As a further requirement, focal points have to be common knowledge among the parties. However, such vague definitions, even if we do not require more precision, are too narrow for capturing the attractor property of focal points. A party still aspiring to realize maximum gain has an incentive to deny the salience of a focal point in order to influence the expectations of others (or its own expectations, if manipulating one's own thinking is possible). In theory, a point loses its focality through such denials, which signal that a party does not regard the point as salient. However, thwarting the moves of the party in question may lead to the reinstatement of the focal point, because the party may give up unsuccessful denials and accept a shared perception of the situation. Is this an indication that focal points might be better defined via third-party assessment of a situation than via the views of the involved parties themselves? It could also be an indication that the attractor feature of a focal point might not be inherent in the parties' expectations but in a power to transform these expectations. The practical importance of these suggestions



can be gleaned from an early debate about the interpretation of the cease-fire line in the Korean War.² US military officials denied that the 38th parallel, an obvious focal point for the division of Korea, was a focal point in the cease-fire negotiations. In fact, the demilitarized zone does not follow the 38th parallel, although it seems to be anchored on this line. This is a general possibility for focal points in negotiations. Even where they do not constitute a solution, they may provide a baseline against which more differentiated solutions can be sought. The denial of such anchoring by a party may not convince researchers, because denial might serve the party's cherished (self-)perception of superiority. Apparently, some work is still required to improve our understanding of what focal points are. The Handbook of Game Theory does not help much in this respect, for while the concept

of a focal point is used in several articles therein, it is never defined.³

A second question is: when is it propitious in negotiations to steer towards a focal solution? Focal solutions are often only second-best (in fact, case studies of negotiations have still to corroborate that this is more than a preconception). Let us assume that the second-best is better than the agents' best alternative to a negotiated agreement (BATNA), so the question is actually when should agents drop lofty aspirations and aim for a focal second-best solution instead of risking failure? This question appears familiar from game theory, either as a compromise in a 'war of attrition' model or as motivation for the endogenous construction of conflict points. However, from a real negotiation perspective, there is more to the question than these aspects. The role of normativity in negotiations is hardly captured by formal models. Agents not only want to come to an agreement, but they often also feel that they ought to do so. Do focal points have a special significance in this respect? Moreover,

¹ For the link between Schelling's reasoning and the Korean War, see Robert Ayson, *Thomas Schelling and the Nuclear Age: Strategy as Social Science* (London: Frank Cass, 2004), pp. 19 and 92.

² Robert Aumann and S. Hart (eds), *Handbook of Game Theory with Economic Applications*, vol. 3 (Amsterdam: Elsevier, 2002). References to focal points are mainly contained in volume 3 of the handbook (e.g., pp. 1996, 2337 and 2343).

⁴ See Schelling, *The Strategy of Conflict*, p. 73.



the perception of second-best is not a given in negotiations. It changes in the negotiating process, and often not only concerning the likelihood of realization but also concerning its value to the parties. Do focal points as attractors of expectations behave in a special way in this respect?

A third cluster of questions concerns the normativity of focal points. The beliefs of some parties that a focal solution ought to be chosen may significantly influence the outcome of negotiations. Schelling briefly discussed the possibility that focal points might have such a normative role,⁴ but focal points have not figured prominently in theories of justice or for that matter in theories of fair negotiation. Is this an oversight, or is there indeed a principled difference that renders focal points unsuitable as landmarks of justice? The famed fairness of 50/50 solutions would then depend on genuine

principles of fairness, independently of the solutions' salience. These considerations lead to a tête-à-tête with traditional ethical theories, and it will be discussed at the September 2014 conference in Copenhagen whether focal points are related to Kantian conceptions of morality. The practical significance of this ethical outlook is, of course, at best indirect. Like all ethical assessments, its only practical import is by influencing the belief formation of agents.

THE CASE OF CASES

The research questions formulated so far are quite abstract – as they arguably should be at the interface between practical negotiation analysis and game theory or theories of justice. Yet from the perspective of negotiation studies, the questions need to be parsed into something that possibly shows up at the negotiating table. Again, while not

wanting to restrict the imagination of presenters, it helps to consider some issues for case studies. The example of cease-fire negotiations in the Korean War is suggestive. Is it common practice to deny presumable focal points, or are focal points usually recognized as such once they are on the table? Which roles do focal points play in final agreements? Do they appear as plain outcomes or rather as baselines from which more differentiated solutions are derived? The second-best nature of many focal solutions suggests that a history of failure to come to an agreement might precede focal solutions. Are focal solutions hence a measure of last resort? In this case, they would probably follow some recognizable crisis – as in the Korean example. However, the 38th parallel had been accepted as the border between the Koreas even before the Korean War. Was it already a crisis-solving option when the border was first

⁴ According to Zartman, 'If the parties to a conflict (a) perceive themselves to be in a hurting stalemate and (b) perceive the possibility of a negotiated solution (a way out), the conflict is ripe for resolution (i.e., for negotiations toward resolution to begin)' (Zartman, 2000, p. 228, Proposition 2).

established? These (and similar) questions can be discussed on a case-by-case basis. Before the case studies, it is not clear whether all indicated options regularly occur, or whether some are more likely than others. Yet even if the whole range of possibilities can be observed, the specific form of their occurrence may prove instructive.

THE CONFERENCE

The foregoing questions provide more than enough material for interesting discussions at a conference on focal points in theory and negotiation – and international negotiations in particular. Focal points are important for the practice of negotiation and should hence not be neglected in theory. They may not easily fit the agendas of established branches of decision science. Focal points are too psychological to be central for mathematical game theory, and their role may depend too much on complex strategic reasoning to suit standard psychology. Scholars of ne-

gotiation probably need a more fine-grained understanding of the roles of focal points before their practical import becomes apparent, but the required conceptual work has to be informed by case studies. In short, scholars from diverse fields have to be brought together to gauge the significance of focal points for negotiations – and this is precisely what will happen at the Copenhagen conference.

Presenters from a variety of relevant academic subject areas have agreed to come. Philosophers who study games and underlying concepts of rationality will contribute, as will experimental economists. The roots of research on focal points in Thomas Schelling's work will be assessed in a presentation. Other contributors will present case studies of the role of focal points in international negotiations. The case-based discussions will culminate in a roundtable on ongoing events in the Arab World. The processes of conflict and negotiation arising out of the Arab Spring

(the 2012 PIN Project) involve scattered instances of focal points and saliencies. Determination of the boundaries of a shattered Syria and a federated Libya and Yemen are geopolitical cases under discussion. Legal cases involve specific wordings in the formulation of constitutions in Tunisia, Egypt, Libya and Yemen. Other applications can be identified, and will be discussed at the conference.

Finally, the normative significance of focal agreements in negotiations (and focal choice in strategic situations) will also be broached by several contributors. Spanning the outlined spectrum, the field of presenters is set by now. Presenters include Marlies Ahlert, Cecilia Albin, Joachim Behnke, Nik Emmanuel, Paul Meerts, Moti Melamud, Valerie Rosoux, Rudolf Schüssler, Mikhail Troitsky, Bruno Verbeek, I. William Zartman. Readers of this article are heartily welcomed to participate in the conference.

PAUL MEERTS

THE NETHERLANDS NEGOTIATION NETWORK (NNN) SYMPOSIUM ABOUT NEGOTIATING THE FUTURE

The Dutch PIN and GDN (Group Decision and Negotiation), which was created in 2007 with a first end-of-year symposium in 2008, organized its sixth meeting in December 2013. This time the topic was: 'what will be the conditions for negotiation in the future?' The previous colloquia were on international negotiation and research (2008), the differences between public and private processes (2009), the impact of culture (2010), training (2011), and the impact of social media (2012). The 2013 meeting on future developments was organized by the Dutch Employers Organization (AWVN). Scenarios, which had been developed to train employers and employees for negotiations in the coming decades, were applied to encourage understanding of the different circumstances in the future and their impact on international negotiation processes. After a keynote speech by Alexander Rinnooy Kan, the former president of the Dutch Social and Economic Council, the morning was devoted to lectures by German researchers. During the afternoon, the 50 participants worked in simulated environments on four different scenarios.

At the end of 2014, the seventh meeting will take place at Tilburg University, and will analyze the utility and outcomes of quantitative methodologies in laboratory experiments with university students.

