

PIN•Points

Processes of International Negotiation

Network Newsletter 36/2011

*Horizontal issues in
multilateral talks*



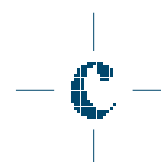
*Negotiations for a world free
of nuclear weapons*



*When and How to Engage
with Extremists*



*Regime Change in North Africa
and the Middle East*



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international relations

EDITORIAL

As already reported in our previous *PINPoints* issue 35 we, the Steering Committee members of the PIN Program, are grateful that our Program has been given a temporary new home in the Netherlands Institute of International Relations Clingendael, Le Hague. With the great Dutch tradition, going as far back as to Hugo Grotius' work in the 17th century, and the Institute's experience in international negotiations research and education, we think we found a wonderful and exciting environment for continuing our work. Following Ariel Macaspac Penetrante as administrative coordinator, Wilbur Perlot from Clingendael started his new part time job with enthusiasm and vigor which helped to achieve the transition into a new era of the PIN Program.

Let us sincerely thank Ariel at this point: With his knowledge and engagement as well as his kind and diplomatic negotiation style he contributed very much to the successful work of the PIN Program in the last three years.

The first meeting at Clingendael will take place in the beginning of June and, among internal and organizational deliberations, following the long years tradition of PIN, a workshop on a special negotiation theme will be organized. What could be more timely than an analysis of "negotiations in transitions" which is devoted to the new and totally unexpected events in the Arab World? An outline and list of contributions and authors is presented later in this issue.

In the fall of this year, PIN Steering Committee members will visit Tash-

kent, Uzbekistan: They will organize a roadshow on the role of negotiations in regional issues at the invitation of the University for World Economics on 28 November. The meeting will focus on regional issues in general and negotiations concerning Central Asian themes in general.

Thus, with all book projects in the pipeline and despite an uncertain financial future, the PIN Program moves ahead, following its mission in the way it did it in the last 20 years. The contributions to this *PINPoints* issue represent the rich variety of topics covered by the members of the Program.

Gunnar Sjöstedt points out that so-called horizontal issues which are cutting across different institutionalized subject areas like trade and environment represent a particularly great challenge in multilateral talks, and he calls for a strategic facilitation in order to cope with the increasing agenda complexity in these talks.

The doctrine of "transformational negotiations" set forth by US Secretary of State Condoleezza Rice at Georgetown University in January 2006, the purpose of which is to change some of the fundamental characteristics of one's counterpart during some negotiations, is analysed in a semi-formal way by Mikhail Troitskiy.

One of the results of previous work is the book *Engaging Extremists: Tradeoffs, Timing and Diplomacy* which was edited by I William Zartman and Guy Olivier Faure and which has just been published by the US Institute of Peace. Here, an outline

of some of the findings of when and how to engage with extremists is presented. It is highlighted by a few propositions even though it is argued why there is no theory of negotiations over terrorism.

Another book project near to completion is the one dealing with the negotiation process associated with the establishment of the Comprehensive Test Ban Treaty (CTBT), its organization and its verification regime. In the more general context the question for a nuclear weapons free world has been discussed intensely, in particular since President Obama's speech in Prague in April 2009. The contribution by Mordechai and Aviv Melamud addresses the international negotiations for dealing with this difficult issue so crucial for the future of mankind.

Guy Olivier Faure is also an expert on hostage negotiations which are considered in the PIN book *Negotiation with Terrorists: Strategies, Tactics and Politics*, edited by him and I William Zartman and published last year by Routledge. Here, he describes the Manila hostage negotiations in August 2010 and analyses carefully the severe errors which have been made by the negotiators which then led to the disastrous result.

The North Africa and Middle East Region is at a cross road says Mark Anstey. He describes in some detail the waves of popular protest in the States of this region, and he asks what the chances of international negotiations are in order to avoid that the region will enter another period of unilateralism under new or existing autocracies. ➡

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COLOPHON

PINPoints

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PINPoints is the bi-annual publication of the Processes of International Negotiation Program (PIN). PIN is a non-profit group of scholars and practioners 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 4000 scholars and practioners of international negotiation.

The organization is presided over by an Steering Committee, who organize the many activities and edit the *PINPoints*. The secretariat of PIN is based at The Netherlands Institute of International Relation Clingendael, a leading think tank on international affairs, European integration and security issues based in The Hague.

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➔ Rudolf Schüssler describes the experience gained in the business negotiation seminars at his University, where students are guided by practitioners when dealing with real world negotiation cases.

"Is there a Russian Negotiation Style?" asks Paul Meerts while studying negotiations between the European Union (EU) and Russia. He reports on literature published on this subject, and he describes simulated negotiations on the New Partnership and Cooperation Agreement between the EU and Russia which have been carried through with young Russian civil servants at the College of Brugge, Belgium.

An outline of the Negotiations in Transitions workshop in June and a report on the activities of the Netherlands Negotiation Network complete the text. Thus, this new *PINPoints* issue covers again all our traditional areas of work, theoretical investigation, analysis of concrete cases and education, together with organizational and administrative news of interest for the wider PIN community. We, the PIN Program Steering Committee members, will continue to do so with the help of our friends all over the world, and we are optimistic that we will be able to find the resources which are necessary for fulfilling our mission.



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HORIZONTAL ISSUES IN MULTILATERAL TALKS: CALL FOR STRATEGIC FACILITATION

We need new approaches to cope with increasing agenda complexity in important multilateral negotiations concerning the economy, the society, and the environment. Currently, so-called horizontal issues cutting across different institutionalized subject areas like trade and environment represent a particularly great challenge in this regard. A principal dilemma is that for the same national government a particular item on the agenda may represent two (or more) sets of incompatible values. For example, certain trade regulations may impede the free exchange of particular goods (e.g. stuffed birds) while at the same time they have a favorable impact on the environment (e.g. biodiversity). Thus, in this case deregulation contributes to trade expansion but also to environmental deterioration.

Horizontal issues in multilateral negotiations are by no means a new phenomenon. For example, a complex inauspicious connection has existed between trade and environment for more than fifty years of international cooperation. However, globalization processes have made it more and more important, and demanding, to cope with horizontal issues in many current negotiations.

COMPLEXITY IN MULTILATERAL TALKS: GENERAL PATTERNS

In the parlance of practitioners an issue is horizontal when it needs to be addressed in two or more institutional settings simultaneously. One example is negotiation on environmental goods, which has unfolded in the World Trade Organization as well as in environmental regimes.

In the last decades the need to address and cope with various horizontal issues effectively has contributed to amplify the complexity that is a principal problem of multilateral negotiation. Successful multilateral negotiation is, hence, typically characterized by the management of complexity.



A bilateral negotiation can certainly also be highly complex due to the difficulty of integrating the conflicting interests of the two parties into a feasible negotiated agreement. In this case complexity is a representation of the need for the creativity that is required to find a feasible negotiation solution. The same kind of complexity often occurs also in multi-party talks. For example, both the current Doha round in WTO and the climate talks exhibit highly complex conflicts of interest involving leading actors and coalitions.

However, multilateral talks are typically also more genuinely complex in the sense that it is often problematic how issues should best become negotiable and addressed at the negotiation table. Multilateral talks

require suitable negotiation institutions and effective methods for the organization of the negotiation process. The basic complexity of multinational talks has various sources, for example the great number of actors and specific issues involved. The technical difficulty of coping with many issues represents still another cause of complexity.

AN OLD APPROACH TO COMPLEXITY REDUCTION: INSTITUTIONALIZED ISSUE FRAGMENTATION

Various methods are used to reduce complexity in multilateral talks. For example, in many talks informal negotiation groups with a restricted - - limited - - membership has been one way of facilitating complex negotiations. The determination of consensual focal points has been another common approach to reduce complexity and facilitate negotiation. For example, in the GATT/WTO talks a principal issue on the agenda is *trade liberalization*.

In order to address these topic categories of tariff and non-tariff barriers to trade have been established to serve as such focal points. In the climate talks emissions of CO₂, and emission reductions, have been critical focal points. Concentration of negotiation efforts to such focal points has facilitated negotiation considerably, and not least the exchange of concessions in search for a compromise between negotiating parties with partly competing interests. A drawback is that an important part of the complexity is circumvented or simply disregarded rather than coped with effectively.

The priority given to the determination of focal points in multilateral talks corresponds with a more general strategy: *institutionalized issue frag-*



mentation. Cooperation and negotiation on environmental issues offer a good illustration of this approach.

The Organization on Economic Cooperation Development (OECD) was one of the first international institutions to address environmental issues when they emerged on the agenda for international cooperation amongst industrialized countries in the 1960's. OECD adopted a very broad perspective on the environment. The work in this area was assigned to two bodies in OECD: a committee on air and water pollution respectively.

This broad conceptualization was sufficient for the exploratory cooperative environmental studies that had early been initiated in OECD but were unworkable in more targeted regime building negotiations that were associated with 1972 UN Conference on the Human Environment in Stockholm. More clear-cut and limited issues than air and water pollution were defined and negotiated on, for example, long-range air pollution in Europe, ozone depletion in

the stratosphere, bio-diversity, desertification, or hazardous waste. These and a multitude of other issues have become institutionalized in separate international regimes, which in many cases include binding commitments for signatory states.

This development of *institutionalized issue fragmentation*, which still continues, has had important beneficial effects on global cooperation and regime-building, particularly with regard to complex environmental problems. So far, issue fragmentation has represented a winning approach to environmental problem solving. In many issue areas effective methods to cope with a particular environmental problem have been both designed and implemented due to the narrow scope and precise meaning they have been given as agenda items in a multilateral negotiation. Nationally, regionally (e.g. in the EU) and globally (e.g. in the WTO) organizational structures have been built up to cope with the separated issue areas which has contributed to cement them even further.

It should be noted that although *institutionalized issue fragmentation* in international environmental politics appears self-evident at the present time it was not the only conceivable approach in the early 1970's. An alternative strategy would have been to develop an international order similar to that, which had been established in the trade area. The GATT/WTO system represents a comprehensive inventory of a multitude of international trade issues incorporated in a unitary organization subordinated to principal objectives (e.g. trade liberalization) that are valid in all issue areas incorporated into the regime such as tariffs, non-tariff barriers to trade pertaining to both goods and services. At least in theory it would have been possible to set up a similar arrangement for many environmental issues, a World Environmental Organization.

However, it was most likely a good thing that such an organization was not created thirty or forty years ago. To develop issue-specific regime-building processes was probably a good choice. Not only was complexity kept at a relatively low level. It was also possible to fully take into consideration the special conditions that prevailed in particular issue areas without worrying so much about how negotiated agreements fit into the general legal framework of a general environmental regime. However, at the present time increasingly manifest issue linkages seem to signal that in some cases institutionalized issue fragmentation entails increasing economic and political costs that are objectionable.

Issue linkage in international negotiation manifests itself in two principal ways. The first alternative is that the negotiation process in

one issue area affects bargaining in another issue area. The other main option is that the outcome of regime-building in one issue area impinges on the negotiation results attained in other issue area. A typical example is that strong and binding environmental regulations may undermine trade rules in WTO concerning trade liberalization.

There has been considerable interest in recent years in the question of issue linkages in international negotiations. Usually, issue linkage has been considered to be a tactical approach in negotiation or in international politics more generally. Most issue linkages that have been highlighted in the literature appear to have been motivated by attempts of individual countries or groups of countries to extend their dominant bargaining or veto power in one particular issue area into other areas so as to achieve maximum advantage from their whole array of international interactions. These conditions mean that issue linkage has become a bone of contention in its own right in international talks, for example in WTO.

HORIZONTAL ISSUES AS ISSUE LINKAGES

Horizontal topics in international negotiation reflect issue linkages. Like other types of linkages horizontal issues can conceivably be part of tactical design. However, fundamentally issue linkages looked at as a basis for a horizontal issue are not constructions made for tactical purposes in a bargaining game. One example is sustainable development, which is addressed in numerous international organizations and negotiations and therefore may be classified as a horizontal issue. *Sustainable development* has three broad aspects, an economic, an en-

vironmental and a social dimension. Each of the three dimensions is associated with a different set of aims, which however are subordinated to an over-arching objective pertaining to sustainable development as such. In a negotiation guided by the norm of sustainable development (e.g. in WTO or the UN) economic, social and environmental goals have in principle to be combined on equal terms and on the basis assumed equal weight.

In an international environment characterized by *institutionalized issue fragmentation* the conditions for negotiation in, say, WTO are quite different and more favorable. A good example is GATT negotiations on tariff reductions in the Kennedy Round, which unfolded between 1964 and 1967. The talks were guided, and facilitated, by one single well-defined objective, trade liberalization according to neo-classic trade theory. Trade liberalization gave the Kennedy negotiation (as well as other GATT rounds) clear direction and also functioned as a strong norm driving the process. Furthermore, trade liberalization was also unambiguously placed above objectives pertaining to other issue areas than international trade, for example the environment or health conditions in a country or region. *Institutionalized issue fragmentation* was no doubt a precondition for the spectacular results that were attained in the Kennedy Round, over-the-board tariff reductions in the range of 30% - 50% on industrial goods.

Equivalent results in international negotiations at the present time involving horizontal issues like sustainable development are not easily attainable. It is important to find means to facilitate such talks. Traditional tactical facilitation aiming at improving the negotiation

performance of individual actors may be helpful in this regard but is not sufficient. The obstacles in negotiations on horizontal issues are to a great extent of a structural nature. Two kinds of structure are of particular importance. One is *institutionalized issue* fragmentation and another is the distribution of work within and between international institutions that is largely a consequence of the fragmented issue structure that has emerged after World War II.

In the context of a strategy of long term facilitation there are two principal approaches to cope with the problems of horizontal issues.

One alternative is to simply accept *institutionalized issue* fragmentation and tolerate its negative consequences in a negotiation. One example drawn from the climate talks would be that governments struggling to arrest climate warming have to accept that binding commitments by states to reduce GHG emissions are so difficult and costly to attain that other forms of cooperation have to be relied upon ("soft law" or even codes of conduct).

Another option is structural transformation addressing both issues and organizations. The purpose of such reforms would be remove obstacles which impede negotiation parties to cope with horizontal issues. This approach is much more gainful than acceptance of *institutionalized issue fragmentation* but is also more demanding. The community of negotiation analysts may help practioners to carry out structural reform. However, in order to do that they need to give higher priority to how negotiation structure influences negotiation process.

MIKHAIL TROITSKIY

THE COSTS AND BENEFITS OF "TRANSFORMATIONAL NEGOTIATIONS"



Speaking in January 2006 at Georgetown University, U.S. Secretary of State Condoleezza Rice set forth a doctrine of "transformational diplomacy"¹. This doctrine was premised on the assumption that, in some cases, the primary purpose for the United States to engage with a certain counterpart should be to transform the counterpart. "Transformational diplomacy" soon became subject of an intense debate among both American and international politicians and experts².

In most general terms, the "engage to transform" tactic can be viewed as a negotiation technique aimed at changing at least some of the fundamental characteristics of a counterpart in the course of negotiations. With a degree of simplification, the gist of this technique can be summed in one phrase: "Before starting to negotiate substance, try to transform your counterpart in a manner that is favorable to your negotiating position".

This paper discusses "transformational approach" to negotiations, that is, attempts to transform one's negotiating counterpart to make it more amenable to an agreement. I look at the purposes, ways and means of using the transformational tactic as well as on the range of possible reactions to attempts at transformation.

The viability of the "transformational approach" has a direct relevance to the challenges of contemporary international negotiation. For example, when engaging with extremists, it is highly preferable to change them before striking a deal. But can you really expect to be able to change extremists before discussing substantive issues with them? And when is it better to reach a compromise without transformation in order to avoid worse outcomes?

WHAT IS "TRANSFORMATIONAL TACTIC" IN NEGOTIATIONS?

Let us consider two entities – **A** and **B** – that are engaged in negotiation. **A** is a state, and **B** is either a state or a non-state actor. **A** applies 'transformational tactic' to **B**. Why should **A** try to transform **B**? There may be a variety of motives for **A**.

- A may be pursuing its pragmatic interests: once the identity of **B** is transformed, **A**'s interests in negotiations can be more easily achieved.

¹U.S. Secretary of State Condoleezza Rice. *Transformational Diplomacy. Speech at Georgetown University. January 18, 2006* <http://www.state.gov/secretary/rm/2006/59306.htm>

²For a critical review of Secretary Rice's speech by an American scholar see: Walter LaFeber. *The Flawed Rice Doctrine of 'Transformational Diplomacy' and American Global Policy. Japan Focus. March 2, 2006* <http://www.old.japanfocus.org/products/toppdf/1870>

- Values and ensuing moral principles, if they play a role in the negotiations, may prevent **A** from considering **B** (for example, an extremist movement) as a fully legitimate counterpart.
- The government of state **A** may need to show its domestic constituencies the power of government negotiators or their principled position. This motive comes into effect when there is no other option for **A**, but to begin negotiations, but there is a need for a face-saving agreement. In that case, **A**'s negotiators seek to assure the observers that they did their best to change their unpleasant counterpart for the better, but had to reach an agreement in the absence of other options.
- Sometimes, questioning **B**'s identity and/or interests may weaken **B**'s position, for example, as a result of internal discord with country **B**. At the very least, **B**'s resources may be drained even if no transformation is achieved. This, in turn, may facilitate attaining **A**'s pragmatic goals in negotiations.

How can **A** transform **B** in the course of negotiation? In order to transform **B**, **A** needs not only to question **B**'s specific negotiating position, but to cast doubt on more fundamental characteristics of **B**, such as:

- interests and goals that shape **B**'s negotiating position – with a view to bringing them more in line with **A**'s interests;
- components of **B**'s identity that underlie its goals in negotiations with **A**.

Transformation of **B**'s identity is **A**'s maximum goal because once **B**'s identity is changed, interests are likely to shift as a direct consequence.

To maximize results, **A** should seek a 180-degree transformation of the key components of **B**'s identity: for example, turn **B**'s perception of **A** from an enemy into a friend.

How in practice can **A** question the interests or identity of **B**? The ways and means of doing that may include:

- invoking values that may resonate with **B**, for example, appealing to terrorists' respect for human life or to a government's respect for basic human rights;
- appealing to alternative **B**'s constituencies in order to delegitimize **B**'s negotiators, for example, by opening the eyes of **B**'s citizens to the abuses of their government;
- teaching **B** new ideas or concepts that have a chance of being internalized by **B** and, as a consequence, influencing **B**'s identity or interests (for example, it has been argued that China's international strategy could change if Beijing viewed itself as a "global player with global responsibility");
- offering rewards for a changed identity (for example, European Union's promise of eventual membership encourages prospective members to adhere to certain economic or political standards and change identity to "pro-EU", that is, to accept EU's interests as their own).

How can **A** use these instruments to transform **B**? Two types of transformational tactic can be imagined:

- conditioning the start of negotiations with an agreement on terms or values (for example, signing an initial document between countries **A** and **B** in which both sides commit to

observing shared values and pursuing certain political or economic agendas by declaring: "We are no longer enemies");

- setting the terms in which **B** is supposed to explain its negotiating position. This may lead to the internalization by **B** of some values that may affect his identity and/or interests.

In order to further develop the concept of transformation in the course of negotiation, it may be fruitful to introduce the notion of "transformational power". Such power can be defined through its components that include:

- recognized authority as a source of values (for example, the EU, or France, or Britain as consistent proponents of the human rights agenda);
- creativity and developed rhetorical capabilities in advertising alternative values (the quality of a country's analysts and diplomats);
- **A**'s ability to exploit **B**'s vulnerabilities in a multi-level game. This may depend on how attractive **A** is to **B**'s domestic constituencies (whether, for example, the US, or China, or the EU have an appeal in the eyes of some other country's public).

What reactions should actor **A** expect from **B**? Let us consider a case in which **A** negotiates with a group of extremists.

TRANSFORMING EXTREMIST GROUPS THROUGH NEGOTIATION

The natural question country **A** faces when forced to negotiate with an extremist group is to what extent an extremist identity lends itself to transformation.



Can transformational tactics work with for example extremists groups or protesters who demand change?

A state can be very sensitive to outsiders pinpointing its domestic shortcomings. But state **B** may still choose to engage in transformational negotiations hoping that it will be able to stand up to the transformative pressure and reap certain benefits from negotiating. For an extremist group, however, any transformation is likely to be directed against nothing less than its very extremist nature which is a key constituent part of the group's identity and a factor of cohesion keeping group members together. A state can modify or even forswear parts of its identity while preserving many of other cherished aspects, while an extremist or terrorist group has nothing to forgo, but its extremist identity. Such group has a less sophisticated identity than a state and therefore much less space for compromise with those who seek to transform it.

Moreover, extremist groups seek to capitalize quickly on their tactical advantages. They may simply not allow enough time for state **A** to deploy

instruments of transformation. The game with extremists may be over before state **A** is able to ask them questions about themselves.

Finally, extremist groups are usually aware of the fact that law prevents the government of state **A** from pardoning extremists in the future if they get captured. Domestic constituencies in country **A** may also be reluctant to believe that an extremist group has truly changed its identity. Indeed, once extremists renounce their identity, no one may be inclined to negotiate with them. So their motive to make such change will be even more limited than motives of a state.

CHALLENGES TO THE "TRANSFORMATIONAL TACTIC"

Is it worthwhile to engage in transformational negotiations? The answer depends on **A's** assessment of costs and benefits that, in turn, are contingent on **A's** transformational power and **B's** possible reactions in each specific case. The promise of the "transformational tactic" is that it may allow actor **A** to achieve sustainable benefits in the current as well as in future rounds of negotiation once **B's** identity is sufficiently transformed. What can then be the difficulties that **A** may face when employing "transformational tactic"?

First, more time is needed to achieve success in "transformational negotiations". This applies, for example, to the EU which can and even wants to wait for a long time before delivering membership as a benefit for transformed identity, but this may not apply to an extremist group which usually asks for quick rewards threatening quick reprisals.

Second, if particular negotiation is a two-level game, attempt to delegitimize negotiators (e.g. **B's** government

or ruling elites) may lead to other constituencies in **B** rallying around negotiators and making them more inflexible.

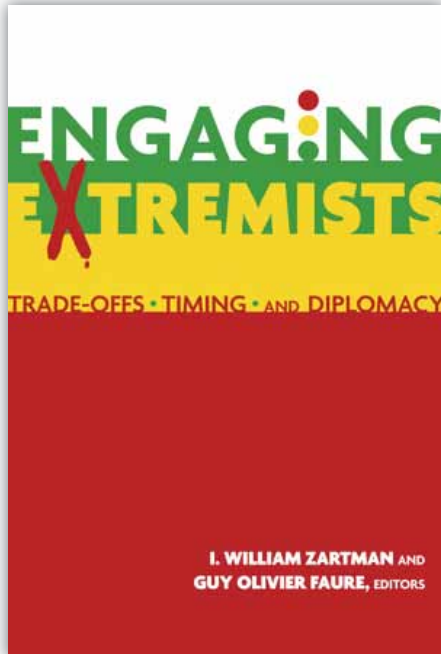
Third, if one of **B's** goals in negotiation with **A** is bolstering **B's** own legitimacy (in some cases, this may actually be all that **B** seeks to achieve – consider, for example, Iran negotiating its nuclear program), **B** would be particularly disappointed and reluctant to allow for a transformation of its identity or interests. This is again a likely case when negotiating with extremist groups.

Fourth, having applied the "transformational tactic", **A** may complicate future negotiations with **B**, because **B** (as well as other counterparts) may become less willing to engage in a new round of negotiations knowing that **A** is likely to resort to the "transformational tactic" again.

Finally, mutual trust may be eliminated as a result of "transformational negotiations". For example, if **A** attempts to delegitimize **B** (or **B's** stated interests), **B** may have reasons to fear that any negotiated agreement will not hold. This is because **A** apparently does not want to accept **B's** legitimacy and may in the future declare any agreement void on the grounds that it was achieved with an illegitimate counterpart.

The "transformational tactic" may deliver results depending on a variety of factors that relate to both **A** and **B** and the environment in which they negotiate. What is certain, however, is that the costs are significant – in both immediate and long term – so a failure of "transformational negotiations" may leave party **A** (who employed this tactic unsuccessfully) in a worse position than **A** had before the start of such negotiations.

I WILLIAM ZARTMAN AND GUY OLIVIER FAURE

WHEN AND HOW TO ENGAGE WITH EXTREMISTS

The record shows that states and extremists do negotiate, even if not always successfully. The initial reaction between states and terrorist organizations is one of confrontation and isolation. Both sides are in to win, to make the other side give in. The outcome at any point is either victory/defeat, continued escalating confrontation, or stalemate, of one of two sorts: either a Mutually Hurting Stalemate or an S5 Situation (soft, stable, self-serving stalemate). In the absence of victory, the contending parties have to consider negotiation, and so do potential mediators. But when? This is a question examined in the new PIN book edited by I William Zartman and Guy Olivier Faure, *Engaging Extremists: TradeOffs, Timing and Diplomacy* (US Institute of Peace 2011).

SOME ANSWERS

Most simply, states negotiate when they have to, when the isolation

policy is failing and the failure is painful to the state. Failing policies can be sustained for long periods as long as the failure does not have negative consequences. This simple basis for understanding a policy change is open to much greater refinement and interpretation by the policymakers and public analysts alike. It is not as directly decisive as a basis for openers when applied to conflicts with terrorist political organizations as with states because of terrorists' heavy reliance on commitment and indoctrination (Zartman 1995); failure is less evident when purpose is imbued with rightness and righteousness and the cause has a distant—even otherworldly—horizon.

The chapters in the new book, *Engaging Extremists*, have provided further refinements to this guideline. Maria Groeneveld-Savisaar and Sinisa Vukovic (a PIN fellow in the IIASA Young Scientists' Summer Program [YSSP] in 2009) give a very direct answer, based on interests: Mediating states engage in terrorist conflicts when the conflict area is one in which they have strong interests, and when they do their engagement requires firm deployment of carrots and sticks to win the protagonists away from their course of confrontation. The same reasoning applies to the state in the conflict itself; if the conflict is outside the state's area of interest, it is a mosquito bite, worth merely balm and flyswats but not the carrots and sticks (to mix the metaphor) needed to bring the opponent to effective engagement. Engagement requires the expenditure of power, as much as confrontation does, to make the conciliatory policy worthwhile to the terrorists.

Syacie Pettyjohn brings out a different analytical variable: moderation. A mediating state will engage with the terrorist organization when there is no moderate alternative to deal with, and when that organization itself shows signs of moderating. Again, the same reasoning applies to the state in the conflict and, by extension, to the terrorist organization. Engagement is designed to produce moderation, and will not be undertaken if moderation is already available elsewhere and if the extremists have not shown an ability to moderate. This means that the terrorists will be expected to show some engagement tendencies of their own before the state will take the step. Terrorists may also moderate themselves by coming together around a common, moderate platform with other, moderate groups behind the same cause. Or they may find themselves engaged in processes, as Pettyjohn suggests—ceasefires, electoral competition, parliamentary processes, marginal negotiations, informal conferences—whose mechanics and spirit gradually force moderation on them. Again, the hanging question is how much moderation does it take to be productively involved in a moderating relationship such as engagement?

I William Zartman and Tania Alfredson (2006, 2009) found a number of different explanatory variables, beginning with the necessity imposed by a hurting stalemate or by the need for an agreement that only terrorists could provide, two sides of the same coin. Again, this presupposes that the terrorist organization is also ready to negotiate, either because it occupies the other side of the mutually hurt-

ing stalemate or because it sees it can get something in exchange for acceding to the states' need for an agreement. In both cases, gains were seen to be available through engagement, in the first case gains through the reduction of losses and in the second outright gains. In both cases, these gains must be weighed against another measure—opportunity gains or gains to be achieved by not engaging (e.g. chances of winning or of not losing what one had to pay to get an agreement). Another variable was the pressure of mediators, persuasive either because it convincingly promised a better outcome, because the mediator used tough persuasion, or because not to listen to the mediator would be costly to the party's relationship with the mediator.

These findings can be totaled for some sharper, if preliminary generalizations. Not surprisingly, states reach out to terrorist organizations when they must, as participants or as mediators—when the conflict matters to them or hurts them enough, when they need the terrorists' agreement to achieve their goals, and when the previous policy of indifference or active isolation has proven unsuccessful in ending the terror. However, they must also feel some reassurance that their gesture will be productive and that a change in policy stance is actually possible. To gain this assurance, they need to continue active involvement in the conflict, as they add incentives to their offers of contact, without totally abandoning their previous pressure, if only as a threat to return to isolation and confrontation. They need also feel that there are enough moderating dynamics present within the terrorist organization to signal a direction and produce a continuation of internal change. All of these elements are judgment calls, but that is what policy is made of (Zartman 2005, 2010).

MORE QUESTIONS

If the signs on the surface are sharp, the ground underneath is squooshy. Beneath these conclusions lie problematic soft spots in the conduct of the process of engagement. The soft areas begin with the distinction between talking and negotiating: States should talk, even if not negotiate, with terrorists, although talking and negotiating overlap. Second is the distinction between ends and means; negotiations can seek to pull opponents away from the use of violence (means) even if not from their causes and beliefs (ends), but in fact it is the ends that are used to justify the means. Third, one cannot negotiate with total absolute terrorists, but negotiations are required in order to turn total absolutes into negotiable types. Fourth, similarly, moderation is both a condition and a process for engagement and negotiation, but how much moderation is needed before negotiation can begin or can be attained as a result? Finally, parties are always horizontal coalitions held together by purpose and legitimacy, but how can moderate factions be enticed into negotiations without losing the unity and legitimacy of the whole?

Initiating the Process: Talking vs Negotiating. It is important to develop all contacts possible with all types of terrorists and terrorist supporters. In dealing with terrorist organizations, negotiation is not what the terrorists want. For that very reason talking is crucial, to find out information, sow doubts, crystalize goals, develop interlocutors, and set up a negotiating situation if it is to materialize.

Talking and negotiation are both part of engagement, but talking is not negotiating. It can be carried out at lower levels, it does not involve legitimizing and recognition, and seeks merely ex-

change (or extraction) of information. Talking in its larger context is the first step of engagement (Post 2005), as opposed to a policy of isolating, and one element of engagement is the changing of images, ideas, and even goals, as well as exchanging views about them. Exchanging is the path to changing, on both sides. Much of negotiating involves talking (engagement); talking does not necessarily involve negotiation but is only the likely prelude to it.

Talking and negotiating are a process, not an event; the initiation of either should not be taken as a total policy opening but rather an investigation of possibilities and intentions and an attempt to sound out and attract the other side into flexibility and moderation. It is not by public statements that one knows whether the opposing party is an absolute or a contingent terrorist, that is, non-negotiable or negotiable, and that what kind of absolute, total or conditional (Zartman 2003). In the process of sounding out possibilities of talking and negotiating, one does not begin with a prominent authoritative figure (Combalbert 2009). Intermediaries are necessary as a first step toward communication and often even the last step of negotiation, behind the public view of strident statements. Talking is a lengthy phase, before obstacles can be cleared, the pre-negotiation process completed, and negotiations can begin (Stein 1990).

Proposition 1: Talks and other contacts (engagement) are a prime means of dealing with terrorists, separate from but a precondition to negotiations.

Proposition 1a: However, negotiation is not necessarily inherent in talking although talking is inherent in negotiation,

Concluding the Process: Ends vs Means. Basic guidelines insist, Do not negotiate belief systems, but rather Seek to deescalate means from violence to politics. Breaking the link between ends and means is important for the reduction of terrorism, whether the ends are downgraded or not. The extremists need be shown that their ends are not worth the means deployed because the means are not successful in attaining the ends; states should engage and negotiate not because of terrorist violence but in order to end terrorist violence.

Yet ends justify means (as in many other instances, despite the mantra to the contrary), so the terrorist, convinced that his ends require or at least condone terror, has to be converted to a contrary conviction, as authors in the book explore including Carolin Goerzig, a PIN YS in 2008, showing how a group can keep the faith but can express it in non-violent ways. Thus, a simple agreement to abstain from violence is shaky as long as it does not rest on further agreement that the ends do not require violence, and that requires getting into the belief system.

To do so, the negotiator must offer alternative means, such as autonomy or electoral participation as the PLO achieved in the mid-1990s in Palestine and the FARC came to achieve in the mid-1980s in Colombia. The negotiator must also emphasize the negative relation, that terrorist means are counterproductive to the attainment of the goals and that only when the means are dropped can discussion of the ends be begun. Thereafter, in the new situation, the ends can also be downgraded over time, although an immediate, explicit statement of that intent would heighten terrorists' wariness of downgrading even the means. Israel could not understand the gradual downgrading of ends by

the PLO and Hamas, as Colombia could not understand the same process by the ELN.

But even with sequencing, things are not that clearcut. Terrorist violence is not likely to be turned off like a spigot. Operating cells may be far from central command and control, geographically or organizationally; a little testing along the margins may be practiced; and central command may well want to remind the engaging and negotiating state (and vice versa) that violence is still possible if sincere negotiations are not engaged (Zartman 2006, 2010). A chapter in the book by Kristina Höglund, a PIN YS in 2003, shows that in non-terrorist conflicts a solid ceasefire is not likely to be produced until the end of the negotiations, not the beginning. Similarly, it has been shown that when sporadic violence continues into negotiations, parties who break off the negotiations are primarily those reluctant to negotiate at all and are looking for an excuse to break off (Höglund & Zartman 2008). Like moderation, ending the terrorist means is a process before it is a precondition.

The question of qualified admission into the political system is of particular relevance to the matter of negotiations with the Taliban (Tellis 2009; Dorronsoro 2010). Unless simple persuasion concerning the inappropriateness of violence is effective, negotiations to end violence require a payment in return. Bringing the extremist organization into the political system has two conditions: that the extremists are ultimately engageable (discussed further below, under moderation) and that the state is strong enough to stand as a viable partner. Anything less than both is a surrender to the extremists. If the extremist organization seeks autonomy or other forms of self-government for a region

of an established state, its nature is more easily acceptable and the state needs to insure its overarching sovereignty and respect of the regional self-rule. If the organization seeks to enter into the political arena as a party facing the electorate, presumably it can take its chances among the other parties, although cases such as Algeria in 1990 show that the political system must be robust enough to face the challenge, the second condition. But if the organization seeks to replace or share power with the government as part of the negotiated deal, the conditions are crucial, and it is unlikely that either is fulfilled in contemporary Afghanistan, where the Taliban's attachment to their aims (and past record in charge of the state) appears solid and where the state suffers from weakness and illegitimacy.

On occasion talks and negotiations can be used to address the goals of the terrorist directly. Sowing appropriate doubts about the ends can work backward to downgrade the means. Convincing political Islamists, Tamil or Acehnese separatists, Colombian radicals, or Irish republicans that inclusion in the daily practice of politics, in legislation and election, is a more appropriate and achievable goal than takeover of the



Bringing the extremist organization into the political system has two conditions: that the extremists are ultimately engageable and that the state is strong enough to stand as a viable partner. Anything less than both is a surrender to the extremists.

state is a basic step in removing the threat of terror.

Yet there is an other hand: As noted, terrorism and extremism are generally warning signs—canaries in the mine—that there are real problems and felt grievances that need to be addressed. As already noted, a resolute pursuit of the Middle East Peace Process at the end of 2001 would have been a warranted action consistent with US past policy and present values, despite its unlikely effect on al-Qaeda. A government agreement to address the real problems of Colombian society would have been helpful to the attempts to end violence and terrorism. It is not “giving in” to terrorism to consider underlying issues.

Proposition 2: Negotiation should focus first on removing terror as a means to a goal, and leave changes in the ends and goals of the movement to the subsequent phase of engagement.

Proposition 2a: However, where ends are within the reach of the negotiator, an agreement in a terrorist conflict is more stable if the ends justifying the terrorist act are addressed directly.

Handling the Parties: Absolutes vs Contingents. “Absolutes” is an analytical category, not a fixed condition (Hayes, Kaminski and Beres 2003; Zartman 2003). The fuller characterization might be, “Absolutes are beyond negotiation as long as they remain absolute.” The challenge therefore is to shake them loose from their absolute characteristics. Unlike contingents, absolutes have no political agenda for negotiation (any more than do many governments). Their belief system prohibits and excludes negotiation. In addition, they are usually physically beyond contact

and communication. Even when talk is initiated, it serves as an occasion to repeat systemic beliefs and reinforce fixed positions. The state is the evil enemy, negotiation is selling out, and there is nothing to talk about. These characteristics constitute the barriers that have to be penetrated if negotiation is to take place. By the same occasion, this means that they should not go unchallenged.

Lowering these barriers to talking and negotiating is often a longterm job for education in multiple forms, but a major ingredient in a positive strategy is to make it quite plain that dropping violence will be rewarded. Behavior and beliefs are altered by effective present constraints and future inducements, a two-handed policy. Contingent inducements can be offered as trial balloons to penetrate the absolute refusal of absolutes and wean them away from terror as a means to their end. It must however be made plain that inducements are not bought by terror but will be the basis of discussions once violence is dropped; the point is to indicate that beyond the change in methods lies the possibility of talking about goals. Present constraints involve the inability of the terrorists to attain their goals. Terrorism is defined by the UN Security Council (UNSCr 1373) as violent acts designed to create a state of terror in the general public and by the U.S. government as politically motivated violence against noncombatant targets to influence an audience (Title 22, US Code, §2656[f]d). The current struggle is not between the West and al-Qaeda (who are beyond negotiation) for each other’s agreement, but between the two sides for the support of the world Muslim population. Terrorists, like revolutionaries, are fish supported by public waters, acting to destroy the state’s public support and to gather their own. The state needs

to be engaged in the mirror-image struggle, seeking to defend its own public support but also to undermine the public support—drain the public waters—behind the terrorists. When the absolutes see their public support waning, they tend to question the solidity of their own strategies and beliefs (Cronin 2008). Indeed, terrorist acts themselves may serve to undercut the support of the very public support they seek to gain (or at least intimidate) (Dellaport 2009).

Nonetheless, isolation may be an effective tactic, under specific conditions. If there is a competing but moderate group that can be rewarded and strengthened by showing progress toward a similar goal, isolation of the terrorist extremes may prove successful as support turns to the successful moderates. Moderate Islamists in Algeria and Morocco have been rewarded with a place in the political system and, in Algeria, even in the government, draining support from the radical party and from the smaller remnant groups. Al-Qaeda in the Islamic Maghrib (AQIM) reemerged in 2007-2008 to challenge the weak government but it did not gain popular support. Isolating the terrorists and favoring the moderates has been an Israeli and Western strategy toward Hamas and Fatah in Palestine—with failed results because of the absence of inducements that Israel is willing to offer.

Proposition 3: “Absolute terrorist” is an analytical category from which the terrorists may be made to emerge through present constraints and future inducements.

Proposition 3a: However, a two-handed policy of isolation as well as engagement is also conceivable, only on the condition that the hard hand offer strong inducements to the terrorists to change their policy.

Evaluating Moderation: Process vs Precondition. Moderation is the precondition for negotiation with terrorists. They must demonstrate a willingness to temper their behavior, change their means, as discussed, and open their attitudes to productive discussions. Until such evidence of moderation is forthcoming, little progress can be made in negotiation, and indeed actual negotiation cannot begin, almost by definition.

But moderation is also a process, a polysemic concept that is both fixed, as a hurdle, and moving, as an action to jump the hurdle. The challenge is posed in determining how much of the process is needed to achieve the precondition, and how much of a dynamic interpretation of the precondition can be sustained. Moderation as a process takes place in imperceptible stages, with terrorists checking, explicitly or implicitly, at each step to make sure they are moving in a satisfactory direction, responding to implacable constraints and receiving satisfactory rewards for their movement. Such movement, the process, can never be counted as irreversible; even terrorists in the nationalist movement in Algeria and Macedonia slipped back into their tactics after independence when they felt that their independence dividend was not what they expected.

Moderation as a precondition must be considered dynamically, even though its continuation is not assured. Movement through early phases may well produce further movement on its own if properly induced and rewarded, and failure to respond to the early phases of the moderation process may cut the process short. Thus, negotiators will often be in the position of perceiving some movement in moderation but having to count on its continuing to fulfill the precondition. Both Hizbollah and

Hamas agreed to accept the rules of democratic competition, which imply acceptance of debate, respect for the popular verdict, engagement in the give and take of a legislative process—all moderating elements, and yet neither have dropped their terrorist practices against either their foreign or their domestic enemy nor recognized their adversary in negotiation. The IRA agreed to “stand down” but not disband, to not use its arms but not decommission, leaving its negotiating partners unsure about how much moderation had occurred or whether the precondition had been achieved.

There is no rule as to when the process has cleared the hurdle or whether its forward movement has enough momentum to carry it on to complete moderation. It remains up to the negotiator or the state (or the moderating terrorist on the other side) to make the best evaluation and take his chances. It also remains up to the state to block the success of the terrorist means, while continuing its inducements and rewards enough to pull the other side solidly into the moderation outcome, without however selling out to the other side. That combination is called a two-handed strategy. Obviously, the uncertainty is great and the risk enormous.

Proposition 4: Moderation as a process needs to overcome moderation as a precondition for effective negotiations to take place.

Proposition 4a: However, moderation as a process needs to be evaluated as it proceeds, to judge whether it contains the movement necessary to qualify for continued inducements and eventually to reach the stage of a precondition.

Balancing the Tactics: Division vs Unity. No negotiating team is unified

and homogeneous. Much theoretical discussion of negotiation assumes the contrary, usually in order to be able to make conceptual analyses, theoretical models, and generalized statements (Zeuthen 1930; Nash 1950; Rubenstein 1981). In fact, the dynamics within the sides and parties are usually as dramatic as those between parties (Anstey and Zartman 2010; Bakke, Cunningham and Seymour 2010; Staniland 2010; Woldemariam 2008; Lilja 2010). Negotiations between the state and terrorists are adrift in this grey area too. Any progress toward negotiation with terrorists depends on getting to some of the members of the other side and gradually winning them over, not to the state's opposing point of view but to the idea of negotiation at all. In terms of the previous point, moderation comes in pieces as well as in phases.

Negotiation is pact-making. The party on one side makes a pact with a party on the other side to establish some sort of relationship and work together to maintain it. Neither party represents its whole side but in the best cases the outliers simply fade away before the *fait accompli* (Zartman 2009). Both parties are linked by the agreement, with an obligation to each other and an obligation to themselves. In the first part, by their signature they pledge to each other to honor and support each other in upholding the agreement and in selling it at home. Even before the agreement is signed, progress toward it depends on an implicitly repeated sense of requitement, the notion that concessions will be reciprocated and the process of moderation rewarded. In the second, they pledge to themselves to represent the interests of their entire side and to convert or marginalize any other parts or parties of their own side who are left out of the agreement. In a telling example noted by Pettyjohn



Arafat and Rabin shake hands on the White House lawn after signing the Oslo Accord.

and Höglund, representatives from the Israeli Labor government and the PLO negotiated and signed an agreement made in Oslo in October 1993, to the exclusion of Hamas, making a pact designed to meet their own needs and interests, although neither party was able to deliver its side, despite the implication that it would do so. The Colombian government and the moderate faction of the FARC designed an agreement in the mid-1980s to engage the terrorists in national politics as the UP (Patriotic Union), and they would have won some elections if their candidates had not been assassinated by the right-wing militias; the militant wing of the FARC drew its conclusions. The UN mediator brought together the various parties of Afghanistan in a *loya jirga* (national assembly) in Bonn in 2001 to set up a new state after the allied invasion, to the exclusion of the Taliban and Pakistan. In Rwanda, the Arusha Agreement of 1993 was a pact between an unstable government and the Tutsi Rwandese Patriotic Front (RPF), to the exclusion of the genocidal Coalition for the Defense of the Republic (CDR), who thereafter spoiled the agreement².

Proposition 5: Negotiators begin by identifying and engaging central but moderatable parties among terrorists and then splitting their ranks

to make a pact calculated to engage the majority of each side.

Proposition 5a: However, faced with terrorists (and often governments) who maintain purpose and legitimacy by opposing engagement, negotiators must then close ranks of legitimacy and purpose again around a new policy of negotiation.

Improving the Process: Conclusion.

There is no theory of negotiating over terrorism. Such negotiations simply lie on the fragile, delicate edge of the possible and exemplify the most tentative aspects of the general negotiation process. Negotiations over terrorism are merely an extreme case of any negotiation situation. The decision to negotiate is uncertain, the opening positions are far apart and there is no Zone of Possible Agreement (ZOPA) between them, and the conflict is so conceived that there is no mutually hurting stalemate or sense of a way out. And terms of trade, joint sense of justice, and consensus on the nature of the problem and its solution—all elements in a formula for agreement—are all absent. Yet these are the challenges that the negotiating process must overcome if it is to reach a successful outcome, whether merely an agreeing formula, a managing formula, or a resolving formula. Engagement is a slow process; it takes time to overcome suspicion and commitment on the other side, and to weather the rebuffs that engagement is bound to meet at first. Awareness of these elements enables a better analysis of the conflict situations, and a more successful venture into the difficult terrain of engagement.

²None of the increasing number of studies - largely quantitative - of agreement durability take this seeming obvious element into account.

References

- Anstey, Mark, Meerts, Paul and Zartman, I William 2011. *To Block the Slippery Slope: Reducing Identity Conflicts and Preventing Genocide*. Oxford University Press.
- Bakke, Karen, Cunningham and Seymour, Lee, 2010. "The Effects of Fragmentation on Conflict Processes in Self-Determination Disputes," pending
- Cronin, Audrey Kurth 2008. *How Terrorism Ends*. Princeton University Press.
- , 2009. "How Terrorist Campaigns End," in Tore Bjørgo and John Horgan, eds., *Leaving Terrorism Behind*. Routledge.
- Della Porta, Donatella, 2009. "Leaving Underground Organizations" in Tore Bjørgo and John Horgan, eds., *Leaving Terrorism Behind*. Routledge.
- Dorronsoro, Gilles 2010. *Afghanistan: Searching for Political Agreement*. Carnegie Endowment for International Peace.
- Faure, Guy Olivier and Zartman, I William, eds., 2010. *Negotiating with Terrorists*. Routledge
- Feste, Karen 2010. *Terminate Terrorism*. Paradigm.
- Hayes, Richard, Kaminski, Stacey, and Beres, Steven, 2003. "Negotiating the Non-Negotiable: Dealing with Absolutist Terrorists," *International Negotiation* VIII 3:451-467.
- Höglund, Kristine and Zartman, I William, 2006. "Violence by the State: Official Spoilers and Their Allies," in John Darby, ed., *Violence and Reconstruction*. Notre Dame University Press.
- Lilja, Jannie 2010. *Disaggregating Dissent*. University of Uppsala. Sisk, Timothy 1995. *Democratization in South Africa*. Princeton University Press.
- Staniland, Paul, 2010. "Insurgent Fratricide, Ethnic Defection, and the Rise of Proto-State Paramilitaries," pending
- Stein, Janice Gross, ed., 1989. *Getting to the Table*. Johns Hopkins University Press.
- Tellis, Ashley 2010. *Reconciling with the Taliban?* Carnegie Endowment for International Peace.
- Woldemariam, Michael, 2010. *Why Rebels Collide*. PhD Dissertation, Princeton University
- Zartman, I William, 1989. *Ripe for Resolution*. Oxford
- , 2005. *Cowardly Lions: Missed Opportunities to Prevent Deadly Conflict and State Collapse*. Lynne Rienner.
- , 2006. "Negotiating Internal, Ethnic and Identity Conflicts in a Globalized World," *International Negotiation* XI 2:253-272.
- , 2010. *Preventing Identity Conflicts Leading to Genocide and Mass Killings*. International Peace Institute.
- , ed., 1995. *Elusive Peace: Negotiating an End to Civil Wars*. Brookings.
- , ed. 2003. *Negotiating with Terrorists. Special issue of International Negotiation* VII 3. Also published separately (Kluwer, 2006).
- and Alfredson, Tania, 2010. "Negotiating with Terrorists and the Tactical Question," in Rafael Reuveny and William Thompson, eds., *Coping with Terrorism*. SUNY Press.

Zeuthen, Frederik 1930, 1968. *Problems of Monopoly and Economic Warfare*. Routledge and Kegan Paul.

MORDECHAI (MOTI) MELAMUD AND AVIV MELAMUD

CTBT AND BEYOND: NEGOTIATIONS FOR A WORLD FREE OF NUCLEAR WEAPONS

At the 1995 Nuclear Non-Proliferation Treaty (NPT) Review and Extension Conference, a decision was accepted entitled Principles and Objectives for Nuclear Non-Proliferation and Disarmament, in which the ultimate goal of nuclear disarmament was emphasized. This goal was again reiterated in the 2000 NPT Review Conference, in which thirteen practical steps for reaching nuclear disarmament were enumerated. Entry into force of the Comprehensive Nuclear Test-Ban Treaty (CTBT) and immediate commencement and early conclusion of negotiations for a treaty banning production of fissile material for weapons purposes are the next major multilateral goals repeated in both documents.

The CTBT, which opened for signature in 1996, was the latest multilateral action in the process of negotiating for a world free of nuclear weapons; but entry into force of the CTBT is still pending, awaiting signature and ratification by nine key states. A fissile material treaty has been stuck at the pre-negotiation and diagnosis stage for over 15 years as delegations at the Conference on Disarmament are unable to move forward and begin substantive negotiations and formula building. Long-standing disagreement on such pivotal matters as scope and verification of the future fissile material treaty are underlined with contentions over justice matters in the nuclear non-proliferation regime in general, and still there is no sign of progress.

The negotiations for a world free of nuclear weapons originally envisaged in the NPT are therefore stuck in all

of their directions – no direct talks on disarmament are being held, treaties perceived to be the continuation of the NPT are wedged, and other non-proliferation instruments, newly proposed as well as such basic mechanisms as the IAEA inspection regime, are undeveloped.

NPT – THE POLITICAL SITUATION AT INCEPTION

The NPT, the backbone of the nuclear non-proliferation regime, was negotiated in the middle of the 20th century in a world that was still recovering from the 2nd World War and the bewilderment from the effect of nuclear weapons. This astonishment was so strong that the leading states of the period pushed successfully for the NPT to be accepted. They conceived a treaty that was meant to freeze the nuclear status at a given time, prohibiting further horizontal proliferation to more states while retaining their own nuclear weapon capabilities, yet committing to eventual termination of vertical proliferation. The NPT opened for signature on 1 July 1968 and came into force on 5 March 1970 with the deposit of ratification by 43 states. With 146 accessions since, the NPT currently bolsters 189 state-parties; an impressive near-universal participation rate.

At the time when the NPT was established, many of the states which are today members of the Non-Aligned Movement (NAM) just recently received their independence or were still under the influence of world powers from the previous era. The emergence of the non-aligned idea was directly linked with the process

of decolonization and formation of a considerable number of independent states coming out of the breakup of previous era structure. At the end of the 1960's, the number of recognized sovereign states had grown to 155 from the 99 existing a decade earlier. The establishing summit of the Movement in 1961 gathered 25 states; by the end of the 1970's, membership increased to 51. Today NAM incorporates 118 member-states.

The economic and political needs of Third World states and the emerging bi-polar international system in the background brought about the establishment of NAM, with the understanding of developing states that 'when elephants fight it is the grass that suffers.' While seeking economic ties with their previous colonizers, the emerging nations sought to loosen the dominance by the leading industrialized nations, thus interference of world powers in Third World countries has been a focal point in NAM agenda since establishment. The Movement called for independence in foreign policy and the establishment of a fair world order, for the advancement of international peace and security as well as economic and social development.

The issue of nuclear disarmament was central to the Movement since its establishment, as it was clear that nuclear weapons are of substantial influence on world politics and the international order to which the Movement objected. The nuclear issue was not only associated with matters of peace and security; the potential of peaceful uses of nuclear energy was related to economic and social



development, of great importance to NAM members.

THE GRAND BARGAIN OF THE NPT

During the 1960's, at the time when the NPT was beginning to take form and the Non-Aligned Movement was established, complete nuclear disarmament seemed impossible in a setting of bi-polar rivalry and East-West tensions. Yet the dangers of nuclear weapons made it clear that their spread should be prevented, for the sake of order and international security.

In this hazardous and complex situation, a grand bargain was achieved, based on three pillars – non-proliferation, peaceful use of nuclear energy and nuclear disarmament. The NPT singled out the already-nuclear weapon states at the time and authorized them to retain their nuclear status. Under the Treaty, all other non-nuclear weapon states undertake not to acquire nuclear weapons and to submit themselves to safeguards inspections in order to verify this. In return, the Treaty asserts the right of non-nuclear weapon states parties to the use of nuclear energy for peaceful purposes. As for the nuclear weapon states, they loosely undertook "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" (NPT, article VI).

This unbalanced distribution of obligations was accepted as temporary, for the sake of maintaining order, until conditions ripen for nuclear disarmament, which was envisaged as the ultimate goal of the NPT. At the time, the sacrifice of *justice* for *order* seemed like the only way to deal with the threat of nuclear weapons¹. Three years prior to the NPT opening for signature, states at the second NAM Summit in Cairo, recognizing the "great danger in the dissemination of nuclear weapons", declared "their own readiness not to produce, acquire or test any nuclear weapon". Non-nuclear weapon states had an incentive to join the global effort to combat the spread of nuclear weapons since the grand bargain seemed the best way to maintain international security in the dangerous nuclear age, while enabling them to benefit from peaceful uses of nuclear weapons and eventually leading to equality in the form of nuclear disarmament.

Despite the end of the bi-polar division in the early 1990's, NAM remains

a relevant and active grouping in world politics, still dealing with many of the same original challenges the Movement originally faced. This is also true with regards to nuclear non-proliferation and disarmament, an area in which NAM raises demands for justice through continued negotiation of treaties in the non-proliferation regime. The new international climate which emerged at the end of the Cold War held the promise of finally enabling real advances in nuclear disarmament. However, this was not the case.

THE STRUGGLE FOR CHANGING THE NUCLEAR STATUS QUO EN-ROUTE TO DISARMAMENT

A central contention over justice in the non-proliferation regime is related to the lack of progress in changing the nuclear status quo and bringing about nuclear disarmament, which is often presented by NAM and other non-nuclear weapon states as a failure by the nuclear weapon states to stand by their NPT article VI obligation.

The NPT is a status quo preserving treaty, as it froze the nuclear situation at a specific point in time. The CTBT, aimed at limiting the potential of non-nuclear weapon states to develop nuclear weapons and also the capability of nuclear weapon states to improve existing stockpiles, is likewise status quo preserving. The CTBT was created at a time when the nuclear weapon states had performed all the nuclear tests they required, and had already declared a self-moratorium on nuclear testing (Russia, UK and US concluded their nuclear tests in 1990, 1991 and 1992 respectively; China and France saw through their testing programs and concluded testing in 1996, just before signing the Treaty). However, the rejection of the CTBT by Republicans in the US is strongly based on their view

¹Hedley Bull, *Justice in International Relations: The 1983 Hagey Lectures* (Waterloo, Ontario: University of Waterloo, 1984).

of the CTBT as status quo altering – they claim that the US would need further testing for maintaining and developing the US arsenal (which is precisely what the Treaty serves to prevent). For several other Annex 2 states whose ratification is required for entry into force of the CTBT (such as North Korea, India and Pakistan and possibly Iran), stalled ratification may be due to their perception of the CTBT as status quo altering.

The only treaties that affected the nuclear status quo during the 60 years of the nuclear age were the bilateral Strategic Arms Reduction Treaties (START agreements), the latest of which – New START – recently entered into force with the exchange of the instrument of ratification by the US and Russia on 5 February 2011. Yet these were 'soft' changes – the two major nuclear powers (US and Soviet Union/Russian Federation) proportionately reduced deployed strategic arms and limited delivery systems, thus maintaining the nuclear balance and still holding way-too-many warheads. STARTs are important arms reduction agreements, yet they do not satisfy the demands for multilateral justice brought forward by NAM, based on their reading of article VI of the NPT.

The next step, as perceived at the NPT Review Conferences, is the fissile material treaty, which could be either status quo preserving as the nuclear weapon states would have it, or status quo altering as demanded by non-nuclear weapons states, particularly NAM and the developing block. As a status quo preserving agreement, the fissile material treaty would halt future production of fissile material for weapons purposes; as status quo altering it would entail a small, yet meaningful, step towards disarmament, by accounting for existing stocks of fissile material that

have been previously produced. The insistence of non-nuclear weapon states, mainly those belonging to NAM, on finding meaningful ways to advance disarmament (e.g. accounting for existing stocks) corresponds to their denial of any further non-proliferation measures being imposed on them until substantial steps towards disarmament are taken.

THE INALIENABLE RIGHT TO PEACEFUL NUCLEAR ACTIVITIES

An additional major justice contention is related to another pillar of the Grand Bargain – peaceful uses of nuclear energy. The NPT asserts the inalienable right of all parties to the Treaty to "develop research, production and use of nuclear energy for peaceful purposes" (NPT, article IV). However, developing non-nuclear weapon states frequently complain that their right to peaceful nuclear activities is denied under the guise of protection from proliferation.

The desire for prestige is considered a substantial motivation for nuclear development – the mastering of an advanced technology and an independent source of energy. Related to this is the common association of nuclear weapons with international leadership status. Already in early stages of the nuclear age, developing states understood that economic growth depends on energy supply, and nuclear technology thus has a great appeal, considered a cheap and reliable source of energy.

Since the NPT was established, it has been accused of constraining the technological development of non-nuclear weapon states, with restrictions on the export of sensitive technologies and materials put in place for the prevention of nuclear weapons proliferation. Only recently has Iranian President Mahmud

Ahmadinezhad again raised claims against the unjust distribution in the non-proliferation regime, in which the West denies others their right to use nuclear energy for peaceful purposes: "Humanity wants to benefit from this atomic energy, but they [the West] want to forbid others from gaining access to and benefitting from atomic energy. They monopolized atomic energy."²

WHAT ARE THE PROSPECTS FOR NEGOTIATIONS FOR A WORLD FREE OF NUCLEAR WEAPONS?

Nuclear disarmament by the nuclear weapon states will eliminate the inequality inherent in the NPT, and will bring justice to the regime in its most basic form – it will cancel the regime's discriminatory division between nuclear haves and have-nots. With advance in disarmament, greater confidence could be built between parties, which could possibly make the regime more receptive to new non-proliferation measures. Improvement of non-proliferation mechanisms could enable better handling of non-compliance, and thus the regime will be further strengthened, and consequently justice with regards to peaceful uses of nuclear energy would be more readily advanced.

It is now the negotiations on a fissile material treaty that are at the front of the struggle for a world free of nuclear weapons, embodying a practical, initial step en route to eventual nuclear disarmament, and therefore the demand for breaking the status quo and bringing justice to the regime is now central to the deliberations. The fissile material treaty negotiations can be consid-

²From Iranian President Mahmud Ahmadinezhad's speech at the Lebanese University in Beirut, during a ceremony in which he was awarded an honorary doctorate in political science, 14 October 2010.

ered a litmus test for the willingness of nuclear weapon states to take practical status quo altering steps (as opposed to declaratory statements) towards nuclear disarmament and the creation of a nuclear weapon free world. Negotiating this treaty will be no easy matter, as it deals with issues of great complexity.

The question of whether to include existing stocks is still in its very early stages; if it is agreed that they should be included, negotiations will only get more complicated. Fissile material handling is the basic challenge of nuclear disarmament, as nuclear weapons dismantling and its irreversibility depend on accounting for stocks and managing fissile material. Fissile material is produced by both nuclear and non-nuclear weapon states; hence, this issue is a global problem, and must be resolved in a global, multilateral forum.

A further, possibly as complex matter is verification, which will certainly be a bottleneck for conclusion of a fissile material treaty. Certain states and experts claim that a verification mechanism would be too costly and incomplete to be worth the overhead and efforts³. Yet the treaty's original formula for negotiations demands it to be "verifiable," and so many states will not agree to have a solely declaratory treaty.

An immediate course towards nuclear disarmament seems implausible at this time, as it has always been; it appears that disarmament, if ever achieved, would necessarily follow a gradual path that has already been generally charted in the framework of NPT Review Conferences declara-

tions such as the 13 Steps. It is clear that the demand for justice necessitates changing the nuclear status quo, which would entail ratification of the CTBT, agreement to including existing stocks in the fissile material treaty and taking more practical steps towards nuclear disarmament.

The incapability to bring about entry into force of the CTBT is problematic if only because it is high on the list of milestones in the accepted road to disarmament. Likewise, despite fissile material negotiations being unable to proceed, the agenda that has been outlined will be difficult to change.

The faceoff between justice and status quo preservation has been building up in the non-proliferation regime since its inception. The lack of sufficient cooperation is disabling joint efforts by negotiating parties in the fissile material talks, with

regards to CTBT entry into force and also generally at NPT Review Conferences.

It might be that in order to break the stalemate, a leading power has to take a stand and lead the process. Based on the hopes raised with the new administration in the US under President Obama regarding non-proliferation, arms control and disarmament, the US may be able to move this process ahead. The recent US ratification of New START (and its subsequent entry into force) was a meaningful step; is it possible that this is the beginning of a new momentum that will be used to bring about ratification of CTBT by the US? This would not produce a domino effect, but certainly would advance the goals of the non-proliferation regime and create a more positive atmosphere, in which the US could retain its leadership role on these matters.



Perhaps under President Obama the US could retain its leadership role and advance non-proliferation and disarmament.

³E.g. Ephraim Asculai, "International Nuclear Nonproliferation Agreements: Current Status and Future Prospects," in Emily B. Landau and Tamar Malz-Ginzburg (eds.), *The Obama Vision and Nuclear Disarmament*, Memorandum 107 (Tel Aviv: Institute for National Security Studies, 2010).

GUY OLIVIER FAURE

THE MANILA HOSTAGE NEGOTIATION: WHY IT ALL WENT WRONG?



THE CASE

The Manila hostage case started with a discontented Philippine National Police officer hijacking a tourist bus in Rizal Park, Manila, Philippines on August 23, 2010. A former senior police inspector, Rolando Mendoza, from the Manila Police District (MPD) took over a tour bus with 25 passengers onboard in order to get his job back. In the bus, there were 21 people from Hong Kong and 4 Filipinos. The hostage taker was carrying a hand gun and a M16 rifle. He stated that he had been unjustly dismissed by the Manila Police Department over extortion without having been given the opportunity to defend himself. He claimed to be re-established in exchange for the release of the bus passengers.

The bus remained stuck at Rizal Park throughout the whole day with the bus driver handcuffed to the steering wheel while the police kept negotiat-

ing with the gunman. During these very long hours, Mendoza released nine of the hostages, including a mother and her three children, a man with diabetes and two photographers. However, the negotiations did not reach any satisfying outcome for either side.

At a certain stage, the gunman's brother spontaneously joined the negotiations but soon he became himself nervous and agitated. The police removed him from the scene and later arrested him for having intervened in the negotiations without due authorization and also for having committed a breach by carrying a gun in the exclusion zone. During the discussions, the media were covering on live the whole event and thus the gunman could follow these events on television. Knowing everything that was going on around him, the gunman turned out more and more exasperated and fired warning shots. He was also interviewed for a long time

by journalists via the phone line and kept showing rage, issuing threats and telling that he had already shot two passengers.

Ultimately the Philippines authorities did give in to the gunman's demands, but too little and too late. After having rejected Mendoza's request to be reinstated in the police, the authorities sent a written message promising to review his case, while he wanted it to be formally dismissed. Mendoza considered the written promise as "garbage", adding that the text did not seriously address his demands. Late on, a second message reinstating him as a police officer was prepared in the ministry but only arrived after the slaughter had started. The envoy with the document re-integrating the gunman had been stuck in a traffic jam along the way between the ministry and the scene of the hostage taking.

When the first shots started, the local

SWAT (Special Weapons And Tactics) team took position around the bus. Mendoza threatened in one of his radio interviews to kill all the passengers if his demand was not met and that he wanted first the SWAT team to leave the area. Mendoza had been extremely disturbed by news broadcasting that his brother had been arrested and started becoming extremely violent. He killed the tour leader who was handcuffed to the door handrail. Then five of the hostages tried to neutralize him as he was going to shoot the other hostages, but he killed them all. During that time, the Filipino bus driver managed to get out of the bus by jumping from his bus window. He was shown on television shouting "*patay na sila lahat*" ("they are all dead").

When hearing this and after ten hours of siege, the police decided to launch a rescue assault. The shoot-out was watched by millions of people on television. The whole operation met such a level of disorganization that it lasted for 90 minutes instead of a few seconds. First, the police team spent an incredible amount of time trying unsuccessfully to smash the windows of the bus. Then, the officers who finally managed entering the bus from the back were driven out by gunshots from the hostage taker. Afterwards, Mendoza started killing the hostages left one by one. At the end of the shooting, eight new hostages were dead and nine other people were injured. Some of the passengers in the bus may have died from "friendly fire". Snipers positioned to target the hostage-taker were the only ones who fired at the bus. They eventually shot Mendoza in the head during the assault. Two bystanders were also wounded, possibly because the public was allowed too close.

Soon after, the Hong Kong Government issued a top-level "black" travel alert for the Philippines. The assault

on the bus to rescue the hostages was widely regarded by experts at home and abroad as "bungled" and "incompetent". The Philippine government admitted that errors had been made and promised a thorough investigation, which they would report to the People's Republic of China and Hong Kong SAR (Special Administrative Region) governments. A few days after, the Philippines justice secretary said that at least ten people, including police officers, government officials and journalists, will face charges because of the deaths of eight Hong Kong residents. However, after one more month, according to a government report released by The Associated Press news agency, only one of these ten, the Manila Mayor Alfredo Lim, will finally face criminal charges. He will face administrative and criminal complaints for the blunders that caused the day long standoff to degenerate into bloodshed. The others nine should not face charges unless a future investigation brings new facts. On his own, the commander of the rescue operation decided to take leave and four members of the SWAT team were temporarily suspended.

MAJOR ANALYTICAL CONCEPTS FOR ANALYSIS

Among the most prominent variables which played a role in this case, the following can be put forth: uncertainty, risk management, escalation, articulation goal/strategy, fairness, information, personal variables, time management, and audiences.

The number of *uncertainties* existing in such a type of negotiation is considerable and the related consequences highly dramatic. Uncertainty about the real intentions of the hostage taker and his commitment to them comes first. Some hostage takers simply give up after some discussion

or the intervention of someone influential they know. Others would go even beyond their initial project and kill without necessity. The emotional dimension is also an essential component of the situation. If the gunman gets easily nervous, is prone to escalate, becomes exasperated and loses control, the consequences may be the slaughter of the hostages.

Risk management is associated with the possibility of death, the most terrible issue in a negotiation. It induces stress, a sense of an enormous responsibility and ultimately the risk of falling into bounded rationality when making decisions. The first stage is to assess the real level of risk in the given situation. All strategic decisions will be made from this diagnostic. If the diagnostic is wrong, then the strategy will be inadequate and the outcome may be disastrous. The second stage is direct action, which means reducing the level of risk through communication. One of the basic purposes of a negotiation is to regain some control on the situation. In the current case, what happened was exactly the contrary: the level of risk kept increasing and the situation got more and more out of control.

Escalation is a mutual process of increase of tension, conflict that may take a life of its own with consequences going beyond any rational interest. In this case we have at the beginning a case that looks quite easy to solve and due to the inability of the authorities to deal properly with it, the negotiation ended up with 8 hostages killed, several other wounded and the gunman shot. The subtitle of such a story could be "From win-win to lose-lose". There are many ways to escalate and in this case it is an escalation of means to reach the intended goals. Hostages executed on one side and police intervention on the other side.

Goals and strategy are narrowly articulated as the strategy is the mean to reach the goals. Obviously the goals aimed at by the police kept changing over time; the strategy became inconsistent and led nowhere. The most important effect was on the judgment of the gunman on the course of the negotiation. He became more and more distrustful, reluctant to cooperate and emotionally disturbed.

Fairness has been the cause for what the gunman took hostages. It was an important variable to take into account as a major element of the solution. He considered he had been treated unfairly by his administration and his hostage taking was an extreme form of protest with the purpose of being heard. The negotiation process could be used as a way to set a common standard of fair behaviour.

Information is a decisive variable in any negotiation situation. Having information enables to have a better control of the process. Normally, the hostage taker is confined in a small place with little access to information. Here, he was crippled in a bus but with the TV and media coverage, he could get the same amount of information than the authorities and have a good knowledge of what they were preparing. We had a sort of lethal game in which all information was public.

Personal variables play their part. The protracted negotiation elicited suspicion with the gunman who became extremely nervous. Then, the public arrest of his brother added to the stress, anger and resentment. At least, some empathy had to be demonstrated, so that a decent level of communication may be established with the hostage taker.

Time management is absolutely crucial in such dramatic incidents. Normally the first minutes of a hostage taking are the most dangerous. After one hour, a proper interaction or communication system has been set. In the Manila case, one of the simpler cases to be solved, a maximum of one hour was needed to free the hostages and capture the gunman. However, after 10 hours of discussion nothing had been solved and on Mendoza side, which means that the prospects were rather dark.

Accepting to have the *negotiation held before an audience* may drastically change the course of events. Having millions of people watching in live the hostage taking has consequences on the behaviours of each of the actors of the drama. It gives an incredible importance to the gunman who never reached such fame in such a short time. It considerably restrains the authorities about the tactics they can use to solve the problem. Everyone is on the stage for a performance for which he has never been really prepared. In any negotiation, parties play the audience if there is one as it was the case here. Furthermore, having made his demands public, the hostage taker was much more committed to his words and had little possibilities of making concessions.

THE PRACTITIONER'S VIEW: 20 CRITICAL ERRORS

The Philippine National Police was heavily criticized for lack of organization and inconsistent strategy for negotiating with the hostage-taker. The response to the rapid deterioration of the situation put the police out of control. The 90 minutes long assault on the coach was also described by a security expert as "extremely risky to the hostages". The former commander of the Groupe d'Intervention de la Gendarmerie Nationale (GIGN),

a world expert in dealing with such situations, after watching live television footage, was quoted as saying that "one cannot understand what justified this badly prepared and risky assault". A fact finding report asked by the president of the Philippines expressed grief on a plethora of errors that "conspired to produce the tipping point." How such an easy to handle situation could be turned into a total disaster? How a potentially win-win case could end up so much lose-lose? How such carnage could be achieved including even two bystanders wounded? We are facing a concentrate of faults in managing the negotiation going so far as regrouping almost all the possible mistakes that could be made in such circumstances. No less than twenty critical errors can be pointed out. Here they are:

1 - No proper activation of the crisis management committee

When the hijacking took place, the inertia in taking action from the Manila Mayor resulted into ineffective moves. The slowness in collecting critical information and operational intelligence did not enable the negotiators to take proper control of the negotiation process. One may even wonder if there were crisis management procedures existing and, if they were, at least they were ignored by those who had to make decisions in such dramatic circumstances. Furthermore, it took seven hours to Lim, the Manila mayor, to decide to come to the scene of the hostage taking.

2 -Inadequate negotiation team

The group assigned to negotiate with the hostage taker was unprepared, insufficiently trained, poorly equipped, and ill-informed. Hostage taking is typically the type of situation for which a highly specialized team should be required. Zealous

amateurs, or people selected because they are there, should never be given such a task. Furthermore, they broke one of the most basic rules in such situation which is to have a clear separation between decision makers and negotiators to prevent the decisions makers to be manipulated by the hostage taker.

3 - Unclear goals

The decision-makers on the side of the authorities did not set up clear goals and spent hours hesitating between discussing with Mendoza to convince him he was wrong and had to give up, or working on some trade off in order to get the hostages free or finally gaining time to either exhaust the gunman or prepare for an assault. This fuzzy approach spread confusion in the mind of the SWAT but also in the perceptions of the hostage taker.

4 - No adequate and consistent strategy

Each possible goal requires a specific overall conduct of action. There is an absolute need of consistency between ends and means. Here, the discussion is not backed by a univocal strategy but by fuzzy intentions. Thus, verbal exchanges become more and more unrealistic hampering negotiation effectiveness.

The dominant strategy, as expressed by Mayor Lim, was to merely "tire out" Mendoza, waiting for him to get exhausted so that he gives up any demand. Such a strategy was based on a wrong assumption concerning his psychological profile. The gunman was handled as a criminal, which means a person that has just committed a crime, who is surrounded by the police and, in order to avoid being arrested, who chooses to take hostages. This type of individual does

not premeditate to take hostages. This was not the case for the gunman who had carefully planned the whole hostage taking. In reality, Mendoza did not belong at all to the category of criminals. He falls in the category of mentally deranged people. He is someone who resented the injustice done to him and wanted something else than keeping his freedom. He was ready to die if not reinstated because to him it was a way to recognize and nullify the prejudice he suffered. In addition, such type of hostage taker does not tire easily and tends to overreact when getting impatient. Thus, associating Mendoza to the wrong profile led to adopt a wrong strategy resulting in a massacre.

5 - Lack of credibility as negotiator with a mandate

The agreement to re-integrate Mendoza is not presented in a credible way. The counterpart of the hostage taker has to build enough credibility, if not trust, to send messages considered as reliable. Instead of this, suspicion increases on the hostage taker's side along the discussion. The negotiator is viewed either as untrustworthy or as powerless. In both cases, it destroys the possibility of an agreement.

6 - Very poor control of the hostages' scene

For the police, one of the first and basic moves in case of hostage taking is to establish an isolation line, to keep onlookers and passers by away from the scene. The police have to put a barrier or a screen around the area. Here, the public was allowed too close and we had almost a theatre show with actors on the stage and the audience around. At the end, two bystanders were also wounded, most probably by the police.



7 - Wrong appreciation of the hostage taker needs

The demand of the hostage taker was either wrongly appreciated or deliberately not properly answered. Mendoza asked to be reinstated to his former position. What he got after so many hours of discussion was a paper indicating that his case would be reviewed. Practically, it meant that there would be a further delay to make any decision and that the decision would still be pending on the assessment of the authorities. Thus, nothing was solved. Previously the gunman had received oral assurances that he would be reinstated. Such a measure of appeasement led to the raise of the level of expectation of the gunman, making the frustration even more painful. Although negotiating over hostages is not a game for boy scouts, obvious lies, easily verifiable by the gunman were very unwisely made.

8 - Wrong time management

Any negotiation putting lives at risk must be conducted by considering every minute available as a resource for improving the situation. In this case, it worked the other way round. Mendoza became more and more disgruntled, suspicious and furious. When the matter was to deliver a written document, it took much too long to issue such a paper. A second message reinstating him as a police officer finally arrived but too late, for the slaughter had started.

A second type of time management concerns the psychological stages in the process and the windows of opportunity that open and should be seized. For instance, the releases of hostages by Mendoza should have been used to shift the negotiation to a more cooperative stand by reciprocating. It could have been used as a way to apply the bicycle principle by triggering a reciprocal concession-making process.

Even if negotiating was not considered as the most effective way to handle the situation, at the beginning of the discussions, there were several windows of opportunity to shoot the gunman dead as he was standing by the door of the bus.

9 - No control on the media

The gunman was interviewed for a long time by two radio journalists who monopolized the phone line, thus preventing the negotiators to do their job. Behaving so, the journalists were clearly breaking ethical rules in covering the hostage taking. In addition, they made the gunman believe that his arguments were heard on the spot by the authorities, which was absolutely untrue. Letting them do, was an incredible mistake from the authorities who did not seem to even know the most elementary principles that should be applied in such situations.

The media was so much everywhere during the whole drama that they were the ones who provided light in the crime scene when it became dark. Later on, when an ambulance came to the bus at the end of the shoot out to rescue the wounded hostages, the people who went out of the van were not medical personnel but TV cameramen.

10 - No control on the information released

The authorities in charge should have not only banned the media to go anywhere during the drama but should have also controlled them on the coverage of the incident. The gunman was able to watch closely what the police were doing on the TV screen inside the bus, to guess their intentions and to follow all their moves. Furthermore, the standoff and rescue attempt were watched by millions on live TV.

Before this, at a certain stage, after the intervention of the brother of Mendoza, a TV channel reported the shouts of the brother fearing that the police was going to kill him. It was probably a turning point in the negotiation process because from this moment the gunman lost all confidence in what the police would say or do.

11 - Involving spontaneously someone totally unfit and unprepared in the negotiation

Bringing or accepting relatives and close friends to discuss and possibly deter criminals from doing something wrong can be a double-edged sword. While they may have some influence over the hostage taker, what they are saying or doing cannot be easily controlled. Here, the gunman's brother was included in the negotiations with no preparation and no specific objective. After some time, he became himself agitated and his role turned



highly counterproductive, making the overall situation much worse.

12 - Having a relative of the hostage taker arrested publicly

When realizing that the intervention of the brother was causing more problems than bringing any good, the police decided to remove him and, as the whole scene was on TV, the gunman saw him arrested. This unfortunate public initiative was decoded as an escalating move on the authorities' side, sowing the seeds of doubt on the real intentions of the authorities. Any decision of such a type should be obviously kept discreet if not secret.

13 - No need to kill the gunman

Several witnesses testified that Mendoza was initially willing to cooperate. A promise extracted under force is not a promise that has to be honoured. Normally nobody wants to give in to the demands of terrorists, but in a situation like this, which did not even involve a terrorist group, or the release of jailed terrorists, the authorities could have just accepted his demands. He could have been reinstated in the police - and then immediately put in prison for hostage taking, merely because what he had committed is a most serious crime.

Furthermore, before the final slaughter, there were opportunities to neutralize the gunman without having to kill him. During the discussions, the negotiators have been close to him when he was not holding his weapon. He could have been physically controlled and disarmed.

14 - Inadequate firing squad

Braveness or local availability are not sufficient reasons to select a rescue team. The very special task which

is to launch an assault requires to have police officers well trained and knowing clearly what to do. The national elite Special Action Force (SAF) was available and highly specialized in that type of intervention but they were not called although they were on the scene. Manila Police Chief did not abide by President Aquino's order to resort to an elite police commando team and instead resorted to a local SWAT.

15 - Wrong equipment

Although the assault was launched more than nine hours after the beginning of the siege, the police was still ill-prepared. The rescue team spent an incredible amount of time smashing the windows of the bus, whereas explosive charges would have instantaneously done the job with the windows and doors. Furthermore, they had no ladders to get through the windows. Later on, the SWAT was again ill-equipped for intervening inside the bus. Not even able to shoot the gunman, they had to retreat and leave the hostages to their fate.

16 - The assault taking place without enough tactical information

The data collection which is an essential tool for taking action was dramatically neglected. There was no intelligence officer to assist the negotiators in order to give them details on the hostage taker in order to provide a better knowledge of his personality, such as service track record, and personal traits.

Altogether there were nine hostages freed. Not a single one was debriefed for getting information about the conditions inside the bus. For instance, during the whole negotiation process, the team in charge was unaware of

the fact that the bus was equipped with a TV set that could receive live broadcast on the hostage-taking.

Later on, before the assault, there was no intelligence collected to help the negotiation team and eventually for preparing the attack. The final police assault on the one gunman surrounded should have been a matter of minutes if not seconds but bullets flew all over for more than an hour. That shows that the SWAT did not know much about the characteristics of the bus and the precise places where everyone was sitting. However, technical information on the emergency exit door, on the release button of the main door from the outside, and on the material of the window panels, were readily available from the assistant manager of the tour operator. However, no one thought about collecting that most basic but essential information.

When the driver escaped from the bus, he shouted that everyone was already killed in the bus, a statement that triggered the assault. The authorities did not do any cross checking of this assertion. Later on, it was discovered that this was absolutely wrong but it had already led to most dramatic consequences. After the failure of the first assault, the police did not try to clear up if the bus driver was not an accomplice of the gunman. What was only known at that time was that he escaped by himself through a window and then vanished.

17 - No use of the element of surprise when starting the assault

As reported, the rescue team moved "laboriously slowly" and in a most predictable way. The police did not distract the gunman, so could not take advantage of what is in such

circumstances a decisive element of surprise. They had to face someone who was expecting the assault and ready for a lethal fight.

18 - The absence from command post at a crucial time

Among other mistakes, Manila Mayor Lim, the top decision maker and Police Chief Magtibay, ground commander, left the scene to have dinner in a restaurant just before the hostage-taker started shooting the hostages. Their absence from the Advance Command Post created vacuum at the very moment critical decisions had to be made.

19 - Wrong use of snipers

The number of bullets found in the bus did not match the number fired from the hostage-taker's gun. Most probably one or more of the hostages were not killed by the gunman but by the snipers from the police, adding another tragedy to the overall disaster.

20 - No proper post assault plan

In any hostage taking situation, the priority is to save the lives of the hostages. This can be done through negotiation and if not through an assault. In this case, one can expect casualties such as people killed or wounded. The authorities are supposed to have medical teams ready and surgery interventions made possible on the spot. The absence of control of the crowd after the assault already made it difficult to reach the wounded hostages and take care of them. Worst of all, a very seriously wounded hostage was taken, as officially planned, to the Manila Doctor's Hospital but there the ambulance was told that they were no longer accepting emergency cases. Then, she had to be brought to another

hospital. She was already too weak for another trip and died on the way. This last tragedy added more shame, when possible, to the general disaster.

CONCLUSION

As mentioned in the First Report of the Incident Investigation and Review Committee (September 2010). "One is tempted to believe the Chinese that this August is indeed the ghost month. But this is the farthest cause of the murder of eight human beings. The ghosts are ours alone. A man with a perceived injustice and oppression done against him, so common in Philippine society, cornered and forced to a murderous and insane mission, the incompetence and insubordination of a police commander, the aggravating vigilantism of a politician, the disregard for the proper use of a crisis system by the crisis responders, the reckless irresponsibility of media people and their total abhorrence to any form of restraint in the practice of their trade. These are our own ghosts."

When looking at this dramatic hostage taking, the Committee expressed what could be an essential conclusion going much beyond the current crisis. Negotiation is a micro situation reflecting much of the macro context in which it takes place. It reveals more than just the failure of a process. It tells something about the whole society. Here it uncovers a lot about the Philippines' society. It is another dimension of negotiation to produce a revealing effect and hopefully in the future to avoid disasters of the magnitude of the Manila hostage taking. Thus, it would demonstrate the most important purpose of negotiating which is, in this case, to save lives and, in a more general way, simply to enable people to live together.

ANNOUNCEMENT | CLINGENDAEL/ PIN SEMINAR ENGAGING EXTREMISTS | 8 JUNE 2011

Hear about best practices for negotiating with hostage takers, pirates and terrorists at the joint *Clingendael/ PIN seminar Engaging Extremists* on 8 June 2011.

Although it is not easy to engage extremists, governments, companies and NGOs frequently end up talking to hostage takers, pirates and other (political) groups who do not fear extreme measures to accomplish their goals. The seminar *Engaging Extremists* features experts speaking from both academic research and practical experiences on how to differentiate between extremists and how and when to engage them.

Goals of the seminar

- Identify differences between extremists and strategies to approach them
- Discuss do's and don'ts in negotiations with hostage takers, pirates and terrorists
- Present best practices and casestudies

Preliminary program

- 9.30 Coffee and reception of guests
- 9.45 Opening
- 9.50 Key note speech "Identifying the actors and the topics for negotiations" Professor I. William Zartman (Johns Hopkins University, Washington) is a leading expert on international negotiations and conflict mediation. He is co-editor of the book *Engaging Extremists*.
- 10.15 "Understanding the rationale of your negotiation partner"
Dr. Willem Vogelsang works for Leiden University and is the former project officer cultural affairs (CULAD) for the Dutch MFA in Afghanistan.
- 10.35 "Negotiation and paranoia"
Michel Marie, project manager of CIVIPOL and senior consultant Crisis Management Negotiation GEOS (large Risk Management Company).
- 11.00 Break
- 11.30 "Handling negotiations with pirates"
Alex Kemp works for Neil Young Associates (NYA) International. NYA advises and mediates during crisis situations, including acts of piracy.
- 11.55 General discussion
- 12.30 Lunch

Organization

This seminar is part of the The Hague International Negotiations Week. The Week is a joint initiative of PIN, the renowned network on international negotiations research, and Clingendael, leading think tank on international relations, European integration and security issues.

Costs

Participation fee € 249,- per participant. This includes materials, lunch and light refreshments. Discount options are available for groups.

More information and registration

For more information and registration please visit the Clingendael website (www.clingendael.nl) You may also contact Wilbur Perlot, seminar organizer and coordinator of PIN (email wperlot@clingendael.nl, telephone +31 70 3746681).

MARK ANSTEY

CHANGE IN THE MIDDLE EAST – MIXED, MUTED AND MUDDLED*LAST UPDATED ON 20 APRIL 2011*

The wave of popular protest across North Africa and the Middle East has had mixed immediate outcomes: the departure of several longstanding leaders in the region (Mubarak in Egypt, ben Ali in Tunisia, and in all likelihood, Saleh in Yemen); in one, a collapse into civil war (Libya); and then a mix of actual and promised economic and political reforms (Saudi Arabia, Oman, Algeria, Syria, Jordan, and Bahrain) with a hardening rather than a softening of regimes in some. In all three groups there is the promise of change - but no clear sense yet of the shape of new regimes into the future. It is probably safe to project that the region is unlikely to experience a sudden flowering of liberal democracies; that outcomes will not be uniform across nations; and that not all leaders are at risk – the monarchies seem to be more secure than the big-men republics. Then again a change in leadership may not see fundamental reform or a shift in political values, simply a changing of the guard. So - reforms almost everywhere but in different directions, off different power bases and with different intent. While accusations of covert external meddling have been made and seem likely in several of the conflicts, in two, external intervention (Libya and Bahrain) has been overt. Libya in particular has drawn in the international community in a manner that begs some tough questions.

**THE FALLEN –
AND THE LIKELY TO FALL**

After 34 years in power **Tunisia's** Ben Ali left in a hurry in the face of a surge of protest action. Elections for a constitutional congress are scheduled



for July. In **Egypt** Mubarak's knee jerk response after 30 years in charge, was to use force to suppress protest action that began on 25th January 2011. When this widened participation and spread protest action from Cairo to other centers, an attempt was made to rally counter-protestors reinforced by plain-clothes police; then to deflect demands for his departure by reshuffling his cabinet; then by promising a departure from office permanently in September - but the pressure continued to build. On 11th February he left office and Cairo. A previously supportive military reshaped itself in the mix coming through as an impartial force, declaring it would not shoot at protestors and adopting tactics of containment rather than repression. When the crunch came, in the absence of a coherent civilian political system, it was the only credible agency in place with a capacity to govern – transitional power was turned over to a newly formed Supreme Council of the Armed Forces headed by Hussein Tantawi who promised to hand over to a civilian government in the near future. Not too many regime change scenarios can have witnessed a civilian uprising willingly hand over interim power to the military! The Council dismissed the government, dissolved the state security agency and put the Mubarak

family under criminal investigation. At the same time there remain concerns over its intentions and the shape of a future regime - some protest groups continue actions to remind the Council of democratic objectives. The recent referendum for constitutional reform in Egypt saw participation by Islamic but not secular groups who it seemed were too disorganized to mount a timely response to proposals. There was strong support for the reforms proposed in the referendum, though some argued changes did not go far enough, for instance on the issue of women's rights. It might have been some solace to western powers when the Supreme Council of the Armed Forces declared that it would not allow Islamic groups to take control, but the transitional government has also indicated readiness to re-establish diplomatic ties with Iran and is brokering a deal between Palestinian groups Hamas and Fatah – moves with potential to reshape relations in the region. At one level the USA and Israel might find this disturbing, at another however it may offer prospect of settling Sunni-Shi'ite, and Israeli-Palestinian tensions a little and offer a new channel of engagement. There are no clear indications yet of what direction these actions might take.

In **Yemen**, the debate is less about whether President Saleh's 32-year regime will end, than when and how. The anger evoked by the violence of his security forces in putting down protest action in Sana'a (with over 125 killed) has overridden his reformist offers to create a unity government including opposition group representatives; to step down from office on expiry of his term in 2013 (with

signals of 'sooner' under conditions), and his expressions of regret over security force violence. It has seen a loss of support from tribal leaders, the resignation of cabinet members, defection of military personnel and international condemnation. Saleh did not respond to power transition proposals put forward in early April by opposition groups that had coalesced into a Joint Meeting Party (JMP); and the JMP in turn rejected an invitation by GCC leaders to meet with him in Riyadh on April 10. The original GCC proposal, rejected by all the parties, was for Saleh to handover power to his deputy and leave office with immunity from any criminal charges, and the creation of an opposition-led national unity government. JMP representatives are now meeting separately with GCC leaders to discuss obstacles to a peaceful resolution of the crisis. Their unity in opposition to Saleh however, may not extend much further. Moderates might welcome a GCC mediated settlement but some are holding out for a straight victory – Saleh to go without immunity. The diverse opposition group includes separatists in the south, rebels in the north, and a youth wing, as well as tribal leaders.

After years of backing, these leaders have passed their sell-by dates for Western nations and their own militaries and traditional supporters. Outcomes however are uncertain. There are divisions within opposition groups – often the grounds on which militaries take and retain control 'until things settle down'. Western nations are concerned that extremist elements may seize control. Saleh and Mubarak had been allies in the pushback of Islamic extremism in the region, with the former a lynchpin along with the Saudi government in the fight against al Qaeda. The west now seems to have recognized that instability is a given with or without these leaders and to have put its hopes in a future

without them. The months ahead will see intense overt and covert jockeying for control over system redesign in these countries. If opposition groups cannot find internal coherence and unrest continues, the door is opened for military rule – a preferred option for a variety of stakeholders perhaps over ongoing instability or other forces taking control. It is a game of risk with potentials for constitutional reform that might take citizens of these nations into a less repressive future, but it might equally simply devolve into a changing of the guard – military rule and new big-men rulers. Much depends on how opposition forces manage their differences and whether they have the vision and capacity for mutual accommodation to give life to more democratic regimes.

THE REFORM / REPRESSION SURVIVORS

Protest actions in Algeria, Bahrain, Oman, Jordan, Syria and Saudi Arabia have seen violent clashes between opposition groups and government forces, and states of emergency along with curfews. However regimes in these countries seem under lesser threat.

In **Oman** Sultan Qaboos has ruled for 41 years. Protests have to date been directed against the government rather than the monarchy. The regime does not appear under immediate threat but its repressive measures to quell protest action have generated anger. The Sultan has passed reformist measures including a sacking of ministers, an unemployment benefit and raises in civil service pay and pensions. In **Jordan** the government has enacted laws to allow greater freedom of assembly and protest action. Thousands of protestors however wanted more, demanding constitutional reforms including the election of the prime minister. On 18th March a con-



stitutional reform meeting was held but it was boycotted by the Muslim Brotherhood that chose instead to protest outside the building demanding that it would only participate in discussions for a parliamentary government. The government through its UN ambassador Prince Zeid has said it will only respond to such proposals within the committee. Clashes have taken place between government forces and Salafis a conservative Islamic sect. Reformists see increased political openness as the route to moderate politics; hardliners fear it will simply give space to extremists to organize a more dangerous upsurge. Protest action in **Saudi Arabia** has evoked reforms from King Abdallah bin AbdulAziz, but not liberalization. His two-fold strategy has seen on the one hand very large sums of money allocated for improvements in hospitals and housing, and to fund job creation, minimum wages, and promotions within the security forces; on the other, steps to strengthen religious centres, the promotion of Islam and the religious police. In short, the strategy has been a mix of economic palliatives coupled with deepening religious conservatism. In **Syria** ongoing protests and violent repression by security forces have seen about 200 people killed. The government has claimed that protests were infiltrated by violent elements that opened fire on security forces under strict orders not to fire unless fired upon. After sending out clear signals of intent in early April to lift a decades old state of emergency that allowed security forc-



es to act with impunity President Assad balked. Instead he clamped down on protest action, accepted the resignation of his cabinet, and issued a set of decrees awarding health benefits to retired state employees, exonerating farmers from unpaid irrigation fines, and establishing a privately funded Islamic university. Then, on 16th April in a televised address Assad expressed condolences for those who had died during protest action, and promised to lift emergency laws. In their place though it seems a tough new set of terrorism laws is to be introduced. He has acknowledged problems of corruption, and unemployment (especially amongst the youth), and hinted at political space for opposition parties. His critics argue it is too little too late, and protests continue particularly in Deraa but there is not a sense that the Assad regime is at grave risk. Violent repression of protest continues to increase and is increasingly evoking international criticism. Assad though is not as weakly positioned as many others in the region, not least because of support from Iran. **Bahrain's** politics are the reverse of those in Syria – a Sunni monarch reigns over a Shi'ite population. Protest action gave rise to several weeks of protest in Pearl Square and rising levels of violence in exchanges between protestors and security forces. On the 15th March the government imposed martial law. The Pearl Monument was destroyed as a rallying symbol for protestors. The king is reportedly reformist in intent, but the government has recently dismissed over a hundred civil servants

for participating in protest action; teachers face possible criminal prosecution; and a well-known defense lawyer for opposition groups (Mohammed al-Tajer) has been arrested, as have 19 medical doctors. In **Algeria**, President Bouteflika a survivor of a very muddled democratic history has promised constitutional reform and accelerated economic development before elections in May 2012, including: an overhaul of electoral law a redesign of system following multi-party talks. The state of emergency of two decades was lifted in February, but demonstrations were banned in the capital though thousands have recently marched on the presidential palace to demand change.

OVERT AND COVERT EXTERNAL INTERVENTION

Nations in North Africa and the Middle East are of course not newcomers to overt and covert external intervention in their politics. This round of crisis is no different. **Syria** has enjoyed a 'special relationship' with Iran over many years. The state is officially secular, but Assad and his family as Shi'ites rule over a largely Sunni population and enjoy close relations with Iran. Iran is dependent on Syria as a platform off which to exert regional influence, has large investments there and has supported the Assad regime through this period of protest. From Syria Iran supports Hamas in Gaza and Hizbollah in Lebanon in their struggle against Israel. Both western powers and Iran suspect the other of using Syrian unrest to achieve leverage in the region. In **Bahrain** when the Sunni monarch found himself badly stretched by several weeks of protest Saudi Arabia, the United Arab Emirates and Kuwait sent troops, police and other support to strengthen the monarchy - and the existing government. Bahrain is strategically important providing a home for the US Fifth Fleet. It is a conflict,

like Syria, with the potential to aggravate wider regional Sunni-Shi'ite divides. Iran has denied accusations by the King of fostering discontent amongst the Shi'ite majority. The GCC is attempting to mediate the **Yemen** crisis where al Qaeda has mobilized in recent times, evoking Saudi intervention. The African Union has tried to mediate in **Libya**.

It is the external intervention in **Libya** under a UN mandate that has received central attention to date. There Qaddafi met recent popular protest with force, but it quickly mutated into a popular uprising and then into a full-blooded civil war between pro-regime and opposition group forces. In the ensuing humanitarian crisis tens of thousands of refugees spilled over the borders into neighboring states struggling with their own problems in North Africa. They also, and perhaps critically, created a massive refugee threat for Europe, and particularly France and Italy. In remarkably quick time, under pressure from France, the UK and the USA the UN Security Council passed Resolution 1973 to the effect that 'all necessary measures' should be taken to protect civilians, including a no-fly zone but excluding invasion on the ground. Traditionally the UN confined interventions largely to inter-state conflicts – individual nations resisted outside interference in intra-state conflicts on the principle of sovereignty. After UN dithering allowed space for nearly a million people to be murdered in the Rwandan genocide of 1994, Kofi Annan led an argument that the principle could never have been intended to allow protection for tyrants to murder their own people, and it was supplanted by a new principle – the responsibility to protect civilians at risk in civil conflicts. Resolution 1973 was immediately enforced, but controversially so with the Arab League feeling actions had gone beyond the mandate, and some divisions of interpretation over scope of

the mandate emerging between the USA and the UK, and NATO eventually tasked with seeing through the mission.

Qadaffi with over 41 years of unelected rule and a long history of domestic and international nastiness has of course done little to earn a right to protection – indeed he is at risk of prosecution by the International Criminal Court. Concurrently with Resolution 1973 the USA, UK and France have declared Qadaffi must go – they are advocates of regime change and openly supportive of opposition groups. Has a UN third party mandate been manipulated to endorse secondary party objectives and initiatives? NATO has posited that it is there to protect all civilians – for and against Qadaffi. It is a civil war – civilians have taken up arms against the regime. Who are civilians in this mix – are civilians who take up arms militia, or civilians? There is a logic of course that civilians in the long term can only really be protected through termination of the Qadaffi regime – if so the mission is really then one of regime change rather than simply civilian protection during a period of hostilities.

So - what are the boundaries between protecting civilians and using air support to push back pro-regime forces to assist opposition militia? Can the Resolution be interpreted to allow space to supply arms to opposition groups and train them to use these? In the last instance the USA and the

UK have suggested 'yes' (though they have not overtly done so), the secretary general of NATO, 'no'. Rebel forces have criticized NATO as not doing enough to support or protect them. Their intention is to topple a regime. They have turned down a negotiation option (proposed by the African Union) premised apparently on Qadaffi retaining some power. As these opposition forces are incapable of prevailing in a military campaign on their own, the war becomes in reality one centrally between Qadaffi forces and Coalition forces under the guise of UN Resolution 1973. France has gone as far recognizing opposition forces as the only representatives of Libya despite the fact they had not yet constituted themselves as a government, or been elected. There is overt Western support for the recently formed Interim National Transitional Council that has created a 'vision' for Libya and is likely to take the lead in state redesign into the future. None of these complexities of course gives Qadaffi legitimacy – the questions surround appropriate avenues of response to such complex realities.

Qadaffi has civilian support but it will probably diminish as the Coalition campaign is continued and the prospects of an opposition victory improve. The defeat will of course be heralded as a 'collapse' under pressure from opposition forces. But from there – where? Problems can be foreseen as reports indicate some divisions emerging within the rebel forces as well as poor discipline. Increased Coalition Force activity might avert a long period of civil war – but defeating Qadaffi is only the part one of a bigger process required to create stability.

SO WHERE IS IT ALL GOING?

Change in North Africa will be mixed, often muted and muddled. A mix of internal conditions and external forces

has traditionally shaped the region, and will shape outcomes of the current uprising.

The wave of protest does reflect a powerful new regional thrust for change from below – people are calling for freedom from repression, an end to corrupt regimes, jobs and an end to poverty. This does not however portend a sudden flowering of liberal democracies. Further the outcomes are not likely to simply reflect calls from 'the people'. The extent of strategic interests at risk for external powers means the processes will not simply be played out by domestic regimes and opposition groups. The old Sunni-Shi'ite fault-line runs through several of the national conflicts. Western and Israeli interests are in play across the region. Al Qaeda is mooted to be in the mix. Western nations have of course played a very active role over the last century in igniting and fuelling regional conflicts through the design of the regional map, the imposition and support of autocratic leaders (both benign and despotic), the removal of leaders hostile to western interests, and the suppression of democratic processes that might have given rise to unfriendly governments. In short they have compromised, and continue to be compromised by the politics of the region. They want democratic governments but not ones hostile to their interests, and have not only tolerated but supported repressive regimes in North Africa and the Middle East as bulwarks against potentially more extreme forces.

Zakaria (2004) argues that regional politics have long been held in a peculiar tension with western nations supporting repressive regimes across North Africa and the Middle East based on a fear, shared by regional moderates, that radical groups will seek power through elections and then establish intolerant theocracies. Several longstanding rulers have ac-



tively played on these fears, thwarting democracy on the basis that elections would see more fundamentalist anti-western regimes come to power. The concerns are not without foundation of course – Hamas for instance won elections in Gaza. So one emerging challenge in the mix is that the west may find it must develop new relationships to secure negotiation as the alternative of choice in the region.

Zakaria (2004:120) observes the peculiar phenomenon that 'In Oman, Qatar, Bahrain, Jordan, and Morocco, on virtually every political issue, the monarchs are more liberal than the societies over which they reign.' Contrary to experience in the West where democracy and liberalism fuelled each other, Zakaria argues that 'The Arab world today is trapped between autocratic states and illiberal societies, neither of them fertile ground for liberal democracy. The dangerous dynamic between these two forces has produced a political climate filled with religious extremism and violence. As the state becomes more repressive, opposition within society grows more pernicious, goading the state into further repression' (121-122). In short the thrust from below may reflect a mix of interests – more extremist elements using the space created to push agendas of their own quite different to the surges for liberal democracies experienced in other parts of the world.

We are certainly at the end of an era of particular longstanding 'big man' regimes in North Africa and the Middle East – will they be replaced simply by new 'big men' or military rule, will there be collapse into prolonged civil wars, might we see constitutional democracies take root, or a mix of all of the above? In Egypt and Tunisia there are potentials for stronger more liberal constitutionalism, but there are emerging fears that the process

is really one of containment rather than significant change. Saleh has not yet departed office in Yemen. In others, regimes are trying to contain militance through a mix of reform and repression - economic appeasements with mixed bundles of liberal and conservative liberal reforms.

Longstanding regimes of repression stifle the space required for democratic values to take root. Governments across North Africa and the Middle East have not emerged through frequent free and fair elections; most reflect longstanding systems of 'big man' or dynastic rule; values of pluralism and political tolerance are only weakly in evidence; there are unresolved tensions between liberal democratic values and Islam; and old tribal and sectarian divides threaten regional stability. Internal opposition groups are divided and may not retain coherence much beyond toppling existing common enemies. The calculus of risk through the Cold War period and beyond has seen the West support repressive regimes, and become ensnared in facilitating the destruction of values and institutions it holds dear within democratic ideology.

Autocracies may offer periods of stability through repression but leave revolt as the only means of regime change (ruptura). Revolutions fought under banners of democracy unfortunately seldom produce them. Referendums and elections are not sufficient in themselves to create viable democracies. There is argument that Islam is fundamentally incompatible with democracy. Zakaria however suggests it is not Islam that is opposed to democracy, but leaders in the Middle East who all claim legitimacy as Islamic states but express adherence to it in different ways. Unlike Christianity which developed under a papal authority, Islam has never had a single 'infallible' leader after

the Prophet. There is one God, and one Koran but many regime forms that take legitimacy from Islam with the support of local religious leaders. Iran has shaped a democratic theocracy – a form of democracy played out within strict parameters defined by a hierarchy of clerics. Saudi Arabia is a conservative monarchy, the UAE a more open society. Interestingly, Turkey, Pakistan and Bangladesh are ranked by Freedom House as 'partly free' nations, and Indonesia is ranked as 'free'. In short they go some or all of the way to meeting the criteria for liberal democracies. Beyond this 120m Muslims live in India within a liberal democracy (Zakaria 2004). Open democracies then seem not to be anathema to Islam, nor are human rights dispensations (Hathout 2006; Al-Marzouki 2005). There is evidence of expansion of women's rights (Coleman 2010). The Arab League of Nations has approved a Charter of Human Rights. There are arguments that 'good government' need not simply reflect liberal democratic values. Such thinking is evident in the work of eminent US philosopher, John Rawls who suggests 'good governments' may exist not only in liberal but in 'decent' societies, characterized by a decent consultation hierarchy in the legal system through associational groups. They do not have aggressive aims against other societies; they secure human rights to life, liberty, property, and equality under the law (human rights are not politically parochial), they are guided by a common idea of justice, and they impose obligations and duties on all persons within such societies (they are responsible and cooperating members of their respective groups). A non-liberal decent society according to Rawls may not see expression of human rights through individuals as much as through the groups they have the freedom to belong to – they allow room for political expression but in different form to

liberal democracies. Dissent is permitted; human rights are constitutionally protected.

What all this suggests is that while liberal democracy may not have easy cultural fit in Middle East societies, democratic and human rights advances in the region are not impossibly constrained by Islamic faith – they are constrained by old sectarian and tribal divisions, traditional systems of top-down rule, recalcitrant regimes afraid of loss of power, and external fears of unfriendly forces emerging as victors in elections. Longstanding autocracies have not enabled democratic institutions to take root or the evolution of national attitudes that inform enable functional democracies – constitutional rule, an independent judiciary, freedom of association, assembly, and expression, a free press, free and open political activity.

If democracy is to emerge in some form through the mess it will only do so through processes of negotiation. Who really knows or understands the true spread and mix of interests across the region – and how could this be ascertained? Beyond the removal of old regimes – or simply old figures within regimes – what is the spread of visions of activists in the region? Would there be sufficient inter-group tolerance for a viable pluralism to emerge or would disaffected groups simply use the space offered by liberalization or democracy to pursue politics of intolerance through tactics of violence? Within each nation's national mix and history of relations, is there potential (commitment, tolerance, organizational capacity) for local activists and regimes to develop a common national vision in which there is room for all? In terms of international relations what if a series of national democracies emerged that were hostile to Israel and to Western interests in the region? When it

comes to the crunch, democracy in other nations is a lesser objective than self-interest for the west – especially where oil supplies, political and military influence may be affected.

The region is at a crossroad. Some regimes will successfully coerce their way through the situation; others may have successfully contained the initial wave of anger, and be hoping for a dissipation of revolutionary energy through muted change as time goes on. The energy of activists will need more strategic focus than the mobilization of street protest to be really effective, and longstanding regimes will need a fundamental revision of approach if processes of negotiated system redesign are to become viable. It's a high-risk scenario for all the interest groups involved.



The failure to use negotiation as a vehicle for change reduces relations within and between nations to zero-sum exchanges and the region is likely to enter another period of unilateralism under existing or new autocracies.

References and background reading

Al-Marzouki, IA. 2005. *Human Rights in Islamic Law*. 3rd ed. Abu Dhabi.

Bergman, R. 2008. *The Secret War with Iran*.

Oxford, Oneworld Publications

Carter, J. 2006. *Palestinian Peace Not Apartheid*. New York, Simon and Schuster

Coleman, I. 2010. *Paradise Beneath Their Feet: How Women are Transforming the Middle East*. Washington, CFR.

Crane, J. 2010. *Dubai. Story of the World's Fastest City*. London, Atlantic Books

Fisk, R. 2006. *The Great War for Civilisation*. London, Harper Perennial

Fromkin, D. 2001. *A Peace to End all Peace*. New York, Owl Books.

Gettleman ME and Schaar, S. 2003. *The Middle East and Islamic World Reader*. New York, Grove Press.

Hathout, M. 2006. *In Pursuit of Justice: The Jurisprudence of Human Rights in Islam*. Los Angeles, Muslim Public Affairs Council.

Hobsbawm, E. 1994. *The Age of Extremes*. London, Abacus

Hourani, A and Ruthven M. 2002. *A History of the Arab Peoples*. London, Faber and Faber

Hulsman, J. 2009. *To Begin the World Over Again*. Houndsmills, Palgrave Macmillan.

Ruthven, M. 1997. *Islam*. Oxford, Oxford University Press.

Lamb, D. 2002. *The Arabs: Journeys Beyond the Mirage*. New York, Vintage Books.

Mahler GS and Mahler ARW. *The Arab-Israeli Conflict*. London, Routledge

Meredith, M. 2005. *The State of Africa*. London, Free Press.

Nugent, P. 2004. *Africa Since Independence*. Houndsmills, Palgrave MacMillan.

Rawls, J. *The Law of Peoples*. Cambridge Mass, Harvard University Press

Zakaria, F. 2004. *The Future of Freedom*. New York, WW Norton & Co.

Daily Articles in The National and Gulf News.

RUDOLF SCHÜSSLER

BUSINESS NEGOTIATION – EXPERIENCES FROM TRAINING SEMINARS

Many institutions provide negotiation training for students aspiring to leadership roles in the business world. Here I reflect on some of my training seminars in the “Philosophy & Economics” course of studies at the University of Bayreuth. These seminars are part of the curriculum and are sometimes held in co-operation with other universities like the “Frankfurt School of Finance and Management”. Students of “Philosophy & Economics” in Bayreuth receive, in roughly equal proportion, a diet of economics (not business administration!) and practical philosophy (e.g. ethics, political philosophy, social philosophy and their respective histories). The whole venture is styled as “decision oriented”, and for this reason the students learn a fair amount of decision theory and game theory from the not always coinciding perspectives of both disciplines. Since game-theoretical bargaining does not fully prepare (to put it politely) for real-life negotiation and its problems, I have added training seminars in which students struggle with cases from real life. Most cases come from business environments but a significant number are political (reflecting the fact that many of our students end up in political organizations, government agencies etc.). I will focus on the business-oriented seminars here. What hopefully makes them interesting for readers from outside academia, too, is that they are co-chaired by experienced managers or management consultants who contribute a view from beyond the ivory tower.

THE NATURE OF THE SEMINARS

I will first review some of the key design features of the Bayreuth negotiation seminars. As a rule they are held in co-operation with experienced practitioners from different fields of the business world. The profile of these practitioners ranges from (ex-)CEOs of DAX firms, board members of international enterprises, (ex-)partners of international consulting firms, to free consultants, negotiation advisors, and mediators. Each seminar deals with one to three cases of negotiation in which the participating practitioner personally played a significant role. Where necessary cases are carefully chosen, made anonymous, and re-written so as to preserve confidentiality. Students nevertheless appreciate the remaining real-life feel to more abstract negotiation exercises and experiments. Usually, the cases are sufficiently complex to provide food for thought for several days. Since the cases are founded in the field of activity of the practitioner, the practitioner can also serve as an expert on the subject matter in question. Often, however, additional experts are brought in to brief students about certain aspects of the case or to add background information. This practice is more commonly used for seminars on political cases. For example, in a seminar on (at that time) impending negotiations on the EU financial framework the students (and professors) were briefed by actual officials from the EU commission who prepared the negotiations, and by officials from the German ministries of Exterior and Finance on the basis of actual projected budget

numbers. In a business-related case two negotiation advisors with different approaches gave feedback for the students’ solutions. In another case a board member of a firm was supplemented by a management consultant. Ideally, though it is not always possible, several practitioners participate in a seminar so that students benefit from differences in the perspectives of the practitioners or experts. Usually, the subject matter of the seminars is tailored to the practitioners’ expertise and follows their suggestions. We have developed and used cases dealing with such matters as mergers & acquisition, disclosure of information, telecommunication roaming, media co-operation, and the prevention of corruption. Sometimes an intercultural or international dimension is explicitly addressed. In all the mentioned fields the students (and professors) first had to familiarize themselves with the field in question before the seminar began. As the “hot phase” of the seminar takes place during just one weekend, it is preceded by as many preparation and briefing sessions as deemed necessary. Practitioners usually do not participate in these, but experts may. This seminar design allows us to keep information gathering and preliminary discussions relatively separate from the hot phase of the seminar. It is important for our purposes that the students act during this hot phase instead of discussing theory or digesting basic information. Action means that they immerse themselves as far as possible into the roles of the agents in the case and try to find the best solution from within the constraints of

the role. In the EU-case this went as far as studying the personality of the chancellors and prime ministers the students had to represent. I also encourage, for example, collecting information about the *modus operandi* of key players in a certain field of business. In this manner students learn that persons often matter as much as numbers or hard constraints in negotiations. The person specific (beyond the merely role-related) side is unfortunately often lacking in standard role play exercises and the extent to which this is made explicit in our seminar design gives it a quite unique character.

The cases are (re)designed to focus on one major, but not always obvious, obstacle to a successful conclusion. Students are divided into a few rival groups (optimally 15–20 students into three or four groups) who compete for the best solution. After the team sessions are over, two members of each group try to sell their suggestions in a short presentation to the practitioners. Depending on the case, reflection in the whole group can occur at several stages of the role play or team work. Ideally, all participants then jointly reflect on the performance of the groups again after the practitioner has evaluated the performance. At this point the academics also come in with analytic remarks. Sometimes, however, reflection has to be 'partitioned', occurring after crucial steps in the negotiation process have been taken. In such settings the students are informed about an option at some stage (registering who has found it and who not) and then asked to proceed further from this option.

As an academic I naturally ask whether a rule can be made out of a stratagem in a given case. In other words, participants are asked

to consider whether the key learning from a case can be applied to other cases (improve your BATNA, look for linkages etc.). Some participants like it – and some don't – when I throw in general hints at the method of casuistry, that is, the method of learning from cases for other cases, looking for parallels in fields such as medicine, law, history, philosophy. It seems important, however, not to overplay your hand concerning the transferability of stratagems. To audiences eager to generalize (sometimes led by the practitioner) the pitfalls of overgeneralization should be pointed out. In short, in my experience it is helpful sometimes to play the "devil's advocate", leaning to the side that happens to come short in a seminar. Unfortunately no rules seem to exist to assist in walking the tightrope between an unconnected collation of experiences and overgeneralization. All one can do is to ask a certain number of key questions and try to learn from the ensuing debate. However, for the uninitiated it is helpful to see how experienced practitioners handle this task – and this brings us back to the rationale for the negotiation seminars.

THE PERSPECTIVE OF THE PRACTITIONERS

Why are experienced practitioners interested in helping to train students? Most of the participating practitioners regard it as a kind of moral duty and opportunity to pass on their experience to aspiring (and often promising) soon-to-be members of the business community. Obviously, the practitioners also enjoy communicating their views – they certainly do not come for the meager reimbursement we are able to offer. Last and hopefully not too far least, is the motive to learn from the feedback of students (and

professors) for their own business practice. Such a practical learning is possible because the seminars do not focus on abstract questions and answers from theory. Practitioners come to discuss their cases. Usually, these are cases where they performed well, so they probably feel safe against too pungent criticism. However, criticism and suggested alternatives are the most valuable part of the students' feedback, not least because the practitioners reconsider and relive their case without the strategic constraints and risks of their own business environment. Strategic self-interest often renders one's colleagues less than fully candid. Coaches can help to get valuable open feedback – and so can students in a completely different but often complementary way. This is, of course, more often true if the students are bright and have some real-life business and negotiation experience of their own. For this reason, I try to get some of our brightest students for negotiation seminars and also some who already have done a business internship at a level that has exposed them to real decision making problems. But variety is also important. There should be strong representation of males and females amongst both students and practitioners in the seminars. An internship that taught a student to organize, say, a taxi service in Bolivia or food distribution in rural Africa can be as valuable for the seminar as an internship with a top-notch business consultancy. International experience of the students always helps (and fortunately is the trend among our students). Finally, I am also in favor of throwing in some absolute beginners because they often ask what nobody else dares to ask, and often the questions are far from foolish.

PHILOSOPHY AS HANDMAIDEN FOR SOME OCCASIONS

So much for the contribution of students, but many readers may ask themselves what the specific contribution of an academic philosopher (such as myself)¹ to negotiation seminars could be. The plain answer is: little. The main rationale for the seminars is pragmatic, helping the students acquire useful skills for a career in business, politics or international organizations. Philosophy should not meddle with this rationale, and wait patiently in the hope of an opening to contribute something practically elucidating. The time for philosophy, in the sense of basic methodological reflection, arrives when the transferability of results from case to case is discussed. To many the systematic comparison of analogies and differences between cases harbors new insights. Besides that I want to mention one example where philosophical issues have played a major role in a seminar. Truthfulness in negotiations is an important area of negotiation ethics. Different ethical systems suggest different policies of information sharing in negotiations. We constructed a case in which less than full truthfulness could benefit one side, although this strategy became risky if carried too far. The students had the task to implement one of two information policies, which can be roughly described as "consequentialist" (i.e. probable outcome oriented) and "Kantian". The Kantian policy did not follow the usual tex-



Kant's lectures in Ethics can offer a useful rule of thumb in negotiations.

book accounts of Kant's thought but rather his lectures on ethics, where he discusses problems of openness and truthfulness in detail. From this material a "traffic light model" of Kantian information policy can be gleaned. Never tell a blatant lie (red light), and show severe restraint concerning active deception, which may only be justified in exceptional cases (yellow light). However, you need not always tell the whole truth as you know it. For Kant, in contrast to consequentialists, the deception-free withholding of information is usually not morally problematic because each side owns its information and need not let the other side partake in its benefits (green light). Two experienced negotiation advisors were asked to assess the viability of the rival information policies in the case in question from a hardnosed practitioner's view. To some surprise, the Kantian traffic light model fared better than expected, above all because it provides a useful rule of thumb to negotiators whereas

the consequentialist policy relegates everything to the outcome expectations of negotiators – which may as well be off as on target. Moreover, the exercise showed what has to be avoided if each side in a negotiation wants to hedge against the moral indignation of the other side. Under these auspices, information should be provided in a way that seems legitimate from all widespread moral positions (roughly represented by consequentialism and deontology in our case). Unfortunately, in many given cases, such a policy of "moral safety first" will not leave much room for profit on one's own side. It is therefore often necessary to choose between following one's own moral views and hedging against the possible moral indignation of the other side. In such cases one can either do what one regards as morally right or avoid what others probably consider morally wrong. It should never be expected without good reason that these options coincide. Moral disagreement is one of the most salient and difficult features of modern moral discourse. Because negotiators have to cope with this fact in practice it is probably better to experience it in a negotiation seminar than merely hear it in a lecture.

(Thanks for help with the English go to Mark Anstey.)

¹It should be mentioned, however, that I did not pursue the standard career of an academic philosopher. Besides philosophy I studied economics and sociology as majors, writing my Ph. D. in sociology. I have done a three year empirical (statistical) study on the survival of small firms in a "Sonderforschungsbereich". This means that I have a somewhat larger affinity to matters of business administration and economics than most "pure" philosophers.

PAUL MEERTS

EU-RUSSIA NEGOTIATIONS*

The Russian Federation is the most important neighbour of the European Union (EU), the most powerful, and the most difficult to handle. The two main reasons for this are the asymmetry of interdependency and the Russian negotiation style. First of all, there is an imbalance in the field of security. The EU is dependent on the United States to counterbalance Russian military power, while the Russians are not dependent on a third power. Secondly, the economic equilibrium is not a stable one. Though Russia is very dependent on EU imports and EU payments for its natural resources, the EU does not have the option of short-term punishment. Russian sanctions on oil and gas deliveries have an immediate effect on EU member states, while EU sanctions will only do their work in the long run. Timewise, the 'Russian stick' is more effective than the 'EU carrot'. This is all the more true as Russia can try 'divide and rule' tactics against an inherently divided EU. This has to do with the segmented and democratic character of the EU vis-a-vis a centralised, autocratic Russia. Then there is the question of culture.

It is difficult to determine EU culture; actually, there is no single EU culture. Indeed, we can distinguish EU systemic, political and bureaucratic culture. But societal culture is just a basket of Western, Central and Southern European cultures, where one might want to add Northern and perhaps Eastern European cultures as well (though they can also be seen as subsets of Western and Central European value systems). Maybe we could determine a European civilisation, but for sure the Russians would claim they are part of that. And there

are good historical and other reasons to defend that position. In fact, the European civilisation stretches far beyond the European subcontinent, to Siberia and the Americas. In any case, one of the expressions of cultural differences between the European cultures within the European civilisation is negotiation style.

RUSSIAN NEGOTIATION STYLE?

We may define negotiation style in terms of individual personal character or as the expression of national culture in the behaviour of negotiators. Research into the Russian negotiation style as collective behaviour is quite limited because Russian national culture has not been included in a comprehensive study like Geert Hofstede's *Culture's Consequences*¹. He has estimated values, but due to the secretive character of the Soviet system, Russian style has not been included in the wave of cultural surveys in the second part of the twentieth century. One of the few sources is Hans Binnendijk's edited volume *National Negotiation Styles*. Although the chapter by Leon Sloss and M. Scott Davis deals with the Union of Soviet Socialist Republics' negotiation style, can we to a great extent translate this into Russian negotiation style². First of all the Russians and foremost Russian culture dominated the USSR. Secondly, all the Soviet styles mentioned in Binnendijk's book can be found in the negotiation styles of the present-day Russian Federation. All five cases in this *EU Diplomacy Paper* bear witness to that, though in one of them it is the exception that seems to prove the rule.

Sloss and Davis start their exposé with the "burden of history"³. That burden is, of course, the same for the Soviet Union as it is for the Russian Federation: the feeling that nature and mankind are a threat to the survival of the peoples between Poland and the Pacific. Therefore, trust is an issue, as is the willingness to give in. In a harsh political and environmental climate trust is a precious thing and tough defence an absolute necessity. Remember the Mongols! And not only them, the Huns and the Turks, but also the Poles and the Germans, Catholicism and Islam. The fear of being overwhelmed seems to be an important drive in the strategy to keep everybody at a distance, for example through imperialism. Sure, this is stereotyping, but it is in line with the experiences noted by many Western negotiators, as well as the case studies in this paper. These observations are also in line with my own experiences, both with students - but certainly not all! - in my classes in Eastern Europe, but also in my dealings with some Russian researchers of international negotiation processes.

The second main factor mentioned by Sloss and Davis is "revolutionary ideology"⁴. Here we will find a difference between the Soviet and the Russian Federation negotiation

¹Geert Hofstede, *Culture's Consequences*, Beverly Hills, Sage Publishers, 1980.

²Leon Sloss and M. Scott Davis, *The Soviet Union*, in Hans Binnendijk (ed.), *National Negotiation Styles* Washington, D.C., Centre for the Study of Foreign Affairs of the Foreign Service Institute, US Department of State, 1987.

³b/d., p. 17.

⁴b/d., p. 20.

⁵b/d., p. 21.

⁶*Ibid.*, pp. 25-34.

styles, but I argue that revolutionary rhetoric was only a sauce over Russian behaviour. Indeed, the tactics mentioned in Binnendijk's book and those recorded by the authors in this paper are similar. It seems very likely that Soviet style has been Russian style in the end. Especially as the third main underlying factor mentioned by Sloss and Davis is an "oligarchical decision-making system"⁵. We could have had our doubts about this under President Yeltsin, but not under Putin. There might be some changes under Medvedev, perhaps, but these signals are still very weak.

Sloss and Davis describe the following tactics, shaping the Russian profile⁶:

1. a preference for generally worded agreements and the tendency to equate compromise with weakness;
2. a drive to promote a broad range of interests at the same time, thereby strengthening the Russian position through package deals between issues where the Russians have stronger and weaker positions;
3. careful preparation - and the Russian diplomatic education is one of the best in the world - while manipulating its environment as much as possible;
4. a tendency to instruct Russian negotiators very tightly - which is in line with the extremely dominant role of leaders and bosses in Russian society - in a steep hierarchical order;
5. a combative negotiation style, confrontational - blunt - stubborn: negotiation is war by other means;
6. divide and rule, being very patient if needed, a love for 'drama';
7. very skilled in secretive and back-channel negotiation.



In negotiations with Russia, it is important for EU negotiators to show strength (...) as "negotiators who are perceived as confused, weak, vacillating, or uncertain will be both exploited and scorned".

Jerrold L. Schecter, in his book *Russian Negotiation Behaviour*⁷, comes to similar conclusions. "Byzantine and Mongol rule served as models for Russia"⁸ and these examples of authoritarian statecraft highlighted the importance of authority, power and submission. Schecter deplors the fact that Moscow prevailed over Novgorod, which had a much more 'democratic' state system,⁹ having the Hansa cities as its reference for state organisation. In short, he concludes that (in negotiation) the Russians have a 'winners-take-all' mentality aiming at dominating or destroying their opponent¹⁰.

In September 2009, twenty-six young Russian civil servants from across-the-board Russian Ministries and Agencies came to the College of Europe in the context of its collaboration with MGIMO, the Moscow State Institute of International Relations in Moscow. Under the guidance of the author of this *PINPoints* article the group simulated negotiations of the new Partnership and Cooperation

Agreement (PCA) between Russia and the EU. Or, as they formulated it in their final document "between the European Communities and their member states, of one part, and the Russian Federation, of the other part". I thought 'the EU' would be adequate, but the Russian participants rightly said that the Lisbon Treaty had not been fully ratified yet. A dispute then followed between *de facto* and *de jure* perceptions, the pragmatism of a Western European (Dutch) versus a more legalistic approach by the Russian participants. They negotiated a substantial and realistic agreement, not having any problem in representing both sides very empathically and insightfully. The EU should rejoice in their capability to understand the EU side so well and to be ready to fight for EU interests without taking into account their own

⁷Jerrold. L. Schecter, *Russian Negotiation Behavior*, Washington, D.C., United States Institute of Peace, 1998.

⁸/b/d., p. 18.

⁹lb/d., p. 19.

¹⁰/b/d., p. 115.

cultural background. In that sense, the behaviour of the new generation of Russian civil servants comes close to that of the young diplomats of the European Union - according to my experience in training them in the context of the European Diplomatic Programme. This might mean more fruitful interaction and maybe give-and-take between the two sides, at least in the near future.

The Russian group were good sports and they were ready to do the self-assessment exercise connected to the Thomas and Kilmann¹¹ model. They distinguish Competition, Collaboration, Compromise, Avoidance and Cooperation as modes of conflict management, or in other words: as negotiation strategies. The outcome of this exercise - group averages on the basis of individual male and female scores - confirmed the main feature of Russian negotiation style: a combative style. Though Compromise was the highest score - this is the case with any group as it is a kind of non-choice outcome - Competition/Domination scored second. This is very unusual; in general young male EU diplomats have Avoidance as their next highest score, while with females it is Accommodation. While the group scored highly on dominant behaviour, the Russian women scored even higher than the men (7.4 against 6.8 on a scale of 10). The lowest scores were for Collaboration (4.3) and Accommodation (4.5). The women scored even weaker (4.1 and 4.2) on these dimensions than the men (4.4 and 4.8 respectively). Avoidance scored middle of the road (5). To wrap-up: the group scored high on assertive and uncooperative behaviour. On the basis of the re-

sults of the conflict-mode exercise, combined with my observations of the PCA simulation exercise, the conclusion would be that - like in the past - the European Union will still be confronted with stiff negotiation behaviour of Russian negotiators as far as content is concerned, but their behaviour might be more flexible and empathy. This could be the fruit of the changes in Russian society in the late twentieth century, no overall *inflexibility anymore, distributive on interests, integrative on process*.

LESSONS TO BE LEARNT BY THE EUROPEAN UNION?

Though the Russian bargaining style does have a cultural, political and historical basis, context remains the dominating factor. Like any negotiation style, the Russian one is contextual indeed. Where the Russians are in a dependent position, they will be more accommodative, whereas in an independent position, they will be competitive. They may try to avoid those issues that cannot be dealt with immediately and threaten the security of the state (see Yeltsin's initial and follow-up strategies on Chechnya). Compromise will only be made if any other strategy cannot be effective. Collaboration, the final and most positive of Thomas and Kilmann's five strategy models will only be doable if the European Union and the Russian Federation become more entangled than they are today¹².

Collaboration, or a win/win integrative relationship, is probably the EU's preferred outcome of a new Partnership and Cooperation Agreement with the Russians. However, this point can only be reached if the EU approaches Russia, and Russia approaches the EU, packaging

the main interdependencies on a broad front. But as Russia's historic strategy seems to be as autarchic as possible - given traumas from the past - the negotiation road ahead will be bumpy at least. For the EU it is therefore advisable to take a competitive stance at the start of these negotiations and work its way towards collaborative behaviour, though compromise will probably be the final outcome. In any case, Russia will have to be more of a priority in EU policy-making than before, and avoidance cannot possibly be the answer. This is neither in the interest of the EU, nor of Russia - even, I dare to say, if this is not to the liking of some former Soviet 'allies' who have since become EU member states. Accommodation is not the answer either, as the Russians will see this as weakness and they will therefore disrespect the European Union. To be respected by the Russians is, given their experiences in the past, an absolute precondition for fruitful negotiations in the future. One might hope that these negotiation processes will, in the end, socialise Russia into 'European' negotiation culture: integrative instead of distributive bargaining. But even if stonewalling does continue, "this does not necessarily mean that the [...] response [...] should be to adopt the same tactics".¹³ But it is important for EU negotiators to show strength at the same time as "negotiators who are perceived as confused, weak, vacillating, or uncertain will be both exploited and scorned"¹⁴.

¹¹Kenneth W. Thomas and Ralph H. Kilmann, *Thomas-Kilmann Conflict Mode Survey, Tuxedo, Xicom, 1974*.

¹²Thomas and Kilmann, *op.cit.*

¹³Raymond F. Smith, *Negotiating with the Soviets*, Indianapolis, Indiana University Press, 1989, p.119.

¹⁴*Ibid.*

*Note: this article is a slightly modified version of the author's introduction to 'Negotiating with the Russian Bear: Lessons for the EU?' EU Diplomacy Papers, Department of EU International Relations and Diplomacy Studies, College of Europe, Bruges.

PROCESSES OF INTERNATIONAL NEGOTIATION PROJECT: NEGOTIATION IN TRANSITION (PINNIT) IN COOPERATION WITH AIMS (CEMAT, CEMA), AIYS AND ARCE

BOOKWORKSHOP: NEGOTIATION IN TRANSITION

6 JUNE 2011

Clingendael Institute,
The Hague, The Netherlands

THE ARGUMENT

The world of 2011 is shaken by an extraordinary series of events in the Arab world, a domino effect of socially integrated and secular mass uprisings against characteristically corrupt, arrogant and inefficient governments. In a region marked by a disillusioned longing for ideology, these intifadas are neither class conflicts nor religious revolts, but popular spontaneous disorderly democratic outbursts. The event is unprecedented in the Arab world, but it has its predecessors in other parts of the globe—in the Philippines, in Thailand, in Kyrgyzstan, in South Africa—each with its special twist and distinction but each similar in many ways.

In a world of social analysis where nothing is new, these events nonetheless distinguish themselves from a previously well-analyzed event, the pacted transition (O'Donnell and Schmitter 1989). The parties and even the sides that characterized transitional pacts are absent or inchoate in the current revolts. And if eventually they appear, the challenge for the revolters, the country, and the analysts has been to understand the possibilities of orderly change. Pacting is one way but not all such revolts end in

pacts. So what are the possibilities and patterns? What do the unfolding events tell us to do or to avoid? What are the turning points in these evolutions? And what can the Arab world tell about this type of event and what can previous similar events tell about the evolution of the Arab countries?

The key to these answers is negotiation. At the outset, negotiations are unthinkable: the mass wants the government out, and the government is often soon in shambles. The transition promises to be disorderly. But as the situation evolves, negotiations emerge within the sides and then between opposing parties. Rather than 2-level negotiations, it is a multi-ring circus with negotiations within and among the rings/sides.

There is much to learn and much to apply about negotiation in these situations. Negotiation is a choice of partners, a selection of parties to represent sides and then to set up future cooperation among them (Zartman 2009, 2011). Not only must the transition be effectuated, but optimally it should be without too long a gap between the breakdown and the restoration of order. How this accomplished and how the dynamics within each ring evolve is the subject of analysis. The situation is quite different from state to state negotiations, where the parties are constituted, even if there is internal discussion and politics involved. And it is different from intrastate negotiations between government and rebels, where primarily only one side is disorganized

or in evolution. In this situation, both sides are in conflict over the Tactical Question (talk or fight) and over who should be the spokesman for the side. Furthermore, identifying two sides is not to suggest the autonomous presence of a third, the military, and possibly other autonomous players. What role can/do negotiations place in channeling conflict away from chaos or radical takeover from either side and into stable participatory government?

Thus, there are three rings of negotiations to analyze: within the intifada, repeatedly over the Tactical Question of whether to resort to political means (including negotiation) or violence; within the "other" side, over the same Tactical Question; and between the two sides, over the nature of the transition and its ultimate goal. More than most negotiations, these are as actively preoccupied with a determination of goals and demands as they are with the deal being worked out with the other side. Initially, the protestors' demands are almost entirely negative and procedural: remove the corrupt autocrat, his despotic party and indifferent government, his hated practices; gradually they evolve (through negotiation) into positive substantive and procedural demands.

Rough drafts of papers should analyze the evolution of the negotiations within and between the two (or more) sides, from the outbreak of the popular outburst to the present, situated within an analytical framework. The rough drafts are due no later than 1 June.

The workshop will be held on 6 June at Clingendael, the Hague, Netherlands. We are grateful for initial funding for the project from the Council of American Oversea Research Centers (CAORC).

THE GROUP

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11. Rwanda: Valerie Rosoux,* Louvain (Belgium)
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13. Lessons for Theory; Lessons for Practice

* PINGroup members

PAUL MEERTS

NETHERLANDS NEGOTIATION NETWORK

The Netherlands Negotiation Network (NNN) is the Dutch offspring of the Processes of International Negotiation (PIN) Program and the Group Decision and Negotiation (GDN) Network. NNN has a Steering Committee of five and a network of a hundred practitioners, researchers and trainers linked through LinkedIn. It organises a yearly December conference. Topic of the one in 2008 has been 'Research in International Negotiation' with a keynote speech of former Dutch Minister of Foreign Affairs, Permanent Dutch Representative at the European Union and Secretary –General of the Dutch Foreign Office Dr Bernard Bot. In 2009 Dr Rinnooy Kan, President of The Netherlands Council for Social-Economic Affairs and former President of the Dutch Employers Organisation as well as Rector Magnificus of Erasmus University of Rotterdam, opened the NNN-meeting with a speech on his experiences as an academic on negotiation as well as a practitioner. Topic of the symposium: negotiations in the public and private sector, differences and similarities. The 2010 meeting – held at the Dutch Ministry of Social Welfare – was about the question of Dutch Negotiation Style: does it exist and if so, what are the consequences?

Former NATO Secretary-General, Minister of Foreign Affairs and Parliamentarian Prof. Jaap de Hoop Scheffer gave his view on Dutch negotiation behaviour in a very insightful and open keynote, depicting the pro's and con's on Dutch negotiation style in comparison to French, British and German approaches. After short but substantial introductions

in two panels by Gert-Jan Hofstede, Vincent Merk, Nelke Galema, Huan-dong Yang, George van Houtem, Nol Groot and Paul Meerts, intensive deliberations with the participants in the conference shed some light on the profile of 'the' Dutch negotiator. It seems that Dutch negotiators underestimate the importance of personal relationships, being well prepared and reliable but not flexible enough in the negotiation process, too much target oriented and collaborative, impatient and self-assured, transparent and informal, and easily flattered with a tendency to move from empathy to sympathy. In the aftermath of the meeting papers will be published in the monthly of the Netherlands Institute of International Relations 'Clingendael', the 'Internationale Spectator', highlighting opinions of Dutch and foreign practitioners and academics illustrated by different cases.

On Friday 16 December 2011 the fourth NNN- conference will be on 'Training the Negotiator, Models and Experiences'. Participation is free of charge, please write an email to Dr Gwendolyn Kolfshoten of the Technical University of Delft g.l.kolfshoten@tudelft.nl or directly subscribe through <LinkedIn.com>.

Wheeling and dealing with Chinese is one of the topics of the seminar "Negotiating with Chinese" on Thursday 9 June 2011, from 14.00-18.00, at the Clingendael Institute, The Hague.

An increasing number of European and Dutch companies do business with Chinese companies. Successfully closing a contract with the Chinese requires thorough knowledge of the Chinese government and culture. It also requires an understanding of one's own behavior or at least the stereotypes that other parties might have. Leading experts and experienced sales professionals share their views on negotiating with Chinese. Come and gain knowledge on getting a better deal.

Goals of the seminar

- Learn about structural and cultural aspects of Chinese negotiating behavior
- Discuss case examples and do's and don'ts in negotiations with Chinese
- Identify typical Dutch negotiating behavior

Preliminary programme

- 14.00 Coffee and reception of guests
- 14.15 Opening
- 14.20 "Structural and institutional aspects"
Ingrid d'Hooghe (Clingendael Asia Studies) is a leading expert on China, specifically governmental institutions
- 14.45 "Cultural aspects"
To be announced
- 15.10 "Strategy for business negotiations"
Boudewijn Poldersmans (Aetico) has more than twenty years of experience in doing business with Chinese
- 15.30 Break
- 16.00 "Preparation and best practices: Damen's experiences"
Henk van Herwijnen (Damen Shipyards) is Sales Manager Area Asia Pacific for one of the leading Dutch maritime companies
- 16.20 "Typical Dutch Negotiating Behavior"
Paul Meerts (Clingendael) is the international negotiations trainer in the Netherlands with experience in more than 90 countries
- 16.40 General discussion
- 17.00 Reception and drinks

Organization

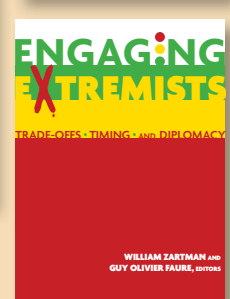
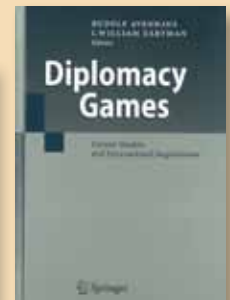
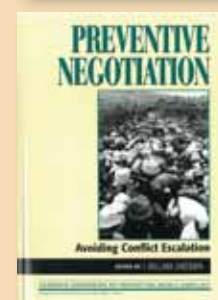
This seminar is part of the The Hague International Negotiations Week. The Week is a joint initiative of PIN, the renowned network on international negotiations research, and Clingendael, leading think tank on international relations, European integration and security issues.

Costs

Participation fee € 249,- per participant. This includes materials, lunch and light refreshments. Discount options are available for groups.

More information and registration

For more information and registration please visit the Clingendael website (www.clingendael.nl) You may also contact Wilbur Perlot, seminar organizer and coordinator of PIN (email wperlot@clingendael.nl, telephone +31 70 3746681).



PIN AGENDA

BOOKWORKSHOP: NEGOTIATION IN TRANSITION

6 JUNE 2011

Clingendael Institute, The Hague, The Netherlands

Closed event – invitation only (see page 39 for more information)

LECTURE AND DISCUSSION

6 JUNE 2011

Sociëteit de Witte, The Hague, The Netherlands

Closed event – invitation only

PIN STEERING COMMITTEE MEETING

7 JUNE 2011

Clingendael Institute, The Hague, The Netherlands

Closed event – invitation only

LUNCHSEMINAR: NEGOTIATION IN TRANSITION

7 JUNE 2011

Dutch Ministry of Foreign Affairs, The Hague, The Netherlands

Closed event – invitation only

SEMINAR ENGAGING EXTREMISTS

8 JUNE 2011

Clingendael Institute, The Hague

See the announcement on page 26 for more information

SEMINAR NEGOTIATING WITH CHINESE

9 JUNE 2011

Clingendael Institute, The Hague

See the announcement on page 41 for more information

ROADSHOW

28 OCTOBER - 5 NOVEMBER 2011

Tashkent, Uzbekistan