

PIN•Points

Processes of International Negotiation

Network Perspectives 39/2013

Negotiations in and about Syria



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EDITORIAL

We are living a time that calls for some tough and persistent negotiating, notably on subjects that resist negotiation success. PIN published a book last year edited by Guy Olivier Faure, on failed negotiations, entitled *Unfinished Business* (University of Georgia Press). It now has two books in press on agreements that have foundered at some stage because of a fundamental disagreement on the legitimizing basis of the negotiations. Negotiations for the Comprehensive Test Ban Treaty (CTBT), subject of a PIN book edited by Motti Melamud, Paul Meerts, and I William Zartman, *Banning the Bang or the Bomb?* in press and to be published early 2014 by Cambridge University Press, were completed after two years in 1996 but the Treaty has still not been ratified by the requisite number of states to go into force. Behind several of the non-ratifications, notably India's, is the idea that negotiations on the nuclear weapons regime should serve to eliminate nuclear weapons, not to lock in the haves and the have-nots. Most states promote, or at least accept, the idea that there are legitimate Nuclear Weapons States (NWS)—arguably with no further need to test—and the rest should not have access—ie not test—to nuclear weapons. Without agreement on the very basis of the negotiations, completion is not possible, even if the negotiators themselves reach agreement.

Negotiations for a New Order, subject of a PIN book in press at the University of Georgia Press and edited by I William Zartman, *Intifadat: Negotiating a Social Movement*, have come close to being completed in only two of the countries of the Arab Spring (Tunisia will probably have reached

a trembling success by the time this *PINPoints* is published, and Yemen is hung up between negotiation and implementation). The challenges are many but the basic problem again is that the parties grouped into two sides, do not share the consensual grounding necessary for the construction of a new social contract. To the disorganized majority, legitimation comes from repeated expressions of accountability in which all people take part; to a dynamic and organized minority, legitimation comes from revelation as interpreted by religious authorities. The first call for a civil state, the second an Islamic state. Even in Tunisia, agreement has come by concessions, not by consensus; Yemen is seeking consensus by dialog after negotiation. In Egypt it came as winner-take-all, a coup that trumped the ballot box, and mass demonstrations. Libya and Syria are beyond negotiation; Morocco and Algeria short of it. The study and practice of negotiation are about more than negotiation.

These books are the subject of articles in this issue of *PINPoints*, by Motti Melamud and I William Zartman, respectively. Other issues of negotiation failure, on the multilateral arena, are also treated by two articles, one on trade, arms and climate negotiations and the other on security, by Cecilia Albin and Mikhail Troitskiy, respectively. The comparative analysis of negotiations examines another type of basic assumptions, on the role of justice. Depending on whether the issue is trade, arms control or climate change, distributive (substantive) and procedural justice play different roles in the ability to reach an agreement. Similarly, the basic element of trust is a fundamental element outside the

purview of the subject in negotiating security arrangements. Two other articles reach into other ingredients of fundamental importance that are often left off the issue-dominated screen, such as the internal composition of the sides (as distinguished from the parties that seek to speak for the whole side) and the personal element of ego (analyzed in a game theory context), by Mark Anstey and Rudolf Schüssler, respectively. Another pair of articles, by Paul Meerts and Valerie Rosoux, deal with secrecy in negotiation. Secrecy is necessary to allow the process proceed creatively but it can also hide some slippery actions that had to undo when the secrecy is lifted, and is more and more difficult to achieve in an era of immediate communication, media irresponsibility, and wildcat leaks and flows.

This issue in sum draws attention to the whole context of concepts that surround the negotiation process. It is important to get away from the green table model to understand that process (including when it finally get to the green table). Some of these are the basic pre-formulaic notion of legitimacy on which the negotiations are based; others are concepts that run through the process as it is conducted. The PIN Program continues to plumb such concepts, as well as parts of the process itself. The next project, for September 2014, focuses on the role of focal points or salencies. If you have an interest in the subject, send us a proposal, to Rudolf Schuessler (rudolf.schuessler@gmail.com).



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NEGOTIATIONS IN AND ABOUT SYRIA, PART II

Analysts of negotiation spend much of their time within the current paradigm of finding some point of agreement between two extremes (Dupont 2008). Sometimes they are obliged to recognize that there is no Zone of Possible Agreement (ZOPA) (Lax & Sebenius 1986, 49) and then try to find out how to create one. But all this takes place on a flat plane (and most often, conceptually, between two parties). In reality, several planes are often co-operating, each with different substantive thicknesses and different tilts in power relations. And in addition the parties have several dimensions to them, rather than being simply the points to which proposals are attached. Finally, rather than two sides, negotiations often end up with strange, if temporary partners. So in Syria.

1. Force was threatened. The US record on threats, an important adjunct to negotiation, is bumpy at best. Two years ago the Secretaries of State and Defense and the CIA Director proposed giving military aid to the Syria rebels; the President shot them down. At that point Iran and Hezbollah were not seriously involved; Russia, the traditional arms supplier for Syria, had an order in the pipeline but not yet delivered, facts that all changed last year. The Secretary of State and Qatar were the prime architects of the National Coalition of Syrian Revolutionary and Opposition Forces (known as SOC to be pronounceable) and castigated Bashar al-Asad as the devil incarnate; The Arab League suspended Syria and called Assad a war criminal. Upon the Syria chemical attack, the US President threatened

to attack, then withdrew the threat lacking Congressional backing but reasserted the right and intention to attack without it. But only as a slap on the hand (or less, “a shot across the bow”), nothing serious, and nothing to help the SOC. But international involvement in the civil war continues unabated.

2. Force was then dropped, leaving no punishment for the breach of an important international regime on chemical weapons, not even a slap on the hands. Instead, the threat to attack was enough (although unintended as such) to shift attention to making Syria sign and then comply with the regime, embodied in the 1993 Convention on the Prevention of Chemical Weapons, which most countries have signed and observed since its entry into force in 1997 but which is only a declaration of intent without enforcement provisions. Compliance is a lengthy and costly process (the US has destroyed 90% of its CWs; Russia 40%, and both are still working at it, US expecting completion in 2023). The Syrian CWs may be in as many as 40 locations plus possibly in Iraq and Lebanon for safe keeping as well. Regimes—like any norms—are solidified by broad international adherence, by punishment for infractions, and by solid enforcement (similar to the 3 pillars of the Responsibility to Protect [R2P] doctrine); only the first has been accomplished.

3. The Russian President picked up and ran with an off-hand mention by the US Secretary of State for the CW disarmament of Syria. It is to take place within a year at an estimated cost of \$1billion, to be borne



by the US. The US has got a Chapter VII reference enforceable by force in the resolution, but only with new UN Security Council authorization and a US willingness to use force (see 1. above). Although Russia has picked up the hedgehog it is not without spines; if the impossible job is not completed in a year, Russia joins US in getting spiked. But Russia is cleverer than the present US government in putting roses on the hedgehog.

4. The West has lost Syria, of any color, and also its natural allies, Turkey and the FSA plus Saudi Arabia and Qatar, for lack of support; Russia has saved its natural ally, the Assad government; neither great power has endeared itself to the rest of the Arab world. What is left is a two-party negotiation between the Assad regime and the Islamists (including several former members of the SOC, who left for want of supplies), in which the West and Russia are cheering for the Assad regime, formerly (for the West) the devil incarnate (see 1. above). The liberal resistance groups and Free Syrian Army (FSA) are left in the dust, too weakened on the battlefield to matter in the talks. This is where the standard negotiation scenario becomes relevant.

5. Geneva 2 is planned to bring together the Assad's shi'i regime and its opponents (de facto the Sunni Islamists), both of whom are riding high. The government has continued its ravages of its own population and its advances against the opposition, and will not call a ceasefire; the Islamists will never admit a stalemate, since God is on their side. This is the closest the parties have gotten (and will get) to a Ripe Moment. There are two options to discuss. One is an incorporation of the Islamic resistance under the government. Given the monstrous cruelty of the government toward its populations and the fanatical commitment of the Islamist rebels, this is highly unlikely. The other option is to divide the country into regions of control: the populous west to the government, the center and east to the Islamists, the north to the Kurds who are not part of the negotiations—in a word, a series of Lebanons instead of a Syria, where each segment contains minorities of populations from other segments. Such a partition agreement is an anathema to Turkey, a gift to Iraq, and a reward to Hezbollah.

6. As indicated earlier (Zartman in PINPoints 38: 4-6, Hampson & Zartman 2012), the regional situation requires a Concert of Rivals (US,

Russia, Iran, Iraq, Israel, Jordan, Turkey, Egypt, EU) similar to the 1991 Paris Conference on Cambodia to draw a new geo-strategic map of the region. A (The?) one positive parallel development is the dégel between the US and Iran which can bring Iran into the Concert; the question of Israel remains.

In sum, there have been no attempts to create peace and it seems unlikely that this will change. Even if a Syrian partitioning agreement is reached, the massive killing will continue for a long time. Even if a CW dismantling agreement is reached, the Syrian CWs in the region will remain for a long time and their use will have remained unpunished. Even if the two agreements are negotiated, Assad's government, once the devil incarnate before he killed thousands more of his population, will be legitimized as the partner on whom the implementation of the agreements depends. If war has been accepted, has peace been served?

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CLINGENDAEL ACADEMY NEGOTIATION TRAINING



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CECILIA ALBIN

NEGOTIATING EFFECTIVELY: FINDINGS FROM TRADE, ARMS CONTROL AND ENVIRONMENTAL NEGOTIATIONS



Delegates pictured during the United Nations Climate Change Conference (COP15) in December 2009 in Copenhagen. Justice issues and arguments figure prominently in climate change negotiations, and often influence the process. The COP15 talks fell into crisis after developing countries rejected a proposed plan for having been worked out without their participation by a small group of lead countries, for being imposed upon them, and for lacking commitment to deal with a problem largely created by rich countries and inflicting most harm on the world's poorest people.

Negotiators normally seek to reach effective agreements rather than, to recall the topic of Rudolf Schüssler's article in an earlier PINPoints issue (38/2012), "rotten compromises". How effective negotiations and results are brought about has naturally been a matter of long-standing interest in the negotiation literature. Among many factors explored are the role of different actors (e.g., third parties as mediators, non-governmental organizations), relations between negotiating parties (e.g., the power balance), and negotiation methods (e.g., integrative/problemsolving vs. distributive/competitive). What remains little examined is the impact, if any, of justice considerations: Are negotiators who adhere to justice principles in the process of bargaining and drafting agreements more - or rather less - effective than others? Put succinctly, are just negotiators needed?

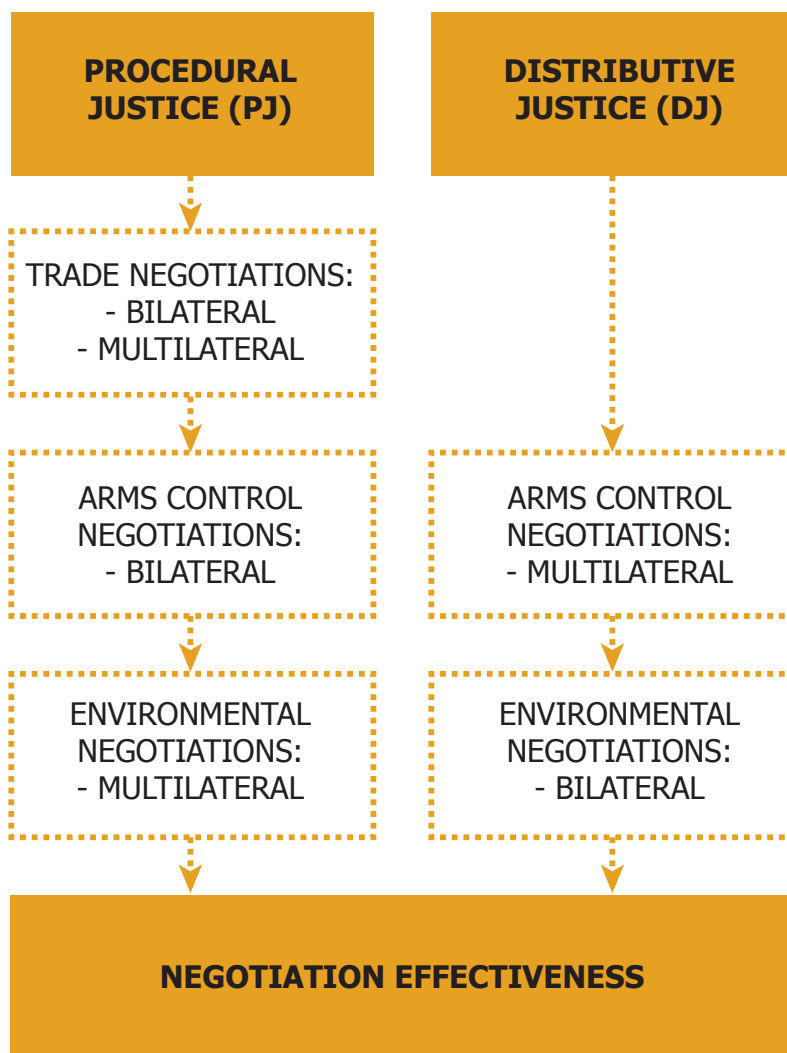
As international negotiations have become ever more important as a

tool to tackle global issues, they have faced repeated stalemates or slowed down in a number of key areas. While the reasons are many and complex, procedural (PJ) and distributive (DJ) justice issues are at the heart of the difficulties in many fields. For example, PJ issues regarding agenda-setting and fair party representation/inclusion have often become controversial stumbling blocks in negotiations within the World Trade Organization (WTO). From the outset the core of climate change negotiations has concerned DJ issues over who should undertake greenhouse gas emission cuts (given inequalities in past, current and future projected emission levels), and at whose cost (given differences in responsibility for the problem, in resources and in gains to be had from emission abatement). Earlier research has demonstrated that justice principles and

concepts influence the dynamics of negotiation and the content of agreements (e.g., Albin 2001, Zartman and Kremenyuk 2005, Druckman and Lyons 2005, Hollander-Blumoff and Tyler 2008). A pilot study also shows that the DJ principle of equality can enhance the durability of peace agreements following civil war (Albin and Druckman 2012). Apart from this study, however, no work to date has systematically examined if and how PJ - that is, the justice of the process and procedures whereby negotiations are conducted - or (DJ) - the justice of the allocation of benefits and burdens in the outcome - impact upon negotiation effectiveness.

A project based at Uppsala University was designed to fill this gap.¹ Negotiation "effectiveness" is defined in terms of several dimensions: extent of agreement (among parties, on is-

¹ The project, entitled "Are just negotiators needed? Justice and effectiveness in international negotiations over the environment, trade and weapons disarmament", is funded by Riksbankens Jubileumsfond from 2010 to 2013. Staff include Cecilia Albin (project leader), Daniel Druckman (principal investigator/senior researcher) and a number of research assistants.



suces), time to reach agreement, comprehensiveness, and quality of the agreement (integrative vs. distributive elements). PJ is defined in terms of four principles: fair representation, referring to full or balanced representation in the decision-making process of parties and interests expected to be affected by the outcome; fair treatment and fair play, implying opportunity to have an input, be heard and influence the process and consistency and impartiality in the conduct of it; voluntary agreement, that is, freedom from imposition and acceptance of one's own volition; and transparency, meaning openness and accessibility regarding decision-making in the negotiation process, as parties work to reach a negotiated agreement. DJ is defined in terms of four other principles: equality, referring to identical or

comparable distribution of resources and burdens; proportionality, implying distribution of resources and burdens in proportion to relevant inputs such as, for example, contributions made; need, meaning distribution of resources to meet present basic needs; and compensation, referring to resource distribution to indemnify undue costs or wrongdoings inflicted upon a party.

All these principles are recognized as central components of PJ and DJ, respectively, in the research literature and widely relevant across different issue areas. In this project, chiefly for reasons of methodology (keeping dependent and independent variables separate), DJ principles are examined as a process rather than outcome variable. This means that the focus is on examining how

DJ principles influenced the process of coming to an agreement, not on such principles as the foundation for the allocation of gains and costs in the negotiated outcome.

The project sets out to examine whether adhering to PJ and/or DJ principles leads to greater effectiveness in three major areas of international negotiations: international trade, environmental and arms control negotiations. Some ten bilateral and ten multilateral cases are covered in each area, bringing the total sample to just over 60 cases. The cases were chosen to provide a as representative sample as possible with regard to types of parties involved, time period, issues covered, and negotiation forum (for the multilaterals) or geographic region (for the bilaterals) involved. Statistical methods (correlation, regression and factor analysis) have been used to assess relationships between PJ, DJ and effectiveness in all three areas.

The main finding is intriguing: While some type of justice always matters, the impacts of PJ and DJ on effectiveness vary widely across issue areas. In two areas - arms control and the environment - the impacts are also different for the bilateral and multilateral cases. As for the trade cases, both bilateral and multilateral, the results demonstrate that adhering PJ - but not to DJ - principles in the negotiation process contributes significantly to effective outcomes. The correlation between PJ and effectiveness in this area is very strong. PJ contributes importantly to effectiveness in several respects in bilateral arms control negotiations, while it reduces effectiveness in terms of number of issues settled in multilateral arms control talks. Adherence to DJ principles in multilaterals contributes to more substantial agreements being reached, while such adherence in bilaterals means more distributive rather than integra-

tive agreements being reached. By contrast, in the area of the environment, PJ contributes significantly to effectiveness in the multilateral cases but not in the bilateral ones. DJ enhances effectiveness considerably in the bilateral cases, and less so in the multilateral ones.



"Negotiations by exhaustion"?
So multilateral negotiations are sometimes termed, particularly in the context of climate talks.

Even long-time negotiation analysts may be surprised that justice plays these useful roles. As long-time analysts of justice and negotiation, the project researchers were surprised to find the considerable variations across issue areas. What explains them? Some plausible factors come to mind.

As for the importance of PJ in trade talks, they tend to be conducted in a normative setting which stresses justice-related procedures as rules of conduct in the negotiations. This is most obvious in a multilateral forum such as the WTO, where a set of norms for achieving free and fair trade specified in the GATT treaties provide a foundation for the talks. A particular focus within the WTO is on promoting a "level playing field" for all negotiating parties, in response to criticism about the lack thereof, which is closely related to PJ principles. The finding about the importance of PJ also in bilateral trade talks suggests that the PJ-related norms of the global trade regime influence all trade negotiations and not just those conducted in multilateral fora. More generally, the importance of process or procedural justice has

been pointed out as the most important norm in international economic relations (Kapstein 2006). Trade talks - bilateral and multilateral - also tend to be longer-term processes in which the prospect of further important encounters is real. Compared to one-time or ad hoc negotiations, this is likely to better encourage and help establish procedurally principled and "appropriate" behavior. By contrast, there is no such favorable setting for adhering to DJ principles or for such principles to promote effectiveness in trade negotiations. There is no set of widely agreed or practiced DJ principles - rather, such principles have proven controversial and divisive in trade talks. Applying them would also require calculations of costs and benefits involved for different parties in proposed agreements, which tend to be complex to estimate and difficult to agree upon in the trade area.



As Director-General of the World Trade Organization (WTO) until 2013, Pascal Lamy kept stressing the importance of bringing the troubled Doha Round of trade negotiations to a successful conclusion. Both procedural and distributive justice issues play a central role in the rift between participating rich and poor countries.

Some of the results obtained in the arms control area are the least expected ones and harder to explain with certainty. How can PJ in the multilateral sample here have a negative impact on effectiveness? Multilateral arms control talks often involve or are affected by spoiler countries, which might help to explain that more adherence to PJ (e.g., in terms of inclusion and participation) has this effect. More generally, in any

large-scale multilateral talks, there is likely to be a threshold or tipping point beyond which even more inclusiveness, representation and so on overload the process and undermine the work to reach an effective agreement (Albin 2012). That adhering to DJ principles, which concern the distribution of costs and benefits, leads to more distributive than integrative agreements is hardly surprising. However, it is unclear why this is the case only in the bilateral sample and why DJ specifically in the multilateral sample leads to more substantial agreements being reached.

By contrast, the findings in the environmental area are relatively straightforward. A major reason for which PJ is important in multilateral environmental talks has certainly to do with the features of large-scale multilateral processes generally: These are complex settings in which a large number of parties, interests and issues compete for attention and influence - far more than can be accommodated in the significant decision-making sessions. This increases the importance of how the negotiation process is arranged, and specifically of PJ issues and considerations. These pressures do not exist to the same extent in negotiations between two or a few parties, which help to explain the relative unimportance of PJ in the bilateral environmental cases. In this far more simple setting, the distribution of benefits and burdens between parties in proposed agreements is usually easier to envision, calculate and agree upon. This may be a factor behind the greater significance of DJ in terms of contributing to effectiveness in the bilateral sample.

These findings contribute to existing knowledge about factors which impact upon effectiveness in international negotiations. They highlight the fact that justice is a significant



➔ factor across issue areas, but that what is being negotiated and the contextual environment go far to determine what type of justice will have what effect. The findings also raise numerous questions for further research. Some of these will be addressed in two new projects based at Uppsala University, with funding from the Swedish Research Council: One is entitled, "From peace negotiations to durable peace: the multiple roles of justice" and the other, "Explaining international negotiating behavior: Adherence to justice principles in international negotiations over the environment, trade and weapons disarmament". As importantly, project results can provide a basis for suggesting advice to practitioners about the use of justice principles to enhance negotiation effectiveness.

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MIKHAIL TROITSKIY

US-RUSSIA NUCLEAR ARMS CONTROL TALKS: IMPLICATIONS FOR INTERNATIONAL SECURITY

It is accepted wisdom that negotiations often have consequences for a broader group of actors than the parties directly involved in the talks. Third parties are usually affected not only by the outcomes of negotiations, but by the process of negotiations per se. The act of negotiating sends a powerful message to the outside players, some of whom may want to be involved in the talks while others may have reason to fear agreement or lack thereof between the negotiating parties.

If the negotiators discuss challenges that are common both to them and to the outside world, they may become influential opinion leaders on the global scale. It means that the negotiators might gain recognized authority in shaping collective responses to such challenges. Their pressure on other actors can push the resolution of the shared problem further and increase the level of the public well-being. This phenomenon can be called "leadership by negotiation."

CONTEXTUALIZING ARMS CONTROL NEGOTIATIONS

Among nation-states leadership by negotiation is quite common – for example, in the spheres of international trade or climate change. It is notable that in these areas

- negotiations have historically been multilateral; even if a few largest stakeholders could be viewed as leaders and motive force behind progress, smaller participants united in groups could effectively wield veto powers. For example, they were able to stall the Doha Round of WTO negotiations (hydrocarbon

emissions control talks were mainly tanked by an alliance of two large players – China and the United States).

- both "haves" and "have-nots" took part in negotiations as equals – the Doha Round and climate change talks have involved both industrialized and developing countries;
- survival and other vital issues have never been at stake – climatic implications of the failure to limit greenhouse gas emissions have been considered potentially dangerous, but still very remote compared to the usual policymaking cycle.

Ongoing trade negotiations in the WTO seriously affect the rest of the international community by incentivizing many states that remain outside WTO to seek accession. Despite the fact that the Doha Round has not yet resulted in an agreement, the existing WTO conflict-resolution mechanisms and membership in the club as such are attractive enough for the non-members.

The inconclusive (some would say, failed) climate change negotiations have led a number of big and smaller players to abandon the hope of putting greenhouse gas emissions under control and largely to agree that a two-degree increase in the global temperature – considered catastrophic earlier – cannot be avoided. In yet another area – nuclear arms control – the picture has been different:

- So far, only the two nuclear superpowers – the USA and Russia – that



Obama and Medvedev sign New START

accumulated well over 90 percent of the global nuclear arsenal have conducted talks on reductions. Not only the “have-nots,” but also nuclear-weapon states with smaller arsenals have not participated in these negotiations.

- Vital security issues for the whole international community – and, primarily, for the negotiating states – have been at stake: the risks of accidental launch or theft of fissile materials have been clear; these risks can subside as a result of reductions in the two largest arsenals.

Unlike the climate change or trade talks, the impact that US-Russian negotiations produce on the global arms control trends is a subject of an ongoing debate. By signing and implementing the INF, START I, SORT and New START treaties, as well as a number of unilateral reductions, the two nuclear superpowers have reduced the number of operationally deployed weapons by up to 90 percent from the peak cold-war levels. And yet the gap between the current numbers available to the United

States and Russia, on one hand, and other nuclear-weapon states, on the other, is still glaring. This fact is cited by the second-tier nuclear-weapon states – both members and non-members of the NPT – in order to justify their refusal to join the next round of reduction talks despite ever louder calls from Washington and Moscow. Apart from the P5 (five permanent members of the UN Security Council) negotiation process, which began in the wake of the 2010 NPT Review Conference, there is no other multilateral forum – either formal or informal – to discuss nuclear disarmament which is also called vertical non-proliferation.

DO ARMS CONTROL NEGOTIATIONS MATTER?

Even more acute is the problem of horizontal proliferation. Article VI of the NPT explicitly links horizontal non-proliferation to disarmament by demanding that nuclear-weapon states pursue nuclear disarmament “in good faith.” Numerical reductions and changes in the force structure, in their turn, necessitate shifts in the nuclear

postures of negotiating states. When the numbers of warheads, bombs and missiles are reduced, the range of options for their use becomes different (albeit not necessarily narrower). Conversely, if the sides change their nuclear planning vis-à-vis each other and the rest of the world (unilaterally or through a bilateral agreement), reduction in numbers become possible or even necessary to make posture changes credible.

Despite the provisions of Article VI, a number of analysts have argued that the drivers of horizontal nuclear proliferation have little, if anything, to do with the size of existing arsenals. They claim that proliferators – actual and potential – are motivated by regional security concerns and/or prestige considerations. They also maintain that neither Russia (the Soviet Union) nor the United States have ever been driven in their arms control efforts by the willingness to implement Article VI. From such perspective, US-Russian nuclear arms reduction talks play no role in either stopping horizontal proliferation or strengthening international security in

the post-bipolar world.¹ A sub-group of these analysts have maintained that several states contemplate or already pursue nuclear weapons primarily to hedge against the interventionist regime-change policies practiced by the United States and its allies.²

However, historical evidence of arms control suggests otherwise. For example, Russia ratified the START II Treaty in May 2000 – after more than seven years of heated debates; the treaty was ratified one year after the United States and NATO strongly fell out with Russia over their intervention into the Kosovo conflict. In a similar vein, the NPT Review Conference gathered new momentum after Russia and the US signed the New START treaty in April 2010. Finally, the calls by two nuclear superpowers to make further nuclear arms control arrangements multilateral put actual and potential proliferators (for example, India and Pakistan) under pressure which becomes clear from their rather nervous responses about parochial motives for obtaining nuclear arsenals. In their turn, the US and Russia warn that further nuclear proliferation, if it occurs, can alter their calculations and, consequently, perspectives on arms control and nuclear postures.³ One may also note that the most recent powerful surge in nuclear-weapon programs of a number of aspiring states (most of whom did succeed in their quest for nukes) happened between the late 1990s and 2010 – at a time when substan-

tive arms reduction talks between the United States and Russia remained stalled. These examples lead a large group of experts to conclude that even if implementation of the Article VI commitments by the US and Russia is not sufficient to thwart proliferation, it is by all means necessary.⁴

Even if Washington and Moscow still remain beyond comparison with other nations by the size of their arsenals, they clearly are influential fashion-setters in the global discussion about the rationale for nuclear weapons. The role that nuclear weapons play in their national security strategies is not difficult to extract from their official nuclear doctrines and other key foreign policy documents. The direction in which the US and Russian perspectives on the role of nuclear weapons are evolving is of key importance not only for the relationship between the two countries, but also for the nuclear future of the whole world.

THE IMPACT OF NUCLEAR SUPERPOWER DOCTRINES

The main negative effect that the United States and Russia produce on nuclear non-proliferation derives not so much from their current numbers, but their mutual nuclear postures. These postures undermine ethical arguments against nuclear deterrence more than any country's actual conduct on the world stage.

Broadly speaking, nukes can be seen as either optional and expensive means of enhancing a country's security (because a nuclear bomb can only be obtained at a large cost to the country's budget and international prestige) or the ultimate and only viable guarantee against aggression (so that the cost does not matter). Even if there are specific motives driving each actual or potential proliferator, including India, Pakistan, North Korea, Iran and others, the leaders of these states waste no opportunity to invoke the legitimacy endowed on nuclear weapons by the nuclear superpowers – very large nations that would be extremely powerful even without nuclear weapons but that nevertheless continue to refer to these weapons as indispensable means of deterrence. Moreover, the US and Russian leaders openly endorse the debatable notion that nuclear weapons guarantee peace.⁵ Such position provides Pyongyang or Tehran with a potent moral argument why they need (or might need) to develop nuclear weapons. Furthermore, the two nuclear superpowers claim that stability is not achievable without mutually assured destruction, that is, a presumably robust second-strike capability on each side. All US-Russian bilateral arms control treaties have so far been premised on the notion that each side has to retain a second-strike capability, not just an opportunity to stop an aggressor by threatening a nuclear strike. This gives potential and actual proliferators another argument to justify regional arms races. If proliferation in the Persian Gulf does occur, Iran and its Arab rivals may not stop at limited arsenals, but argue that ever more nuclear arms are necessary to hedge against disarming strikes. Or if tensions between China and India resurge, policymakers in Beijing and New Delhi may also embrace the notion that their countries are getting unacceptably vulnerable

¹ See, for example: Mark Kramer, *Ending Bilateral US-Russian Strategic Arms Control*, PONARS Policy Memo 182, September 2011 http://www.ponarseurasia.org/sites/default/files/policy-memos-pdf/pepm_182.pdf

² See, for example: Andrei Kokoshin, *Obespechenie strategicheskoi stabilnosti v proshlom i nastoyaschem: teoreticheskie i prikladnye voprosy (Ensuring Strategic Stability in the Past and Present: Theoretical and Practical Issues)*, (Moscow: KRASAND, 2009), brief synopses available at <http://nuclearmo.ru/text.asp?13981> and <http://viperson.ru/wind.php?ID=639116>

³ For example, the United States, reserves the right to use nuclear weapons against non-nuclear-weapon states if they are non-members to the NPT. Russia reserves this right against any nation in case of an attack endangering Russia's survival as a state.

⁴ See, for example: Alexei Arbatov, *The Dialectics of Nuclear Disarmament and Nonproliferation*, in: Alexei Arbatov, Vladimir Dvorkin, Natalia Bubnova (eds.), *Nuclear Reset: Arms Reduction and Nonproliferation* (Moscow: Carnegie Moscow Center, 2012), pp. 349-362 http://carnegieendowment.org/files/nuclear_reset_Book2012_web.pdf

⁵ For a powerful critique of this argument see: Ward Wilson, *Five Myths about Nuclear Bomb* (New York: Houghton Mifflin Harcourt, 2013).

without second-strike survivability. This would lead to a shift from their current low-alert to more risk-prone high-alert nuclear postures. In any of the known regional standoffs, calculations of second-strike survivability would become extremely complex and first-strike incentives would grow dangerously strong.

In addition, lack of progress on vertical non-proliferation talks involving the two nuclear superpowers equally obstructs efforts aimed at enhancing the safety of nuclear materials across the globe. It becomes much easier for any country to defy calls for signing and/or ratification of the Comprehensive Test Ban Treaty (even after its possible future ratification by the United States) or Fissile Material Cutoff Treaty or simply convince any government to minimize the turnover of highly enriched uranium or plutonium.

The United States and Russia committed themselves to the goal of nuclear disarmament by signing a joint presidential declaration in April 2009.⁶ Yet since the New START Treaty came into force in February 2011, Russia has been lukewarm about further negotiations. It is likely that the main argument against further talks and agreements is the prestige that nuclear weapons endow on its legitimate owner. Indeed, the five nuclear-weapon states also happen to be permanent members of the UN Security Council. If one of them (Russia) foregoes nuclear preponderance, calls may get stronger for rotating it on UNSC or for adding new non-nuclear-weapon states to the group – a measure that would dilute the power of the current permanent members.



However, a new round of nuclear arms control negotiations could bring Moscow (and Washington) a number of tangible benefits. Forswearing heavy reliance on nukes in national security policy could raise Russia's (as well as America's) international profile and win Russia credit among the rising nations that either never had nuclear weapons (e.g. Turkey or Egypt) or disarmed voluntarily in the past (e.g. Brasil or South Africa) or intentionally keep their arsenals low and reject the concept of mutually assured destruction, that is, the need for a second-strike capability (China or India). One of Russia's major foreign policy goals is to rally support from

and solidify Moscow's position within the (real or imagined) groupings of rising nations, such as BRICS (Brasil, Russia, India, China, South Africa). In addition, having reached another nuclear reductions agreement and demonstrated consensus about the need to scale down the role of nukes in international relations, Moscow and Washington would be in a much stronger position to lead a multilateral effort aimed at preventing proliferation and increasing nuclear security.

Nuclear arms control is an area where negotiations cannot begin without a bold vision and strong political will. These are necessary for the leaders of negotiating nations to overcome entrenched resistance by parochial groups, build trust and agree on shared goals. If this is done, the results will justify the effort.

⁶ Joint Statement by President Dmitry Medvedev of the Russian Federation and President Barack Obama of the United States of America, April 1, 2009 http://www.whitehouse.gov/the_press_office/Joint-Statement-by-President-Dmitry-Medvedev-of-the-Russian-Federation-and-President-Barack-Obama-of-the-United-States-of-America

MORDECHAI (MOTI) MELAMUD

THE HELSINKI PROCESS IN THE MIDDLE EAST – NEGOTIATING A REGIONAL WEAPONS OF MASS DESTRUCTION FREE ZONE



“As a co-sponsor of the proposed conference on a Middle East zone free of weapons of mass destruction (MEWMDZFZ), envisioned in the 2010 Non-Proliferation Treaty Review Conference Final Document, the United States regrets to announce that the conference cannot be convened because of present conditions in the Middle East and the fact that states in the region have not reached agreement on acceptable conditions for a conference.”¹

As one of the three depositories of the Nuclear Nonproliferation Treaty (NPT), the US issued a press statement¹ on 23 November 2012 announcing that the long awaited conference for negotiation on a Middle East weapons of mass destruction free zone (MEWMDZFZ) will not be

convened during 2012 as decided by the Nuclear Nonproliferation Treaty (NPT) 2010 Review Conference. This development followed almost two years of official, as well as Track 2, discussions on the planned Middle East Conference and efforts by the appointed facilitator, Ambassador Jaakko Laajava from Finland, to bring all appropriate participants to the negotiating table.

ENVISIONING A MEWMDZFZ

The drive for a nuclear weapon free zone (or a wider WMDZFZ) in the Middle East is not new and has been on the international agenda for a long time. A proposal for the establishment of a nuclear weapon free zone in the region was first introduced to the United Nations General Assembly in 1974, and has since been adopted annually. In the early 1990's, the concept was broadened to include all WMD in the region.

As an outcome of the multilateral discussion on the peaceful settlement of the Middle East conflict that took place in Madrid in 1991, a working group on arms control and regional security (ACRS) was established. Delegations from 14 states in the region participated in this process, including Israel, Egypt, Jordan, Saudi Arabia, Kuwait, Oman, Qatar, Bahrain, the UAE, Tunisia, Morocco, Algeria, and Mauritania, and representatives of the Palestinian Authority, in addition to over 30 parties from outside the region² (although key states, namely Syria, Lebanon, Iran, Iraq and Libya, did not participate). The work of ACRS was discontinued in 1994, reflecting the overall decline of progress in the Middle East peace process, but also disagreements between key actors – mostly Israel and Egypt – regarding agenda and approaches to issues at hand.

Since the collapse of ACRS, no formal regional forum exists in which security issues in the ME can be discussed. The decision at the 2010 NPT Review Conference to convene a Middle East Conference by 2012 to advance the establishment of a WMDZFZ was envisioned as an opportunity to launch a negotiation process. These were the hopes for the Helsinki Process, so dubbed following the introduction of the Finnish facilitator for the Conference, Ambassador Laajava, and in reference to the process of confidence building between East and West during the Cold War, but the failure to convene the Conference in 2012, as declared by the US in its statement of 23 November, is perhaps emblematic of how strained regional relations are, and how wide

¹ US Department of State, “2012 Conference on a Middle East Zone Free of Weapons of Mass Destruction (MEWMDZFZ)”, November 23, 2012; <http://www.state.gov/r/pa/prs/ps/2012/11/200987.html>.

² Emily B. Landau, 2001, *Egypt and Israel in ACRS: Bilateral Concerns in a Regional Arms Control Process*; Jaffe Center for Strategic Studies, Tel Aviv University.

the gaps between regional actors.

WHAT SHOULD COME FIRST – PEACE OR DISARMAMENT?

A central disagreement between the negotiating parties, mainly Israel and the Arab states, is whether peace is a prerequisite for disarmament, or disarmament is a stepping stone en route to regional peace and stability. While Israel views arms control and disarmament to be the fruits of peace, its Arab counterparts advance a view according to which peace follows from disarmament. This is a fundamental disagreement, which underlies many of the pitfalls and obstacles in the negotiation process for regional arms control and peace, and more specifically, for the establishment of a MEW-MDFZ. The prerequisite expressed by Egypt, that the process should begin with Israel's accession to the NPT, is in stark contradiction to Israel's position, which considers the establishment of a WMDFZ as the culmination of regional peace and lasting security, which could be reached only after a fundamental shift in regional security and relations among regional actors. These contradicting views on such a fundamental issue have in past years entrapped the process, and have likewise undoubtedly contributed to the decision on postponing the 2012 Conference.

The question of peace and security in the region has taken on another dimension recently, with the Arab Spring revolutions. It is clear that the Middle East is presently undergoing one of its most profound political upheavals in decades, and while the events of the Arab Awakening are still unfolding, it is as of yet unclear what their results will be. Protracted political unrest, which has spread



throughout the region, is taken to be a source of instability and uncertainty, which are considered to be unfavorable to arms control negotiations. With many states in the region navigating in an unknown direction, delay is an expected approach, especially with regards to an intricate and controversial negotiation process on establishing a WMDFZ.

Israel, as a key actor in the process, has fundamental concerns regarding its unfolding. As the process was kick-started under the auspices of the NPT, Israel feels it has no meaningful influence over the agenda and future outcomes, and that it is being singled out in this forum, since it is not a party to the treaty which spawned the process. Because of its grave security concerns, it can only envisage a WMDFZ as following from a fundamental change in regional security structures. This is contradictory to the view held by other regional actors in this regard, mainly that of Egypt, which demands Israel's accession to the NPT as an initial step in the process. Iran is likewise a key actor, mostly due to its controversial nuclear program and allegations regarding its military application and possible noncompliance with the NPT. However, Iran was the first (and actually the only) regional actor which officially declared its

readiness to participate in the Middle East Conference (before its postponement was announced).

“ROUNDING UP” THE MIDDLE EAST

While existing NWFZ treaties such as Pelindaba (Africa) or Tlatelolco (Latin America and Carribeans) cover well-defined geographic regions, the Middle East case is ambiguous. Trying to define criteria for the inclusion of participants in a MEW-MDFZ process is complex, since the region does not have a clear definition, and historical definitions have been subject to arbitrarily drawn borders by previous colonialist powers. The Middle East is conventionally considered to include Egypt, Jordan, Israel, Lebanon, and Syria, as well as Iran, Iraq, and the countries of the Arabian Peninsula. Afghanistan, Libya, Turkey, and The Sudan are occasionally included.³ Because it is generally accepted that the countries of North Africa should also be incorporated, the more encompassing definition MENA can be used, including Middle East and North Africa.

A study by the IAEA, from 1989, proposed a definition of the geographical scope of the region for the purpose of establishing a nuclear weapon free zone, which extended from Libya to Iran, and from Syria to Yemen. It excluded Turkey, Cyprus, Afghanistan and Pakistan, as well as Maghreb countries west of Libya.⁴ Arab states, however, are promoting a wider delineation of the region, based on

³ <http://www.merriam-webster.com/dictionary/middle%20east>

⁴ As presented in UN Department of Disarmament Affairs, 1991, *Effective and Verifiable Measures Which Would Facilitate the Establishment of a Nuclear Weapon Free Zone in the Middle East* (<http://www.un.org/disarmament/HomePage/ODAPublications/DisarmamentStudySeries/PDF/SS-22.pdf>)

a later UN report, which includes all members of the Arab League, Iran and Israel; the latter, on its part, stresses that the zone's geographical scope can only be decided by the negotiating parties.⁵

While the key and crucial actors required to kick-start the MENWFZ process are relatively obvious (minimally speaking, those are Israel, Iran and Egypt), several "peripheral" actors from the wider geographic area *could or could not* be included in the process and eventually in the zone. Their inclusion might have dramatic influence over the process, if only because the introduction of more actors would necessarily enlarge the complexity and append more variables and viewpoints to an already complex negotiation process. An interesting case in point is that of the Arab League members that are usually not considered relevant to the region, such as Comoros or Djibouti. As the Arab League has been active in promoting the establishment of a free zone, and its members are lined up to participate in negotiations, such states should also play a role. A more essential question is posed by Turkey's possible inclusion in a future MEWMDFZ as a part of the Middle East. On one hand, Turkey's regional role and its concern over WMD capabilities in the region would merit its inclusion. However, considering that NATO has tactical weapons deployed in Turkey, its inclusion would substantially complicate the negotiation process.

The table below surveys the regional actors that are likely to be part of a

MEWMDFZ negotiation process (depending on the definition of the region and including an expansive overview), and their signature and ratification status for the existing central WMD non proliferation treaties and mechanisms: the Nuclear Nonproliferation Treaty, the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons, the Comprehensive Test-Ban Treaty, the Biological Weapons Convention, and the African Nuclear Weapon Free Zone in which several actors are either members or candidate-members (due to their regional affiliation)⁷. While it is in no way a prerequisite for the Middle East Conference or the process of negotiating a WMDFZ that regional actors be party to these treaties, this overview shows the regional status regarding WMD issues.

Due to their central roles with regard to the process, it seems unlikely that negotiations could begin without participation of Iran, Israel and Egypt. An alternative approach could be to assemble whichever regional actors willing to take part in a negotiation process and begin, with the hope that as the process unfolds, more regional actors will be drawn in. When the negotiation process initiates, relevant regional actors will have to decide who is to be included in the zone, whether a distinction between core and periphery actors is needed and which actors should be included as having a relevant extra-regional role. These decisions will in themselves be complex and political.

THE LONG ROAD AHEAD - CONTINUING THE DIALOGUE

While a regional arrangement could theoretically serve to address specific concerns and be engineered to better fit regional realities⁶, the complexities and gravity of related issues in the Middle East make it difficult to move forward at this time towards a MEWMDFZ. When compared to existing nuclear weapon free zones, it is clear that the Middle East would require a particularly sophisticated model than that instituted in the regions where such arrangements have already been established. The postponement (till an as-of-yet unscheduled time) of the planned Middle East Conference seems to have stalled the Helsinki Process for the Middle East, and the chances of initiating any meaningful negotiations or discussions on this issue in the region seem as distant as ever. This situation is amplified by the effects of the so called "Arab Spring" (or "Arab Uprising") on countries in the region. The recent events in Egypt, and the ongoing civil war in Syria that is also affecting its neighbors (Jordan, Lebanon) have a crippling effect on creating a proper atmosphere for talks on a free zone settlement.

Despite the obvious inherent complexities in the situation, the dialogue on issues of arms control and regional security relating directly to the establishment of a MEWMDFZ must be continued. Lack of any kind of official discussions on these matters is perilous, and while many Track Two initiatives are exploring these issues, an official framework should also be established. Many participants in ACRS described the talks as having had profound implications on their views regarding regional realities; ⁸this highlights the importance of establishing a new forum for discussing issues of regional security and continuing the dialogue between regional actors.

⁵ Hossam Eldeen Aly, 2012, *A Middle Eastern WMD-Free Zone: Objectives and Approaches of Arab States; Arms Control Today* (www.armscontrol.org/act/2012_04/A_Middle_Eastern_WMD-Free_Zone_Objectives_and_Approaches_of_Arab_States)

⁶ See Mordechai (Moti) Melamud, *Negotiating a Nuclear Weapons Free World – are Nuclear Weapons Free Zones the Road Ahead?*, PINpoints 37.

⁷ During the preparation of this article for print, due to special international situation and pressure, Syria ratified the Chemical Weapons Convention and joined the OPCW (on 14 Sep 2013) after it was found to have been using chemical weapons on Syrian civilians. Its chemical weapons arsenal is being demolished now under control of the OPCW inspectors.

⁸ Emily B. Landau, 2008, "ACRS: what worked, what didn't, and what could be relevant for the region today", <http://unidir.org/pdf/articles/pdf-art2727.pdf>

Country	Middle East Conventional definition	Arab League	ACRS (*)	NPT Member (3)	IAEA			OPCW (7)	CTBT (8)	BWC (9)	ANWFZ (10)
					Member (4)	Safeguards (5)	AP (5), (6)				
Bahrain	x	x	x	x	x	x	x	x	x	x	//
Egypt	x	x	x	x	x	x			(1)	(1)	(1)
Iraq	x	x		x	x	x		x	(1)	x	//
Jordan	x	x	x	x	x	x	x	x	x	x	//
Kuwait	x	x	x	x	x	x	x	x	x	x	//
Lebanon	x	x		x	x	x		x	x	x	//
Oman	x	x	x	x	x	x		x	x	x	//
Palestine	x	x	x								//
Qatar	x	x	x	x	x	x		x	x	x	//
Saudi Arabia	x	x	x	x	x	x		x		x	//
Syria	x	x		x	x	x		x		(1)	//
United Arab E.	x	x	x	x	x	x	x	x	x	x	//
Yemen	x	x		x	x	x		x	(1)	x	//
Cyprus	x			x	x	x	x	x	x	x	//
Iran	x			x	x	x	(2)	x	(1)	x	//
Israel	x		x		x	x		(1)	(1)		//
Algeria		x	x	x	x	x	(2)	x	x	x	x
Comoros		x		x	x	x	x	x	(1)		(1)
Djibouti		x		x	x	(2)		x	x		(1)
Libya		x		x	x	x	x	x	x	x	x
Mauritania		x	x	x	x	x	x	x	x		x
Morocco		x	x	x	x	x	x	x	x	x	(1)
Somalia		x		x							(1)
Sudan		x		x	x	x		x	x	x	(1)
Tunisia		x	x	x	x	x	(2)	x	x	x	x
Turkey				x	x	x	x	x	x	x	//

(*) Arms Control and Regional Security working group in the ME, 1991-1994

(1) Signatory States which have not yet ratified (OPCW, CTBT, ANWFZ)

(2) States for which the Additional Protocol has not yet entered into force (IAEA)

(3) <http://disarmament.un.org/treaties/t/npt?OpenView>

(4) <http://www.iaea.org/About/Policy/MemberStates/>

(5) States that have any type of safeguards agreement with the IAEA; <http://www.iaea.org/OurWork/SV/Safeguards/documents/es2011.pdf> <http://www.kcl.ac.uk/sspp/departments/warstudies/research/groups/csss/2012sectionh.pdf>, pgs. H-18-19

(6) States that signed the Additional Protocol with IAEA; http://www.iaea.org/OurWork/SV/Safeguards/documents/AP_status_list.pdf; <http://www.iaea.org/OurWork/SV/Safeguards/es/es2010.html>;

(7) <http://www.opcw.org/about-opcw/member-states/>

(8) <http://www.ctbto.org/the-treaty/status-of-signature-and-ratification/>; note that CTBT has not entered into force yet.

(9) <http://disarmament.un.org/treaties/t/bwc>

(10) African Nuclear Weapons Free Zone (the Treaty of ANWFZ); <http://disarmament.un.org/treaties/t/pelindaba>.

"// " denotes states on the list that are not eligible for Pelindaba membership, since they are not regionally affiliated with Africa.

VALÉRIE ROSOUX

SECURITY AND INTERNATIONAL NEGOTIATION

The question of secrecy in international negotiation is one aspect of a broader issue devoted to the links between democracy and diplomacy. Democratic regimes imply in principle the publicity of all proceedings, deliberations, decisions taken in the exercise of public authority. Why diplomacy, and in particular international negotiation, could, or should, provide an exception to this general principle? This issue is far from new. After the French Revolution of 1789, Mirabeau called for the abolition of secret diplomacy. At the end of World War I, claims in favor of freedom of information and democratization of diplomacy raised from all over the

world. Figures as diverse as Wilson and Trotsky called for 'open covenants, openly arrived at'. These calls however turned out to be a pious hope: the majority of international negotiations remained closed and secret, the main argument being the pursuit of "national interests" (Kirkpatrick, 1960).

The secrecy of process is to be differentiated from secrecy of outcome. A distinction can indeed be drawn between, on the one hand, disclosing factual information and final agreement and revealing, on the other hand, the internal discussions and processes whereby negotiators arrive

at decisions. There is nowadays a general consensus in favor of publicity as regards to outcome: disclosure of the results of diplomatic negotiation is required by the principles of democracy. Yet, for most practitioners, it takes only common sense to realize that it is impossible to systematically disclose all their tactics and strategies.

More fundamentally, this issue raises a central question: how to take into account the need for efficient and pragmatic diplomacy *and* the call for democracy? Three arguments are generally raised in favor of secrecy: the vision of enlightened elite representing the people as a mass unable to master

the complex questions of world politics (1); the impracticability of any public process in crisis situation (2); the presentation of public opinion as limiting flexibility among negotiators (3).

I. COMPETENCE PRINCIPLE

Diplomacy is perceived as a *domaine réservé*. Machiavelli, Richelieu and even Jean-Jacques Rousseau - which was one of the major defendants of national sovereignty on the domestic scene - considered that the external exercise of power did not suit the people, the great rules of the state being far beyond their reach. Thus, many authors established the primacy of the competence principle over the *national sovereignty* principle. They presented secrecy as inherent to international negotiations. Nonetheless, various elements of the historical evolution increasingly challenged the appropriateness and the possibility of secrecy (White, 1997: 249-262).

As far as the **appropriate character** of secret negotiations is concerned, two main points are often mentioned. First, the opponents to secrecy condemned the autocracy of the Foreign Department, referring to the basic democratic principle. The presentation of the so-called "essential incompetence" of the mass and its lack of interest in international politics was called into question by the advent of mass enfranchisement, substantial improvements in mass education and growing consciousness of basic rights. In 1912, some members of the French Parliament required the power and the right to stop the negotiation processes they judged detrimental to the nation (*Revue de droit public*, 1912: 313). The reason of their demand was not only that secrecy and the so called reason of state may serve as alibi to hide personal ambitions, but also that those who are responsible for the

national security cannot be the sole judges of what the national security requires.

The second counter-argument, based on the link between secret diplomacy and a tremendous risk of war is much less convincing. During World War I, the congress of the Human Rights League considered the abolition of secret diplomacy as one of the major conditions for a lasting peace (*Temps*, Febr. 4, 1915). This claim refers to the logic that Kant developed in his 1795 treatise *Perpetual Peace*. In this famous statement, Kant posited that democracies are inherently less war-like than autocracies because under republican rule leaders are accountable to the public, which restrains them from waging war. Because ordinary citizens would have to supply the soldiers and bear the human and financial costs of imperial policies, he contended, liberal democracies are "natural" forces for peace. The political idealist paradigm provides theoretical support for this prediction, arguing that democracies almost never initiate wars against one another (Ray, 1995). However, this argument works if one presumes that war is bad (which we might agree with) and that Kant is right about the peaceable nature of democracies. Nonetheless, empirical research demonstrates that democracies are belligerent towards non-democracies even though they may be more peaceable towards other democracies (Pfetsch, 2000).

Aside the appropriateness of secrecy, the **concrete possibility** of secrecy is also increasingly challenged. Several factors as the recent development of information and communication technology, the role of media and the emergence of new actors on the international scene (NGOs, networks, religious trends...) have promoted both the desire and the means for making public, as it oc-

curs, the continuing process of negotiation. Contributing substantially to the decline in secrecy has also been a growth in size, reflected both in the number of individual participants and in the number of negotiating parties. The raising of multilateral negotiations is due to the multiplication of global issues and the increasing interdependence between international actors. Traditional bilateral contacts tend to be less and less adapted to deal with worldwide problems (such as environment, health, migration, criminality). This evolution increasingly appeals for open and public diplomatic proceedings. It signals the beginning of an era in which not only the outcome, but also the process of negotiation in itself is known far beyond the small circle of principal negotiators.

II. PRESSURE OF TIME

Criticisms against open proceedings do not only underline the limitations of public opinion. They also insist on the pragmatic impossibility of any consultative process in crisis situation. As Alexis de Tocqueville puts it more than a century ago, in managing foreign relations, democracies are "decidedly inferior" to centralized governments because they are slow to respond to external dangers (Tocqueville, 1981: 316-323). In the same view, John Locke justified the quasi-absolute monopoly of executive power in international relations by arguing that the legislative assembly - too numerous and too slow to react - could not respond to the "unpredictable and uncertain circumstances" of world politics (Locke, 1984: 597).

This argument is not baseless. It is essentially founded on the nature of decisions to be made. Foreign policy actors do not always face routine decisions or long-term decisions.



They also have to deal with urgent threats to the vital interests of the state, its military security or the well being of its people. In the context of any international crisis (characterized by a lack of information and the risk of a violent escalation), time becomes a crucial constraint. As a result, crisis situations require that negotiations be conducted in relative secrecy in order to allow rapid and coherent reactions.

III. FREEDOM TO MANEUVER

A third chief benefit of secrecy is that it allows negotiators to have complete freedom to maneuver and to act according to circumstances and personal judgments. In this respect, three specific reasons are generally stressed. Firstly, it is argued that transparency may actually undermine behind-the-scenes efforts at negotiated settlements. Thus, after having experienced the shortcomings of an open diplomacy, Richard Nixon defended the rule of secrecy by underlining the importance for negotiators to "have the opportunity to propose testing solutions, to study counterproposals and to put other's reactions to the test. They can't do so if there is no secret negotiation" (Nixon, 1981: 347-348).

The second reason concerns the need for policy innovation. According to most of the practitioners, it seems difficult for public opinion to formulate new alternatives; rather its expression generally consists in

favoring or disfavoring certain simply formulated existing alternatives. The effect of public opinion, so this reasoning goes, is consequently to narrow the range of alternatives and to reduce the flexibility of the negotiator to propose new alternatives he sees as beneficial. This point comes back to the supposed incompetence of the mass, which has already been dealt with. In addition, there is no ground to assert that the negotiators' imaginative ability is systematically constrained by a public process. On the contrary, one could argue that the larger number of actors, the greater chance for policy innovation.

The third point refers to the risk of demagogy. It is often said that widespread publicity for negotiation necessarily makes it more likely that a party, in selecting strategies, will consider not only their likelihood of promoting a beneficial agreement, but also their effect upon interested onlookers. Information officers for each nation typically brief members of the press, before the conference, on their delegation's position; and following each closed session, they report their view of the proceedings. Rusk (1955) decried this "football stadium psychology" in the United Nations, which emphasizes scoring points in a debate, and tends to freeze positions as soon as they are put forward, hindering subsequent accommodation.

* * *

These points raise a major dilemma. On the one hand, one has to admit that an electorate - as informed and competent it is - might still put a range of demands on negotiators that make negotiations much less manageable. On the other hand, the simplicity of the decision-making process does not constitute the only factor to take into consideration. Except for crisis situations in which the time pressure

is undeniable, the main goal that is pursued by negotiators is not to solve the problem as quickly or as easily as possible. Isn't it rather to reach the most durable agreement?

Foreign policy cannot anymore be considered as a hermetic art, strictly reserved for an enlightened elite. However, such assumption does not mean that all diplomatic problems have to be settled by a large public consensus. Even if transparency may serve many valuable functions - such as forcing leaders to be accountable to the public - it may also worsen crises resolution. Diplomacy will undoubtedly remain a skilful mix of highly visible public relations exercises and secret talks (Zartman and Berman, 1982: 215-217). However, secrecy is no longer perceived as absolutely legitimate. Rather than being only described as a constraint, public opinion could increasingly be seen as a sustaining resource for negotiators.

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CLIMATE CHANGE NEGOTIATIONS

Sjostedt, G. and Penetrante, A. (eds.) (2013), Routledge, 224 pages

As the Kyoto Protocol limps along without participation of the US and Australia, ongoing climate negotiations are plagued by competing national and business interests that are creating stumbling blocks to success. This book approaches these blocks from five professional perspectives: a top policy-maker, a senior negotiator, a leading scientist, an international lawyer, and a sociologist who is observing the process.

The authors identify the major problems, including great power strategies (the EU, the US and Russia), leadership, the role of NGOs, capacity- and knowledge-building, airline industry emissions, insurance and risk transfer instruments, problems of cost benefit analysis, the IPCC in the post-Kyoto situation, and verification and institutional design. They also identify and assess facilitation strategies to keep climate discussions moving towards international agreement and long-term success.

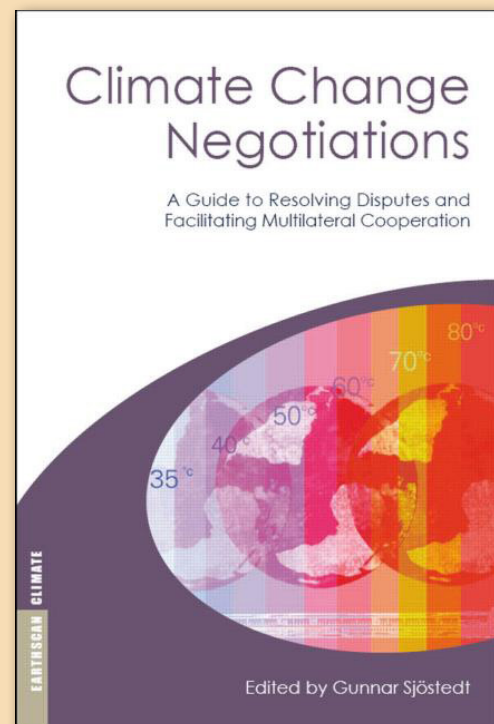
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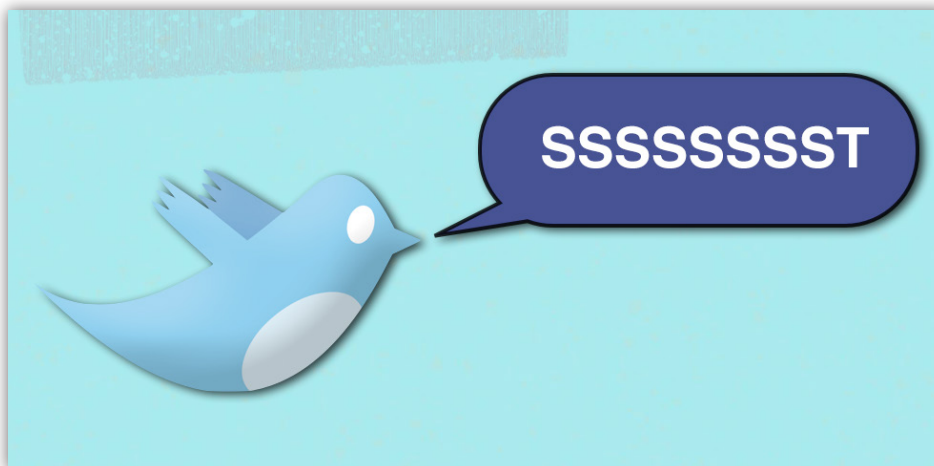
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PAUL MEERT

PUBLIC OPINION AND NEGOTIATION: THE DILEMMA OF OPENNESS AND SECRETIVENESS



Traditional media as well as the new (social) media play a crucial role in influencing and mobilizing public opinion. At the same time public opinion is a major factor in diplomatic negotiation. Democracies, in the first place but also authoritarian regimes, have to take it into account. The effectiveness of interstate negotiation depends to a large extent on the possibilities negotiators have to keep their processes hidden to the outside world. By hiding their interaction they keep room for maneuver as intervention from their government, parliament, media and public opinion will obstruct their creativity in wheeling and dealing in order to reach an optimal negotiated outcome. An example of this are the backchannel negotiations as performed by Henry Kissinger in his dealings with the Soviets and the Chinese (Kissinger 1979, 25). The positive side of keeping the negotiations a secret were, however, balanced of by the negative side that both Nixon and Secretary of State Rogers, as well as Congress and public opinion felt surpassed and therefore started to mistrust Kissinger as a negotiator. They felt he misinformed them, while the backchannel

gave Kissinger a chance to avoid misinformation and miscommunication between the negotiators themselves (Dobrynin 1995, 94). Therefore the dilemma: while he built trust with his opponents, he lost trust at home.

Harold Nicholson said, when lecturing at Oxford in November 1953: 'sound negotiation must be continuous and confidential', while 'the day secrecy is abolished, negotiation of any kind will become impossible' (Nicolson 1998: 75-76). He wrote this as a comment on the desire of US President Woodrow Wilson to make diplomacy more transparent. Where do we stand with President Woodrow Wilson, who told us that the diplomatic agreements had to be openly arrived at while being accessible to all? This first principle of the Fourteen Points (Macmillan 2001, 21) the President presented on 8 January 1918 has never been a serious option for implementation. Wilson stated that 'diplomacy should proceed always frankly and in the public view ... (however) on reaching Paris (in 1919, he) quickly decided that by 'diplomacy' he had not meant 'negotiation', but only the results of that negotiation, namely

treaties.' (Nicolson 1998: 85-86). So far for openness to the public. Wilson obviously does not want the negotiation process itself to be open to the outside world, only its outcomes. In that sense he is against secret protocols, but to raise the expectation of an open process is misleading, he is as secretive and non-transparent as all the other negotiators.

Why is it important to exclude public opinion from the actual negotiation process? First of all, because of the 'concession' issue. Negotiation is a process of give and take, too much openness will obstruct the flow of this interaction. This is already a good reason for professional negotiators to shy away from trade-offs in formal sessions, as this will highly expose them, to the point that it will endanger their effort to fulfill their mandate. They need corridor work and informal sessions in order to bargain. The adage of the groundbreaking book *Getting to Yes* by Fisher and Ury to be as open as possible in brainstorming with the other party (Fisher and Ury 1991, 62) is – generally speaking – counterproductive in diplomatic negotiation.

The idea that openness about one's needs will help to speed-up the process, may be helpful in commercial negotiation, as this process is about figures and therefore less loaded with emotions while the constituencies are the companies themselves. The constituency is within reach and can be controlled, this is hardly the case in interstate negotiation. In interstate negotiation, where the prestige of the countries and their political leaders is

at stake, this advice is not of much help. In fact it can be even more of a problem if some of the negotiators are from cultures where face-saving is of utmost importance, often overriding the material interests of the actors, the so-called problem of egotiation (Meerts PINpoints 2010, 28-29). In that sense, Fisher and Ury's idea of openness seems to be a product of American culture, as is Woodrow Wilson's view on transparency. From an American perspective, the negotiator acts rationally, on the basis of his or her material interests. Nevertheless, negotiation behavior is often steered by values and emotions and even a rational strategy might end-up in an irrational situation through entrapment processes (i.e. see Vietnam, Iraq and Afghanistan).

Another argument against too much openness, is the need to keep certain actors at a distance, as their needs and strategies might create obstacles and stalemates in the negotiation process. This is one of Nixon and Kissinger's reasons of keeping the State Department at a distance in their back-channel negotiations with the Chinese and the Soviets in the early 1970s. The backchannel negotiations were effective indeed, but they infuriated the Secretary of State and his diplomats. The paradox here is that secret negotiations might be of help in the dealings with the other party; however, they can create long-lasting problems with one's own constituency. Apart from this, the back-channel negotiator will be unable to draw on the expertise of that constituency, which may lead to serious shortcomings in the final agreement. Kissinger overlooked the importance of Taiwan in his final deal with Zhou Enlai and thereby had to re-negotiate the press-statement with them, which in turn infuriated President Nixon himself (Reynolds 2007: 246). Something like that hap-

pened as well in dear Henry's negotiations with his Soviet counterparts, when he accepted the ideological term 'peaceful coexistence' in the final text (Reynolds 2007: 270).

The same problem arose when Chamberlain negotiated with Adolf Hitler in Berchtesgaden. In itself the trip was not so much of a secret, but the content of the talks with the Führer were. Chamberlain did not even want a British interpreter to be present and as a consequence he had to depend on the translations of Dr Paul Schmidt, the German interpreter. This led to misinterpretations and to a less favorable negotiation position for the British Prime Minister in Munich at a later stage (Reynolds 2007: 57-59). To shy away from the general public is one thing, not to take your own advisers along, is another. The consequences are contextual, though. In relatively low-tension ongoing negotiation processes, like in the European Union, a meeting of the Head of State and the Heads of

Government without onlookers can be a very productive one, though it generates its own set of problems as well.

A third reason for secretive negotiations, is public opinion at large. Although the general public must be made aware of the value of negotiation in contrast to the use of violence in managing external crises, the opinion of the non-informed or partially informed populace can have a disastrous impact on the success of this peaceful mode of conflict resolution. This is first of all true for democracies, but even dictators have to take public opinion into consideration, namely the ones of the democracies they are negotiating with. Even if they can strike a deal with their opponents at the table, this deal will have to be acceptable to the constituency of the other party. A notorious example is the Oslo Agreement and its aftermath. There is a danger that the negotiators acquire tunnel vision and forget about the



home-front. As negotiators are mediators between the other party and their own constituency, the famous 'two level game', it is vital that they manage their home front. It is telling, that negotiators lie much more to their own populace, than to the other party at the table (Troitsky 2012). They will have to try to avoid losing the support of their own people, as this would severely weaken their position at the table (Zartman 1982: 212).

Public opinion is even more of a problem than one's professional diplomatic support-group, as the latter is not as open to emotional outcries as the general public. Nicolson, in his criticism of Wilson, notes that "he [Wilson] failed to realize that the public is bored by foreign affairs until a crisis arises; and that then it is guided by feelings rather than by thoughts" (Nicolson 1998: 87). He adds "the egalitarian illusions of the Americans [...] tempts them to distrust the expert and credit the amateur" (Ibid. 93). This, of course, can also be perceived as an attempt of an old-fashioned British diplomat to defend the prerogatives of his profession in an age of growing intervention by non-diplomats like politicians, civil servants, and public opinion as it is influenced by the media.

The public and the social media can have a negative impact on the effectiveness of diplomatic negotiation. On the other hand they socialize the general public and the interested intellectual community into this process of convergence, thereby preparing them for the final outcome. They also act as democratic channels in influencing the bargaining between the parties in such a way that not only the stakes of the political elite will count. Openness is instrumental

in successful negotiation and its implementation, but it can raise unrealistic expectations and will therefore have to be dosed depending on the group it addresses, the phase of the negotiation process and the overall political context and atmosphere. Timing and steering are vital.

The problem with the public media and foremost the social media is, quite difficult – if not impossible - to time and steer them, and uncertainty is detrimental to negotiation processes. To strike the balance between reaching a satisfactory agreement and creating public support for its implementation is one of the main challenges for diplomats today, in contrast with their colleagues in bygone ages who had only a very small constituency to care about: the absolute monarch and his court. To manipulate them was much more easy than to direct the modern media and hence the general public. Negotiators had much more control over their negotiation processes and it is to be expected that the grip on the processes of international negotiation will diminish by the decade. This then will alter their nature of the bargaining process and the outcomes, and most likely weaken negotiation as an instrument in foreign policy and international relations.

In the end though the contradiction between secrecy and openness is a false one: both influence the negotiation process in positive and negative ways. The art of negotiation is to decide to what extent the one or the other should be prioritized in the interest of reaching a satisfactory agreement for all stakeholders and their constituencies. This depends on time and context. However, secret protocols are no longer acceptable in this

time and age. 'Secrecy for Safe Talk is important for a successful conclusion, but the results must be sold publicly afterwards' (Hampson and Zartman 2012, 69).

In conclusion: the need for secrecy during negotiations is as great as ever, while the possibility to remain unseen for the outside world is smaller than ever and to share the outcome with the media and general public is nowadays unavoidable. To manage all of these demands modern diplomatic skills are more needed than ever. Politicians and experts dominate the negotiation scene more than ever. Considering the lack of diplomatic skills these occupations normally have, they are hardly suitable to do the job.

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

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

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

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

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

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

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

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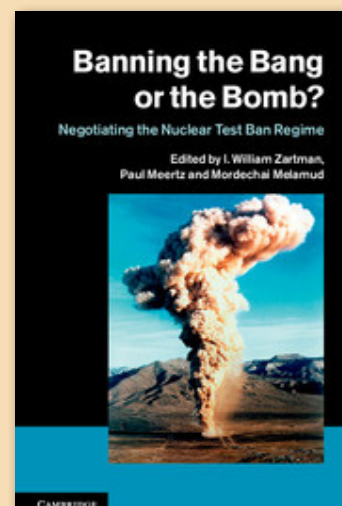
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Simulation of CTBT on-site inspection, By Paul Meerts and Mordechai Melamud



RUDOLF SCHÜSSLER

EGO AND THE CRISIS: THE GERMAN DEBATE ON GAME THEORY AND THE EURO



Frank Schirrmacher

The plot is reminiscent of Hollywood. Super-intelligent, super-ruthless zombies conquer the World. Frank Schirrmacher combines this storyline with a good measure of economics bashing in a campaign against game theory and computerized financial markets. Schirrmacher is one of the editors of the "Frankfurter Allgemeine Zeitung" (FAZ) and hence a powerful German public intellectual with a leading German quality newspaper as his mouthpiece. His attacks are substantiated with a book¹ and nourished by articles in the FAZ. All this may sound peripheral for the reader of PINPoints were it not for the debate's bearing on negotiations and the Euro crisis. For Schirrmacher, game theory has become a vector of evil. Once designed to hold the Soviet Union at bay, it has escaped the weapons labs and befallen Western Capitalism. Computerized markets and the internet help to globalize the virus, feeding it into human minds and turning them into engines of rational egoism. Good old Europe was not designed for such threats, but its nations (still populated by con-

genially unreasonable humans) have become slaves to the markets, while its leaders worship the logic of game theory. Members of the eurozone in particular have been brainwashed not to trust each other, but to seek Nash equilibria in petty egoistical games².

Told this way, Schirrmacher's plot begins to appear more familiar from history than Hollywood. In the crises of the early 20th century, conservative anti-modernists tried to defend their life-worlds against the intrusion of capitalism, conspicuously embodied in the cold logic of global financial markets³. Anti-modernism contributed to the rise of political irrationalism, anti-democratic movements, and conflict in Europe. I do not ascribe such intentions to Schirrmacher. In fact, he mainly defends the thoroughly democratic German version of a social economy with arguments that alternately appear conservative and left-wing. Nevertheless, the historical parallels to the early 20th century are obvious. They call for a critical look at the tendencies that Schirrmacher identifies and their role in Euro crisis negotiations.

I will first inspect Schirrmacher's skillfully posited theses, ask whether they affect the ways in which we negotiate, and finally comment on their relevance for Euro negotiations. Together, these issues will produce a narrative on the power and powerlessness of game theory in real life.

1. SCHIRRMACHER'S PUNCHLINE

Schirrmacher's attack on neo-liberalism, math-clad neo-classical economics, and game theory is a virtuoso combination of the most interesting strands of the present critique of capitalism. His argument is based on a great mass of respectable reading and not to be shrugged-off lightly, despite its tendency to provide a scape-goat for mundane economic and political mistakes. The scape-goat (or real monster as Schirrmacher claims) is *Number 2*, our doppelganger from neo-classical economic theory. *Number 2 is homo oeconomicus*, a super-intelligent, rationally calculative, thoroughly egoistical super-being. A still somewhat emotional precursor to *Number 2* was conceived by Adam Smith and others centuries ago, but it remained rather harmless, partly because of its residual humanoid psychology and partly because it was inept in practice⁴. It was only after World War II that *Number 2* became armed with mathematical weapons and endowed with an extremist psychology that allowed for their use. The mightiest weapon was game theory, designed to gain the upper hand in the Cold War between the U.S.A. and the Soviet Union⁵. *Number 2* required computer assistance to unfold his abilities, and thus began to thrive mainly in weapons labs and military think-tanks, where the big computers stood. In 1989, the Soviet system collapsed. (Interestingly, Schirrmacher uses the 1989 fall of the Berlin wall and not the 1991 collapse of the Soviet Union as his pivotal date). The Cold War was over and more than a few Dr. Strangeloves began to trek to the in-

¹ Schirrmacher (2013).

² The connections to the Euro crisis emerge most clearly in Schirrmacher (27. 3. 2013).

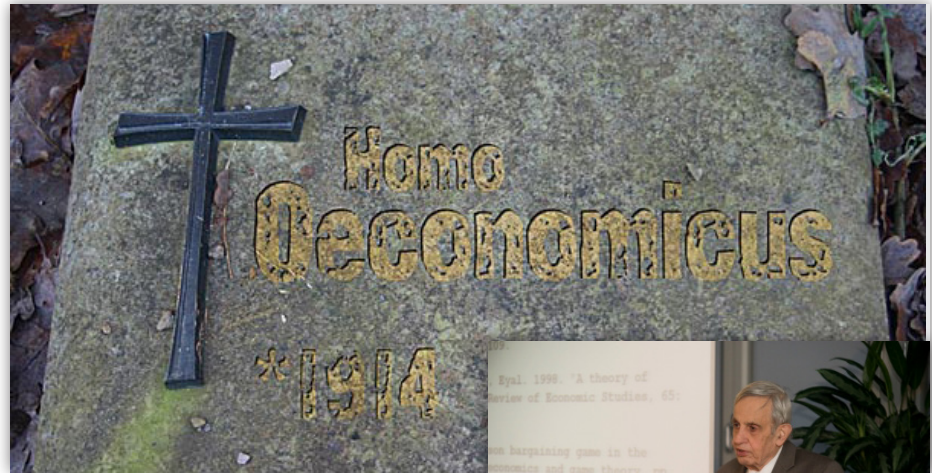
³ See Herf (1985).

⁴ On the history of *homo oeconomicus* up to Smith see Force (2004).

⁵ On the history of game theory see Dimand and Dimand (1996).

vestment banks because that is where the money was. Moreover, Moore's law had blessed computers with exponentially growing speed and capacities. After 1989, everything became computerized, above all the financial markets where *Number 2* found an ideal incubator for its global spread. Embodied in financial algorithms it began to make decisions which no human being could understand or control, but this is not the worst. The worst is that real humans now have to ape *Number 2* if they want to succeed on globalized markets. *Homo oeconomicus*, long a farfetched model of human psychology, had become real by the end of the last millennium. The neo-classical ideal of rationality had successfully infiltrated the life-worlds of Western democracies (and Chinese communism, and whatever system you think is at work in Russia), and is now rapidly re-organizing them in its own image. Citizens and nations around the world do better to appease *Number 2*, the pure spirit of the high-speed market – unless they somehow collectively manage to push the spirit back into the bottle.

This is more or less the leitmotif of Schirmmacher's narrative, which is much embellished by further trends and visions. Important additional trends are the rapid growth of social media and state surveillance, both rendering the minds and actions of citizens transparent in Orwellian ways. Enterprises and governments alike seek complete information about individual preferences and likings. Collected and filtered by computer networks, this information can be used to control the masses⁶. Individuals who resist will be bypassed or ostracized. We apparently live at the dawn of a new information economy, and humanity will be transformed beyond recognition in the process – a perfect dystopia for the remaining standard bearers of enlightenment humanism.



2. COMMENT

Schirmmacher's Frankenstein-like biography of economic man appears crude at first sight, but like Frankenstein's monster it is patched together from real parts. Modern economics was really mathematized after World War II; game theory was really an instrument of the Cold War; weapons physicists really migrated to the banking sector; and algorithmic trading can really lead to crashes. Schirmmacher gives the evidence a heavy spin, but it is recognizable.

However, he seems to get one fundamental thing wrong. The concept of Nash equilibrium has central significance for Schirmmacher's argument because it embodies the logic of game theory in computerized trading algorithms as well as in political negotiations. Schirmmacher claims that the Nash equilibrium presupposes that the players assume the worst of each other⁷. This is simply not true, unless the assumption of rational egoistical action itself is considered as a universal worst-case assumption. Yet rational egoism is not a universally bad behavioral assumption, it leads



Professor John F. Nash, Jr., at Deutsche Telekom Laboratories

to worst outcomes only in some contexts. One such context is the one-shot Prisoner's Dilemma, but uncooperativeness in the Prisoner's Dilemma is engendered rather by dominance reasoning than by the idea of a Nash equilibrium. In other contexts, spiteful behavior, comparative status seeking, or ideologically motivated combativeness are worse than self-centered utility maximization. This is no mere theoretical quibbling but leads us back to the early 20th century when financial capitalism and economic liberalism were attacked because they undermined many people's life-worlds. It turned out that financial capitalism and economic liberalism were not the worst monsters behind history's next corner. Totalitarian ideologies and hate between "races" or nations proved worse – much worse. We should therefore beware of mistaking rational egoism (which knows not spite, hate, or ideology) for the darkest threat on earth⁸.

⁶ On the role of game theory in some such applications see Wilson, Wilson and Olwell (2006).

⁷ See Schirmmacher (2013: 166).

⁸ Note that I am no fan of neo-liberalism or pure rational egoism in real life. The German social economy and its protection is probably no less dear to me than to Schirmmacher. However, I believe that this requires some „ruse of reason“ (List der Vernunft), that is, the clever regulation of markets through politically motivated, system-compatible incentives, rather than global market bashing or dystopian thinking.



Moreover, Nash equilibria do not generally correspond to minimax worst-case thinking. They represent the requirement of reflective stability for strategic solutions. It pays to deviate from "solutions" that are not Nash-equilibria⁹, and hence rational players have not reached a true solution unless it is a Nash-equilibrium. True solutions prove stable against reconsideration of their value for the players. Hence, markets would become less bubbly if reflective stability could be reached for algorithmic strategies on financial markets. I guess that Schirmacher would welcome this development, which, I fear, will elude us for a long time, because not playing is the Nash equilibrium in quite a few economic games, but not playing does not pay off. The result is that people play economic games in spite of game-theoretical rationality, a disposition that can be understood

on the basis of behavioral economics, whose insights Schirmacher largely ignores¹⁰. What he seems to fear most when speaking of Nash equilibria is apparently the logic of defection in the one-shot Prisoner's Dilemma. Realizing that iteration of the game can alter this logic, Schirmacher claims that iterated games are increasingly turned into one-shot games in the globalized economy¹¹. Fortunately, sound empirical proof for this claim is lacking. One might contend that global, internet-driven markets allow for iteration avoidance, but the possibility of avoiding iteration does not necessarily undercut cooperation. Market cooperation is sufficiently stabilized by the occasion or possibility of iteration (inevitability is not required)¹², and global economic reach does much to buttress this stabilizing factor. Global reach immunizes global players against local or regional "iteration shocks", that is, unintended

but unavoidable break-ups of iterated relationships. This is what German industry witnesses at present. Its regional customer relationships are disrupted by the Euro crisis, but global reach has (hitherto) helped them to weather the storm.

In sum, the algorithmic existence of *Number 2* is less of a problem than Schirmacher proposes. We probably would not want to live with *Number 2* in the same flat or house, but algorithm-induced crashes have so far produced much less harm than the crashes that have been caused by the folly of *Number 1* (that is, us). Of course, it is also folly to rely too extensively on *Number 2* and the instruments of financial mathematics.

There is no replacement for good old (Aristotelian) practical wisdom as a check on the fallacy of over-mathematization in human affairs, against which Aristotle already warned more than two thousand years ago.¹³ However, for the same two thousand plus years it was also a bad idea to shun applied mathematics and its further development instead of focusing on its proper application.

3. NEGOTIATION

So far, the upshot of my argument is that we need not fear game theory in real life and by implication in real negotiations. However, negotiations are special because there is, of course, a rich scholarly literature on model-driven bargaining theory.¹⁴ Much of its findings seem hardly relevant for real-life negotiations,¹⁵ but – as Schirmacher warns us – we should not be complacent (if we are) that the status quo will remain the same. Ariel Rubinstein, a master game theorist and participant in the Schirmacher debate, gives us reasons not to worry too much for the moment. Rubinstein is one of the great game theorists who have raised our understanding

⁹ For a detailed non-formal discussion of Nash equilibrium rationality see Weirich (1998), Chap. 3.

¹⁰ See Camerer (2003).

¹¹ Schirmacher (2013: 89).

¹² See Schüssler (1990, 2000).

¹³ See Anagnostopoulos (1994).

¹⁴ See Thomson (1994) for an overview.

¹⁵ See the papers in Avenhaus and Zartman (2007).

of bargaining games to new heights. Nevertheless, he warns us not to overestimate the usefulness of such games in real-life contexts.¹⁶ Given the propensity of many scholars to think that everything needs pounding because they have invented the hammer, Rubinstein's balanced judgment is all the more admirable. Having said this, I will try to avoid the opposite mistake of declaring the hammer unusable because not everything needs pounding. The metaphor suggests that bargaining theory (or advanced game theory in general) can be seminally applied in some contexts but not in others. The users of game theory should learn to distinguish between these contexts. Two real-life contexts in which advanced game theory proves helpful are auctions and poker. Auctions are in some respects like negotiations but I do not count them here as proper negotiations. However, I include inter-machine bargaining between computers, for instance, for storage space or waiting time. The Nash solution of bargaining theory can be used for the allocation of these goods in cyber space, an issue of particular interest for us, because it shows that Schirrmacher's fears are not completely unwarranted. He may suffer from an overdose of gloom, but the normative occasionally does become factual in economic life, and some trends of Nashian bargaining follow Schirrmacher's tale of *Number 2* empowerment rather closely. (For those who are unfamiliar with the full list of John Nash's achievements: the Nash equilibrium and the Nash bargaining solution are different concepts.)

The Nash bargaining solution is not the only available solution concept in bargaining theory and it does not

fit human negotiation behavior well beyond a superficial co-incidence with the split-the-difference rule. Split-the-difference can arise from Nash bargaining under some restrictive conditions, but its prominence in real negotiations is better explained by its simultaneous incorporation of principles of justice and salience. For the rest, the predilection of game theorists for the Nash bargaining solution matches its irrelevance in real negotiations. However, the spread of electronic bargaining algorithms might change this state of affairs.¹⁷ Theorists have a say in the construction of these algorithms, and they may implement the Nash solution because of its predominance in academic textbooks or their own neo-classical convictions. In this case, the normative would indeed become factual, very much as Schirrmacher contends. And there is a price to it. The Nash bargaining solution is normative only in the sense that it is regarded as normative – either as rational or additionally as fair – by (presumably) a majority of game theorists. Significant minorities of game theorists consider other solutions as more fair, and it is not farfetched to ascribe neo-liberal or economic imperialist ideologies to prominent Nashists.¹⁸ It is, of course, not ideological to seek and find Nash solutions for interesting classes of games. Nashism becomes an ideology only if it is guided by the belief that Nash bargaining should prevail in the real world of negotiations. The Nashist aim of constructing bargaining solutions on the basis of rational egoism alone lends itself to such beliefs in the minds of neo-liberals. Hence, not all adherents of the Nash program in game theory need to be

Nashist ideologists who want to turn rational choice theory into practice, but some certainly are. Schirrmacher is right that the latter sort of Nashists might manage to turn their ideology into algorithmic bargaining practice. The spread of Nashist algorithmic bargaining would then probably oust homegrown human notions of fairness, because many humans would adopt a solution concept which they already accept in practice as a result of machine bargaining. It is therefore not inconceivable that Schirrmacher's *Number 2* will usurp the real world of negotiations.

However, some caveats should be added to this conclusion. It is not game theory as such but Nashism that creates the problem. Game theoretical bargaining does comprise nearly as many solution concepts as there are concepts of justice in moral philosophy. Choice among these concepts is conditioned by sociological factors (such as the predominance of certain schools of game theory) and not by intrinsic features of game theory. Moreover, the discussed threat depends on the suitability of the Nash solution in sufficiently many machine bargaining contexts. It is not a foregone conclusion that Nashism will be the evolutionary winner in this respect.¹⁹

In any case, for the moment these are bad dreams of the future. Most business or political negotiations do not make use of game theory beyond a few "proto-theoretical" concepts and models. Most trained negotiators will know the strategic models of Prisoner's Dilemma, Chicken Game, coordination games, and so on. Most will also be familiar with basic devices for engendering cooperative solutions, such as iteration. All this can become well digested without any knowledge of advanced game theory. Schirrmacher nevertheless senses a

¹⁶ See Rubinstein (2013).

¹⁷ On the role of cooperative game theory in general and Nash bargaining in particular for algorithmic bargaining see Nisan et al. (2007).

¹⁸ See for alternative fairness concepts in bargaining theory see again Thomson (1994). For a critique of applied Nash bargaining see Wickelgren (2004).

¹⁹ See the other approaches in Kubiak (2009).

problem here, but his fears are misplaced, at least as far as the usurpation of human thought is concerned. Proto game theory just reformulates in a new, more formal framework what good negotiators have always informally known. We should appreciate the added clarity, but there is no proof that human behavior is much altered. Indoctrinated economics students may play the Prisoner's Dilemma more egoistically than the average student in laboratory experiments, but then training in economic thinking and practice has always had a habit forming effect, including a bias towards economic egoism. Long before the advent of game theory, medieval moralists noted this effect in medieval merchants.²⁰ Early modern theorists of "reason of state" were well aware of the problems of strategic interaction, and they correctly identified the occasional possibility of "game-changing moves" (Gabriel Naude's coups d'état) as key problem of reliance on iterated cooperation.²¹ I doubt that modern applied game theory could tell a master practitioner such as Cardinal Richelieu much that he did not already informally know.

This suggests that the good old economic man of Adam Smith and others was less harmless than Schirmmacher thinks. His nature was initially not gleaned from human market behavior but rather from the calculative politics of "reason of state".²² His ancestor is the slick courtier who lived by the cynical maxims of La Rochefoucauld. It does not take modern experimental economics to find out that on average humans do not fit this mold – experience and a rudimentary interest in history suffice. However, this observation is largely beside the point. What counts is whether the key institutions

of modernity can be run by individuals who do not become calculating egoists on the job (or are selected for their jobs because of a certain suitable predisposition). The early modern system of absolutist courts more or less equaled the modern system of investment banking in producing egoists en masse. Hence, the billion-dollar question is whether we can change the key institutions of modernity so that they produce fewer on-the-job egoists without damaging the system off which we live too much. This question also pertains to the ways in which we conduct negotiations, and it is not a question with facile answers.

4. EURO CRISIS

Game theory has never played a major role in European negotiations, and the Euro crisis (short for European debt, banking and productivity crisis) has so far made no difference. European governments need not study the Prisoner's Dilemma before they come to distrust each other. On the contrary, historically grown distrust has given way to a modicum of trust in the EU. The return of some old national and cultural stereotypes in the crisis, as much as it is to be expected, erodes this trust more than any game-theoretical advice to play Nash equilibria (whatever these are in the Euro crisis). Otherwise, if game theory would matter, Germans could be happy to have a Ph.D. physicist as chancellor – the closest approximation to the "quants" of mathematical finance you can get in present-day politics. However, Angela Merkel does not act like a quant. She lives up to her nickname "mom", and since we are not a family in Europe, but at best a community of tenants in a house, she cares most for the Germans. At least, this is what German voters expect of her.



Angela Merkel, Number 2 or Mom

Distrust between people with diverging interests is quite normal. It is nevertheless important to keep the levels of distrust between Europe's citizens and governments low. The scapegoating of game theory for rising levels of distrust does not really help in this respect, because it is too obvious that other factors matter more. It would help if some politicians and EU officials cared more for what they say. Sounding like the Reich's governor of the Mediterranean, for instance, does not improve Germany's image in the region. Sometimes it is hard to see why what has been said needed to be said, even merely with a politician's home constituency in view. Above all, however, it seems surprising how little EU officials and governments do against the re-emergence of mutually hostile stereotypes. Too few people in power seem to appreciate how dangerous these stereotypes can become. Of course, there is much official "cheap talk" (as economists call it) against stereotyping. Yet nobody seems to care whether the crisis negotiations are conducted in a way that minimizes the risk of stereotyping.

Take the recent negotiations on the financial rescue package for Cyprus. The schedule for the negotiations provided a perfect breeding ground for stereotypes. When the pre-negotiations between EU officials, the Troika, and Cyprus' government were concluded, the final package was to be decided in Brussels on 16 March 2013 with crucial participation of the eurozone's ministers of finance. The agreement on losses for minor deposit

²⁰ See McGovern (1970), Schüssler (2012).

²¹ See Naudé (1667). On Richelieu see Richelieu (1995), Thuau (2000).

²² See Hirschman (1997), Lovejoy (1968).

holders was a major blunder and made a renegotiation of the deal almost inevitable. On 25 March a new agreement was reached, but not without negative fallout for the image of the negotiating parties. There was much final haggling and stonewalling that fed familiar stereotypes. The Cypriot president fainted and maneuvered in ways that Germans associate with carpet selling. The German minister of finance (and other Northern ministers) pushed their positions rigorously, consolidating their image as domineering would-be overlords. However, it could hardly be expected of the agents to act otherwise. It was natural for a Cypriot president to try his utmost to gain something that he could show at home, and to budge would have been suicidal for a German minister of finance in an election year. Much less occasion for stereotyping would arise if rescue negotiations would really be finalized on a lower institutional level by mixed teams (such as the Troika), so that the heads of state or their most important ministers could more or less nod the result through.

Of course, there were extended preparatory negotiations in the Cyprus case. Cyprus asked for EFSF/ESM help in June 2012. The following visits by Troika and Cypriot reactions are no best-of-class example of speedy preparation. Clearly, bailout applicants may have a strategic interest in prevarication and bets of gaining from last minute turmoil. For the same reason, ESM creditors should try to reduce the benefits of delaying a negotiation process. Finding an agreement in the EU on counter-measures against delay is probably a very difficult task. However, at least in principle the major contributors to ESM can take unilateral action, because their parliaments have to ratify bailout deals. The counter-measures in question could, for instance, concern the scheduling of consent. There are different ways

to conceive such measures, and here is not the place to discuss them in detail. Yet an example might help to stimulate the imagination. The preparatory process of national decision making in a parliament (respectively in parliamentary caucuses) could run parallel to the preparatory phase of a bailout. With a set duration for phases of preparation, violations of a reasonable time constraint by an applicant would result in a postponed decision by an ESM creditor parliament. This could be a counterweight to an interest in delay, if the creditor's minister of finance were allowed to decide on the matter only after his or her parliament has been duly informed. In any case, disciplining the negotiation process through time constraints could reduce the need for haggling and stonewalling in last minute negotiations. But of course these have inherent value to negotiators involved in such processes in terms of across the table credibility and with their constituents. Moreover, such attempts at avoiding last minute showdowns would, even if unilaterally implemented, imply a break with EU traditions and it is likely that the EU will cherish its traditions to the end – the end of the crisis or the end of the eurozone. But here is an occasion for putting game theory to profitable use for Europe. Once more, I do not see that more than simple proto game theory is needed, but on this count game theorists might prove me wrong.

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Marikana – and the push for a new South African pact

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MARIKANA – AND THE PUSH FOR A NEW SOUTH AFRICAN PACT



SOCIAL PACTING

In the last decades of the twentieth century a wave of transitions to democracy occurred through South America, Southern Europe and in South Africa. Threatened concurrently by threats of coups, revolutionary overthrows, and flights of capital these precarious processes were usually stabilized through pacts negotiated at political, military and social / economic levels. Negotiations in each of the levels may have been fractious but overall they reflected choices by parties, even as they pushed against one another, to build a common vision of a future society and then to use their joint energies to pull towards its achievement.

South Africa, regarded by many as a model for negotiated transition processes, has now been a constitu-

tional democracy for almost two decades. However a surge of industrial and social protest action in recent years has evoked questions not only about the degree to which its democracy has been consolidated, but the merits of the pacts that enabled it into existence. These questions have been increasingly salient since 16th August 2012 when police brutally crushed a strike in the mining community of Marikana in an action that left 34 dead and 78 injured. The Farlam Commission of Inquiry is currently investigating the matter but its terms of reference may see findings limited narrowly to the decisions by various social actors leading up to the tragedy, rather than addressing its wider implications or the structural conditions that gave rise to it – the shortcomings of a process rather than a structural analysis. There are analysts who see events at Marikana

as a 'turning point' for South Africa, not only in terms of its labour relations but its democracy.

This article considers the violent confrontation at Marikana in the context of the South African transition, and whether it represents a wider crisis in the social pact that emerged during the transition years leading up to the nation's first democratic elections in 1994.

THE NATURE OF SOCIAL PACTS

Pacts reflect decisions by key social actors not to use the full extent of the power available to them for adversarial purposes, but to leverage mutual accommodation. Such decisions are motivated less by altruism than self-interest – they are premised on a shared perception that the benefits of cooperation may be better

than coercion. As grand compromises amongst key social actors pacts are inevitably subject to criticism from ideological purists (those who would prefer revolutionary overthrow of a government, or straight defeat of struggle groups) – but this does not necessarily imply weakness or a lack of principle in their formulation. In a complex world of multiple competing interests, coalitions and pacts are the vehicle through which societal tensions are regulated in the wider public good. They are the essence of democratic systems.

Labour relations systems in developed economies evolved as social pacts or what Reich (*The Work of Nations*) has termed 'national bargains'. They typically took form when states and employers recognized that accommodation of trade unions might serve their interests better than blunt repression; and when trade unions perceived open, legitimated representation to offer better prospect than underground organization and wildcat actions. Labour relations systems have taken various forms (Austrian social corporatism, US decentralized pluralism, British voluntarism, German co-determination) but they are all premised on the same core trade-offs: employers accept unions as legitimate representatives of their workforces, agree to recognize them for purposes of workplace justice, to enter collective bargaining and accept a procedurally regulated right to strike on defined matters of interest; unions agree in return to exercise their power within a regulated system in which they achieve legitimacy and can negotiate with employers but only use their capacity for industrial action according to 'rules of the game' (no wildcat strikes); governments give statutory legitimacy to unions, support collective bargaining, provide dispute resolution services and provide labour market

supports through training and social security benefits. These trade-offs in industrialized nations enabled social and political stability, made for more predictable production, and underpinned economic growth providing a means through which the distribution of fruits of growth could be negotiated. Negotiation in which the social actors agreed forums and 'rules of engagement', and then used these to agree substantive outcomes gave legitimacy to social systems not only at a political but also at social level. In developed economies these grand pacts have unraveled to an extent in the context of globalization processes driven by transnational corporations using global sourcing systems that have seen manufacturing outsourced and 'offshored'; new forms of work organization and organizational design; shifts to a service economy; the use of new technologies; and the decline of 'traditional' work forms and work contracts. In this context trade unions have been in retreat with declining memberships. The social partners in western economies now face special difficulties posed by their demographics, the shape of their economies, and the consequences of the post-2008 debt crisis. In some citizens are taking to the streets again.

'Grand bargains' across societal interest groups emerged much later in developing nations as a consequence of late development, nation statehood and democratization. Pacts at political levels (constitutional arrangements, electoral systems and processes), military levels (ceasefires, civilian controls, integration in post-conflict societies), and social levels (union rights, economic deals) stabilized democratic transitions, reducing the risk of social disintegration and economic collapse.

South Africa's transition evolved

through a period of labour and other reforms, then secret talks about talks, confidence building steps through the release of political prisoners, the unbanning of political parties, the extension of political freedoms, suspension of armed struggle; followed by harder negotiations through multi-party talks over a future political dispensation. The process was supported by a national peace-accord negotiated by civil society actors. The social actors engaged over social and economic issues through a National Economic Forum, and through collective bargaining and dispute resolution processes. Upsurge tensions were managed through dialogue, and a series of forward-looking pacts. In the immediate aftermath of negotiations a Constitutional Court was established, along with a National Economic Development and Labour Council (NEDLAC), a Human Rights Commission and many other institutions intended as vehicles for dialogue, and checks and balances to ensure South Africa's democracy had 'legs'. Since 1994 the nation has held four peaceful national elections and retained a ranking as 'free' by Freedom House, but the system is showing signs of strain. South Africa's transition was agreed to be one of rapid political transformation, but its participants recognized that economic change would be a slower process. Amongst the levers to achieve change in the latter area the government passed legislation promoting collective bargaining as a vehicle for industrial stability and wealth redistribution, as well as employment equity, affirmative action and black economic empowerment to re-engineer the demography of businesses inter alia through share ownership and preferential procurement processes. Platinum mining is a key sector for Black Economic Empowerment (BEE) within wider government development planning.

South Africa is home to over 85% of the world's known reserves of the mineral. The drive for demographic transformation in this sector, and others, however has had some unintended consequences.

WHAT MAKES PACTS FUNCTIONAL?

Social pacts are feasible to the extent that there exist peak functional organizations representing particular interest groups (business, labour, civil society) – they are about a coordination of interests at a centralized level rather than a decentralized pluralism. These peak organizations recognize an interdependence, perceiving their interests to be best served through mutual accommodation and they have the power to deliver something of value to the others involved. Economic pacting is generally regarded to be functional when business, labour and government are not so deeply divided as to be calling for each other's destruction, when they are not making demands on one another that put any of them under threat, and when they offer sufficient rewards to one another to make continuance of a pact more attractive than blunt confrontation, or unilateralism.

In practical terms there should exist centralized organizations of business (employer organizations) and labour (union federations) and each should be internally unified, with the capacity to enter deals on behalf of their constituents, and to deliver to the terms of these. Typically such deals are not simply about claims on one another but making contributions and sometimes sacrifices at a sectional level for a larger and jointly acknowledged common good. For instance higher taxes are accepted for social interest purposes (education, training and retraining of workforces,

social benefits for those who lose jobs in recessionary conditions) not out of altruism but enlightened self-interest – the price of political stability and other threats to economic freedoms. Top managers might forgo salary increases and bonuses during tough times in solidarity with workforces because they recognize its political significance (big p and small p), and to make a demonstrable contribution to reinvestment in the organizations they lead. Men and women living opulently seldom have persuasive capacity with workers in overalls whom they are threatening with layoffs or from whom they are demanding austerity. Unions on their part if they wish to retain investor confidence accept the legitimacy of markets, indicate willingness to temper demands in the context of struggling economies, and have demonstrable capacity for internal discipline. They should be able to enter deals at the centre that their structures will deliver to at all levels of engagement with business – their members adhere to collective agreements, and eschew wildcat strikes. Those in government are seen to use national resources responsibly, efficiently and cleanly in the national interest, rather than for personal gain or as a source of patronage. Pacts then are only as viable as the capacity and commitment of their signatories.

In South Africa a rising tide of industrial action has raised questions as to whether its labour pact at various levels is fraying, and events at Marikana brought these sharply to the fore.

ORIGINS AND SHAPE OF SOUTH AFRICA'S LABOUR RELATIONS SYSTEM

South Africa is no stranger to politically driven, large-scale strike action. The Rand Rebellion of 1922 – really a

strike by white mine-workers - lasted three months before eventually being put down by the military. Its political and labour relations consequences were significant – the fall of the government of the day, and the passage of the Industrial Conciliation Act of 1924 that institutionalized collective bargaining in South Africa, but did so on a racially exclusive basis appeasing white demands for a colour bar by denying black workers rights of representation. It was an enabler of a system of racial corporatism. A strike wave in 1973 gave rise to the Wiehahn Commission whose recommendations in 1979 kick-started a series of legislative reforms that created space for the social movement unionism that energized political change. Indeed labour relations reforms provided the civil society legs for the country's transition to democracy in 1994. The struggle years from the late 1980's saw a huge surge in strike action in South Africa. In the context of the country's new inclusive democracy a labour-friendly legislation was negotiated amongst the social partners (government, business and labour) with extensive rights of association, organization, collective bargaining and protected strike action. A sophisticated dispute resolution service was established, the Commission for Conciliation, Mediation and Arbitration (CCMA) in support of workplace justice and collective bargaining. The CCMA sits on around 150000 cases a year.



During the struggle years several major strikes turned violent. In 1987 for instance a strike on South Africa's railways was triggered by the unfair dismissal of an individual worker. Within six weeks a small industrial action by 350 workers had escalated



into one involving 22000 workers, huge losses of rolling stock, a series of violent confrontations between police and workers and eventually the killing of five scabs (strike-breakers). In the ensuing court case we argued that by denying legitimate representation the railways had failed to build a bridge through which to regulate labour-management relations; by refusing independent mediation or arbitration they had closed down opportunity to resolve a matter of individual workplace justice, and lost the means to prevent escalation of the crisis; and we argued that when people are angry with injustice and find themselves excluded from a system that facilitates a fair outcome, the risk was that they would take action into their own hands. This was essentially a strike over an individual injustice, rights to representation, and for an effective and independent system of dispute resolution. The action was primarily directed at accessing systems of justice and collective bargaining.

Recent strikes however have taken

place in very different context – many have been less about accessing the collective bargaining system than over its returns. Trade unions no longer have to struggle for a right to exist, they are part of the fabric of society. The heavyweight union federation the Congress of Trade Unions (COSATU) is in alliance with the nation's governing party giving it an inner-track on political influence, complementing its independent capacity to guide social and economic policy through the National Economic Development and Labour Council (NEDLAC). It is a partner in the governance of the Commission for Conciliation Mediation and Arbitration (CCMA) that offers easy access to dispute resolution. As already indicated rights to freedom of association, to organize or join trade unions, to justice in cases of unfair dismissal or discrimination, to negotiate wages and conditions of employment with employers and to embark on protected strike action following conciliation are all embedded in the law – and well exercised. Strike action in South Africa is 'protected' (workers cannot

be dismissed or disciplined for striking) provided it is not over a prohibited matter (a matter of rights or one covered by a collective agreement), and is carried out in conformance with legal procedures (essentially declaration of a dispute, conciliation, and 48 hours written notice of intention to strike). The employer is entitled to use replacement workers and may resort to the lockout option to put pressure on a union to accept its proposals.

The violence on 16th August 2012 at Marikana reflects a fundamental breakdown in collective bargaining and dispute resolution systems at a particular mine (Lonmin) in a particular sector (platinum mining). It did not occur without warning, following a wave of similar actions across other mines in the region in which groups of workers defied the terms of a collective agreement, bypassed the representative union and downed tools to back demands for very large wage increases. In short they refused to play within the established 'rules of the game'. This must be distinguished

from the wider surge in industrial action in which actions have largely taken place in conformity with legal requirements, although the size of action carries concerns of its own. The surge in industrial action in recent times dwarfs that of the political struggle years and early democracy. Where strike action on average saw the loss of about a million working days each year for the first eight years of democracy, in 2007 it rose to 9,2 million and in 2010 to 20 million days (NDP 2011; Jones 2012).

Important questions arise. Why have strikes on the platinum mines been non-procedural, and why have they turned violent? Does Marikana have wider implications than simply 'sorting out labour relations' in the platinum sector? And then what explains the surge in industrial action at a national level? Does it suggest that the first democratic pact has run its course? What has to be fixed, at what levels and how? Suggestions in relation to each of course vary across ideological groups. Pluralists (and the country's labour laws are overtly pluralist) argue that at both the level of the mines and other industries parties must find a way forward through negotiation. Radical change theorists argue that such conflicts are rooted in the deep injustices of a capitalist system and that pluralism disguises structural imbalances that undermine the regulatory capacity of collective bargaining. Pluralists perceive the breakdown as a within system breakdown signaling the need for a negotiated redesign of operational aspects of the labour relations system. Radical change theorists perceive the conflict to be over the fundamentals of the system itself, and collective bargaining and social pacts to be a process of covert system maintenance precluding meaningful change. Such ideological divides remain very much alive in South African society

and it is not surprising that divergent views should exist not only about what Marikana means, but how the problems in South Africa that it represents should be addressed.

STRESSES IN THE SOUTH AFRICAN PACT

Events at Marikana evoked two levels of response from the State President: firstly that strike action is simply an expression of freedoms within a democracy, but secondly, revealing a deeper concern over developments he called for a new social pact. South Africa's National Development Plan (NDP) recognizes the 'fraught' nature of the country's labour relations, and the importance of building constructive working relations. Government and business have mooted the NDP as the new social pact, but labour resistance to it makes such suggestions premature. At best the NDP is an agenda for a social pact rather than a pact per se.

One value of the array of commentaries made on Marikana is that it reveals how multi-layered social pacts are. Some have focused on the breakdown in labour-management relations on the mines themselves, others on wider social conditions, and some have given it a political perspective, arguing that it reveals a deeper corruption of the wider liberation struggle.

STRESSES AT THE LEVEL OF THE PLATINUM MINES AND OTHER INDUSTRIES

Platinum mine workers are amongst the better paid in the country but some within their ranks are also intensely dissatisfied. Two unions compete for their membership. Despite its struggle credentials, the COSATU affiliated National Union of Mineworkers (NUM) has lost membership to a breakaway rival – the Association of

Mineworker and Construction Union (AMCU), particularly on Platinum mines. Unlike the gold sector labour negotiations on platinum mines take place on a decentralized basis.

At the beginning of 2012 workers at Impala Platinum mine went on strike - the consequence of several factors including changes in the social conditions of mine-workers that stretched the value of their wages, a loss of faith in NUM as the representative union amongst certain groups of key workers, inter-union rivalry, and an approach to labour-management relations that had seen line managers simply refer issues to HR and NUM who had developed a 'comfortable' relationship - but one that had disempowered line managers and seen the union lose touch with its own members (Hartford 2012). Rockdrill operators (RDO's) who are key to mining operations were unhappy when NUM agreed to across the board increases of 10% over proposals that would see them achieve higher increases. When another group, miners, received large increases out of the frame of the agreement as management tried to respond to problems of high labour turnover, the RDO's also demanded a massive increase, downed tools to back their demand and refused to work through NUM as the official union. Faced with a violent strike and desperate for production, Impala's management conceded to demands. RDO pay rose dramatically. Thousands of workers left NUM to join AMCU (Hartford 2012; Chinguno 2013:160-161). The strike, the concession and the migration of members all occurred in the currency of a new collective agreement. Workers mobilized the local community to their cause, using a mix of tactics including violence and intimidation to further their cause. A wave of similar strikes followed across mines in the region accompanied by violence be-

tween union members, and between workers and security personnel and the police.

The strike at Lonmin that gave rise to the Marikana shootings followed suit. Under the leadership of disgruntled RDO's and clan leaders workers bypassed NUM as the recognized trade union and collective bargaining agent and demanded an increase to R12500. Again the positioning was extreme and intransigent, and the action was unprocedural and became violent – the Marikana crisis. Again management, following events on the 16th August, made significant concessions with wage increases of up to 22% being granted outside of normal bargaining structures. The action was followed by similar action at Royal Bafokeng Platinum and Angloplats - and then migrated into the gold mining sector. By mid-October 100000 workers were on strike across sectors. Estimates were that gold and platinum strikes cost SA about R10bn in 2012, and had done serious damage to the country's image internationally, affecting suppliers, manufacturing, service sector activities and tax revenues. The business confidence index dropped, the country was downgraded by international ratings agencies. AngloGold Ashanti and Harmony lost production of about 45000 ounces of gold during their strikes.

The Chamber of Mines succumbed to pressure to re-open negotiations with union parties (the Platinum mines are not part of this) conceding cash advances to workers and wage increases of above those achieved in July 2012, to raise total increases to between 11-20,8% for the year for 75% for the 160000 workers covered. The push for large increases continued into 2013. Negotiations appeared seriously deadlocked with parties far apart - but after a short three day strike a deal at 8% was



struck with NUM and other smaller unions across most mines. At the time of writing AMCU as a minority union was still threatening strike action and refusing the offer.

SO WHERE IS IT ALL GOING IN THE LABOUR RELATIONS PACT?

What does all this tell us? Firstly there has indeed been a crisis in collective bargaining in the mining sector. But after an initial flurry of outbidding it also suggests a return to more considered relations between employers and unions, at least on the gold mines where (although the game is not yet over) a more 'normative' increase was achieved following quite constrained industrial action.

Outbidding between NUM and AMCU is likely to see instability in labour relations on the mines for a period into the future. A system of sole bargaining rights for majority unions at the level of individual enterprises intended to limit union rivalry seems in fact to aggravate tensions, reducing representation to a zero sum game. This is worsened if a majority union moves into a comfortable relationship with management, and loses touch with those it is meant to represent (Hartford 2012). If a union loses credibility with key groups of workers but closes out access to a competing union a volatile situation arises. In the case of the platinum mines such groups of workers dissatisfied with NUM and bargaining

outcomes took matters into their own hands, bypassing formal systems to use raw power to achieve their aspirations. As industry consultant Gavin Hartford (2012) points out, there is much to attend to on the Platinum mines including the design of a workable collective bargaining system with credible and accountable worker representation (enterprise and sectoral level), and at the level of the workplace the re-empowerment of line management and frontline shop stewards. In the context of exclusion AMCU is playing hardball at present but overall its objectives seem to have the tenor of old - access to and influence over collective bargaining rather than its destruction.

Trade unions in South Africa are in a struggle of ambivalence at several levels: there are tensions at a political level in COSATU's 'strategic alliance' with the ANC; there are stresses at a collective bargaining level; and at an internal operational level some are struggling with ambivalence amongst their own members. While they can argue pragmatism and 'the contradictions of capitalism' in relation to the first two, in the last they are in a dangerous catch 22 crisis of representation that makes social pacts difficult. Inter-union rivalry undermines union capacity in collective bargaining and social pacts.

Organizational change strategists are familiar with the 'trap of success' dynamic in business enterprises

(Hayes 2010), but a similar problem faces trade unions. Marx and Engels recognized that unions would be unlikely to lead a socialist revolution. Legitimacy they argued, would lead to conservatism – trade unions would become part of the fabric of a modified capitalism rather than a vanguard force in its destruction. Michels too proposed union organizations would follow a logical pattern of development becoming distanced from the direct participation of their members. As their membership grew so would their needs for bureaucracy, for skilled personnel to negotiate and manage increasing numbers of sophisticated collective agreements, as well as the internal management systems required to hold the organization together. Top unionists would lose touch with the members they were representing, become conservative, comfortable with easy compromise and reluctant to pursue radical objectives (Hyman 1971). Arguably this has been the fate of NUM on the platinum mines where a perceived drift into moderation has seen it lose credibility amongst some workers – and a more militant competitor has arisen. Where neither is trusted, some workers have discovered independent action to be effective in achieving better deals.

Unions are in a bind. Without membership they have no capacity. Moderation risks a loss of members to competitors, extreme positions and wildcat strikes carry other risks – investor strikes, capital substitution, workforce reductions, collapsed negotiations, costly court cases. The first signs have been mixed. After Marikana, COSATU leadership called for a re-opening of negotiations wherever possible. Tougher bargaining followed in several sectors. Automobile workers took a three week strike to extract an extra 1,5% increase from employers (a three year

11,5%, 10%, 10% deal). But gold mine workers after tough demands and threatening positions settled for 8% after a short three-day strike.

Pacts require internal unity within and across unions, and adherence to agreements. Problems arise if collective bargaining processes lose credibility in terms of outcomes. When confronted with losses experienced in the auto industry after a three-week strike, a union leader argued that if employers had made the necessary concessions earlier the strike would not have been necessary. Pacing concessions can be complex in a game of ratcheting, but across several fronts in mining and manufacturing in South Africa employers have moved from their 'final positions' in the face of long strikes. This does raise questions as to whether the way employers are managing negotiations has become ritualized, and now whether their concession patterns are not reinforcing the very behaviour they do not want – shock tactics work!

Forces of interdependence are the primary force for stability in labour relations - employers and workers need one another, and ongoing production to achieve their separate objectives. Spikes of adversarial activity may occur as parties seek to realign power relations and returns, but neither wants destruction of the 'golden goose'. In tough industries such as mining and auto manufacturing, there is a higher propensity to strike action internationally. Strikes are a means of reality testing, and forces of interdependence most likely will temper relations between employers and workers through time but in South Africa contextual realities inform the value placed on collective bargaining outcomes. An environment of poverty, unemployment and inequality puts stresses into even the most sophisticated procedural

designs. Employers and unions at industry and enterprise levels will find ways to redesign participation in collective bargaining and workplace justice that they can live with, but this is no guarantee of satisfaction with bargaining outcomes. In this respect it is the unraveling of the wider social pact that is of concern.



STRESSES IN THE WIDER POLITICAL AND SOCIAL PACT

A distance has arisen between a disillusioned poor, groups of aspirant workers and the country's emergent political-business elite. A hostile crowd in Marikana forced the rapid retreat of political heavyweights in government who attempted to 'share their grief'. Instead they welcomed Julius Malema, an outspoken youth leader expelled from the ANC.

South Africa faces deep problems of poverty, unemployment and inequality. These directly influence actors within labour relations, shape the issues over which they engage and how they do so. Sophisticated systems of representation and collective bargaining may ensure a degree of procedural stability in workplace relations, but will always be fragile in a context of economic scarcity and perceived inequalities, and the deep resentments that accompany these. Contests over participation are different to dissatisfaction with collective bargaining outcomes. In a context of scarcity, at some point reality disappoints high aspirations, there are pushes for outcomes that a system cannot afford,

and then if parties do not accept the fundamental shape of the system, for its radical redesign.

Two large dissatisfied groups exist: dissatisfied workers - operating within the system; and the unemployed - marginalized from the system. The first group can use its collective bargaining leverage to achieve higher wages, with some concomitant conservatism. Some, such as the RDO's on the mines may nurse higher aspirations based on a sense of entitlement or power and be willing to 'test' the system periodically, but for the most part those within a game that offers reasonable returns want it to continue, unless alternatives offer the certainty of more beneficial outcomes. The problem is that without wider growth rising wages close down opportunities for those out of employment. On the lower end of earners those who receive higher wages are under pressure to share their incomes through extended family networks, keeping the large lower earning strata of society in perpetual poverty. The second group is dangerous in itself to social order because it has so little to lose - marginalization makes for little investment in system maintenance. They are often disorganized but prone to spontaneous angry protest action over service delivery for instance. But they also threaten the stability of collective bargaining systems.

This brings us to the nub of the problem - South Africa's structural problems. Formal *unemployment* stands at 27% in formal terms, but is more likely in the region of 40% and in some townships is estimated to be as high as 60%. The ANC government has responded to poverty through extensive provision of social housing (over 3m houses), clean water and electrification programmes and 14m small social grants (as many as are in formal employment). These are

funded through a relatively small tax base - about 5m of a population of over 50m contribute over 90% of individual tax revenues. But job creation has proved very difficult.

Two levels of *inequality* are in evidence: within wage structures, and at a wider societal level. A collective bargaining system enables workers to negotiate their wages within a market economy. A raft of laws exists to redress past discrimination and to empower black and other previously disadvantaged groups in the South African economy, directed at a demographic restructuring of employment at all levels as well as business ownership. In the context of wider poverty the age-old struggle over wages is more desperately fought and it should not be surprising that there are breakdowns in negotiation and strikes to test employer resolve on issues. Employers argue that workers and their unions want more out of the system than it can afford, that problems of poverty cannot simply be addressed through raising wages in a manner unrelated to productivity, that wage increases simply close out competitiveness and future job creation, and that South Africa is no longer wage competitive in many sectors. What does not help these arguments is the opulence of some business and political leaders. Platinum mineworkers for instance earn relatively well in the South African context but revelations that mining CEO's may earn up to R55000 a day (R20m pa), and that the wage gap between a CEO and worker is 390:1 fuels both a sense of injustice and high aspirations. If top earners appear to be plundering a resource, why not everyone? This kind of disparity fuels demands to nationalize mines. In South Africa the average pay package of the CEO of a listed company is 53,5 times that of the average income of the lowest band of employees. In the USA the ratio is 204:1, in China 20,3:1. There

is a widening dualism in South African society where the gini-coefficient is amongst the highest in the world at almost 0,7, and increasing.

The face of inequality is changing with highest gini scores now within the black community. Simply not all the boats are being floated concurrently - and the hard reality is that the economic tide needed for greater buoyancy is unlikely to reach as far as is needed. This has translated into a transformation project of mixed results. South Africa is not where it was, but it is not where it wants to be. The top 20% (10m) of earners now account for 75% of the country's income, the bottom 50% (25m) for less than 8%. Of the 10m top earners 6,3m (63%) are now black, but 24 of the 25m (96%) poor are black (Terblanche 2012). In short South Africa has been quite successful in creating a non-racial upper and middle class, but beyond some poor housing has not found a means to respond to the needs of the poor and marginalized (about 40% of the population and almost entirely black), other than through a placatory welfarism.

These developments might be seen as (frustrating) natural steps in an evolutionary process, but some are more cynical. Moeletsi Mbeki (*Architects of Poverty*) has argued that events at Marikana clarified that the ANC government was no longer one of liberation, but one simply continuing a tradition of elitist control started first by the British then played out by the National Party up to 1994. He identified policies of Black Economic Empowerment (BEE) as being a major contributor to the crisis. He, along with analysts such as Naomi Klein (Shock Doctrine) and Sampie Terblanche (*Lost in Transformation*) argue that South Africa's transition was hijacked by neo-capitalists through the creation of a predatory

black elite now more interested in plundering the economy in its own interests than in development for the wider population, most of whom live today much as they did under apartheid. From this perspective South Africa's much vaunted 'miracle transition' is reduced to a political sleight of hand played out by established white business interests and an untrustworthy black political leadership more interested in personal gain than national development. The thesis is not without some substance. Amanda (2012) magazine for instance points out that certain dynastic black families have indeed profited immensely and very quickly from BEE – including the Radebes, Motsepes, Ramaphosas, Mandelas, Sisulus and Moosas who are major players in the post-1994 world of mining, including platinum. It is a seductive but limited argument. South Africa's transition surely reflects more than a disingenuous pact, and its post-apartheid period reflects more than looting by a predatory new elite.

The hard unpalatable reality is that some boundaries of redistribution have been reached – the pace has slowed. Now that the public service has been demographically transformed, the BEE gatekeepers in the economy installed, and a wide net of social grants implemented, some limits have been reached as regards easy incorporation into the mainstream economy. Aspirations are frustrated – and more so because rapid social transformation has not always been competency driven. As recognized within the NDP incompetence and corruption have become major problems in the transformation process eroding efficiencies, and the extent and quality of service delivery.

CONCLUDING COMMENTS

I have attempted here to look more closely at the argument that events

in the mining community of Marikana represent an unraveling of or a betrayal of South Africa's transitional pact. Pacts have a multi-level character, with political, economic and social dimensions.

At the level of the labour pact there is some evidence of course that those tasked with pact maintenance on the platinum mines 'went to sleep at the wheel' with a consequent breakdown in collective bargaining. Union rivalry, outbidding dynamics, loss of credibility in collective processes, gaps in participation, and breakdowns in the effectiveness of labour-management relations at workstation levels however have potential for repair through improved joint redesign and management. Following a spike of adversarial activity forces of interdependence are likely to see a return to more sober exchanges.

Participation in collective bargaining however does not equate to satisfaction with its outcomes. Here South Africa's labour pact continues to be threatened by forces emanating from structural problems within its wider social-political pact - those of poverty, unemployment and inequality. Although employers are focused primarily in the cost and return realities of their own businesses, the workers employed within them face problems of high dependency ratios in a context of wide unemployment. It has been argued here that some boundaries have been reached in terms of redistributive capacity. Violence in societies is associated with high aspiration-high frustration scenarios; an absence or loss of trust in mainstream institutions and conflict resolution mechanisms; escalated conflict dynamics; group norms legitimizing violence as a tactic; and inept crowd management. South Africa reflects elements of all these factors.

The analysis that the core problem is that the transition was hijacked by a self-serving business-political leadership in my view is only partially accurate. In the context of the late 1980's and early 1990's what kinds of trade-off were realistically available to parties negotiating South Africa's future that would minimize further violence and loss of life; ensure transition to a constitutional democracy with a primary human rights dispensation; and limit risks of a flight of capital so a new government would inherit a viable economy and attract new investment; and secure an environment that would best enable a rapid response to the desperate needs of the poor (housing, water, electrification, health and education)? There may have been some greed-driven deals done by business and political elites in 1994 but this should not detract from the wider achievements of the pact that enabled the country's transition to democracy. More attention however should be given to the integrity of business deals concluded in the current.

It would be helpful if the critics made more substantive proposals regarding the kind of actions and investments required in the current for job creating economic growth. The NDP lacks a buy-in from powerful groups within organized labour but it is an important document around which diverse groups can engage in order to develop a new pact. The deep ideological divides that remain in South African society can be regulated to an extent at the level of workplaces but are vulnerable to periodic eruptions informed by problems of coherence in the wider social pact. This is reality. In the absence of full employment the calculus of consent that sustains democratic systems is likely to be at risk.

What is really missing is a clear society-wide commitment to nation build-

ing – a sense of mutual investment in national development. Government is mired in a crisis of poor delivery across sectors, often rooted in problems of incompetence and corruption. If there is a perception of looting by those entrusted with the guardianship of the public interest it releases others in society to do the same – to avoid or evade paying their taxes, to pay bribes to secure business, to make appointments based on connections or favours rather than competence, to create 'ghost' employees, not to go to work, to set up vigilante groups when the police are seen not to act or as being bought off. In relation to Marikana, the Bench Marks Foundation (2012) has articulated a wide range of social problems needing urgent attention. Sibiyi (2012) from the Chamber of Mines has argued that platinum mines have paid hundreds of millions of Rand to government in terms of the agreed social plan governing their operations, but it has not been spent on development plans. These are serious gaps in implementation and pacts ultimately are about execution not simply high-sounding agreements.

If the NDP's 'to do' list is not to remain one of wishes the social partners will first have to find agreement on its proposals, and demonstrate new levels of commitment and capacity to its objectives – across the table deals require internal coherence first. There is much to be done within the ranks of government, business and organized labour if a new social pact is to have prospect. The energy that informed the democratic transition requires resuscitation. Institutions such as NEDLAC should be revitalized. Clean and efficient government is the cornerstone of a viable state – a very urgent clean up is demanded. Public servants across the board require resourcing to deliver to their vocations: very specifically in education, health, safety and security, and development.

Business will be required to see its logic not simply as delivery to shareholders but to society as a whole. Societies require investment, wider development will be limited within a logic of corporate extraction founded on lean production principles. ROI is not simply a shareholder imperative, but a societal one. Some signs of this logic have been recently evidenced for instance in the move by South Africa's richest businessman, Patrice Motsepe in a Warren Buffet-like gesture committing half his earnings to 'charity'. Job creating 'charities' should top the list. Trade unions need internal coherence to deliver to their part of a national bargain in a developing economy with a jobs crisis.



In short a new social pact requires radical change in the mindsets of key social actors and their constituents, in the way they deal with one another and particularly how they manage their problems of internal coherence. A social pact is the product of a shared mindset of social investment above extraction, and commitment to a long-term national vision rather than short-term sectional interests. Such a commitment is inevitably more difficult for those unable to feed themselves on a daily basis – what is the mix of commitments, contributions and rewards that can be expected to make sense to the large and growing numbers on the margins of South African society? Acemoglu and Robinson (2013) in their extensive analysis of why nations fail concluded that the key to success was inclusive political and economic policies, while

narrow extractive practices had the consequence of ultimate collapse. This is the stuff of pacts. The killing field of Marikana is not simply about a breakdown in labour-management relations on platinum mines or an event of poor policing. It demands from the country's social partners a wide-ranging review of their joint commitment to nation building and a rebuilding of capacity to the task.

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I WILLIAM ZARTMAN

NEGOTIATIONS AND THE ARAB SPRING



Except for the situations when violence takes over as a full civil war, the uprisings and transitions of the Arab Spring are a matter of negotiation (and even when they become civil war, it takes negotiations to end them). The current PIN project, due for publication in early 2014 by the University of Georgia Press, deals with the Arab Spring in eight countries (Morocco, Algeria, Tunisia, Libya, Egypt, Yemen, Bahrain and Syria) analyzed as negotiations. It may be considered unusual to use the process of negotiation as a lens for understanding the evolution of the Arab Spring.¹ However, its application to an unusual subject brings a better understanding of negotiation

and deepens insights into the subject itself.

Practitioners and some analysts tend to think of negotiations as what happens between two constituted parties across the green table, whereas any negotiation is broader, looser, and more universal than this narrow caricature suggests. What is new from the Arab Spring is the application of negotiation analysis to the entire basket of politics, from the frustrated, isolated individuals at the bottom in the beginning, to the sudden crystalizing of the supersaturated solution into an *intifada*, to the jumbled relations of the *muntafadin* until they are able to negotiate coali-

tions for elections and formulate a constitution. Analysis of the Arab Spring as negotiation also informs understanding of a special category of protest lying between contentious politics and revolution. Although the key to an effective *intifada* begins with negotiation for coalition (the goal of overthrow being already established), the protest continues after overthrow; it continues with the need for negotiation to form a consensus on the formulation of a constitution, particularly difficult as negotiations for coalition fall apart.

NEGOTIATION

The Arab Spring opens new perspectives on negotiation analysis by considering that negotiation takes place at many levels, as a three-dimensional exercise. Negotiation analysis often assumes the existence of

¹ However, it is catching on. A new study of the Arab Spring by the Georgetown University School of Foreign Service in Qatar is entitled *Beyond the Arab Spring: The Evolving Ruling Bargaining the Middle East, with negotiation as a theme; Summary Report 9, Georgetown University Center for International and Regional Studies, 2013.*

constituted parties to the negotiation (much as formerly economic analysis assumed the existence of given initial positions for its analysis [Edgeworth 1881, Zeuthen 1930, Cross 1969]). Here, the process of negotiation is not limited to government and opposition; analysis has to dig below that comfortable surface and enter into the negotiations *within* parties, usually referred to as negotiations among factions, a relatively new field of study (Cunningham, Bakke & Seymour 2010). The process moves from individuals through groups and parties to institutions, not just on one (diplomatic or legislative) level or even two (Evans, Jacoson & Putnam 1993), but welling up through many levels of society and polity as the Old Order, reluctantly and piecemeal, collapses. Furthermore, the parties in internal negotiations are often inchoate, forming and dissolving during the process, shifting, kaleidoscopic, and engaged in internal negotiations before facing other organizing parties; in a word, they don't hold still (Zahar & Lilje 2012).

Consideration of such negotiations must also be expanded to include tacit negotiations and even non-negotiation. The seesaw relations within pacted and competing societies sometimes involve direct exchanges and bargaining, but frequently are conducted tacitly; a party states its position, the other (military in Egypt, civil society in Tunisia) reacts, and then the first party puts forward a decision that it believes will constitute the basis for acceptance or agreement, given the previous elements.² Some other parties, notably the *muntafadin*, are constitutionally disinterested in and organizationally incapable of negotiation, but their

demonstrations nudge the negotiated transition along to meet the negotiating demands and interests of other parties who have the advantage or organization.

Another element in negotiation analysis brought out by the Arab Spring is the importance of violence and the threat of violence—one of the three elements of bargaining power along with organization and legitimacy—as an adjunct rather than an alternative to negotiation. Violence does not replace or destroy negotiation; it reinforces positions, gives an impetus to the process (as an element in the creation of a mutually hurting stalemate), and indicates seriousness in the search for outcomes. Conversely, even when violence takes over as the primary means of conducting the conflict, with the purpose of elimination rather than of coming to terms with the other party, negotiations are required to bring the violent confrontation to a conclusion.

SPRINGTIME

In return, negotiation analysis has opened new perspectives on the Arab Spring. The Arab Spring is negotiation, but the major drama of the negotiation shifts rapidly from that between the Old Order and its opponents to that between, among and within the opponents themselves. The uprising turns upon itself to work out coalitions and formulations, often spending much negotiation energy over the Tactical Question—whether to use violent or political methods. This approach has brought to light a number of quite different patterns in the current *intifadat* and has opened up new insights into the nature and process of negotiation. Although

it is premature to talk of ends and outcomes in political change, five patterns appear: *competing*, *pacting*, *adapting*, *repressing*, and *fragmenting*. These patterns are not immutable; they evolve and can be changed, from within or without. But they evolve from where they are, limiting and channeling the possibilities of evolution (Brynan et al 2012). The parties do what they can under the circumstances, and make the resulting circumstances by what they do. The fact that the Egyptian Freedom and Justice Party (FJP) and its Islamist allies held three-quarters of the parliamentary seats and their candidate (Mohammed al-Morsi) was elected (barely, but no matter) president enabled them to adopt a winner-take-all policy; Nahdha in Tunisia won 40% of the seats in the National Constituent Assembly and needed partners to govern which made it natural for them to preach competition and coalition.³

One pattern is *competing*. It may be too early to confirm the Tunisian *intifada* as leading to the establishment of normal politics of petition, aggregation and allocation, but the uprising did destroy the Old Order expeditiously on a Short Track and establish a procedural transition to elections and a constitution, confronting accountability for the ordinary challenges facing any government—competing bread-and-butter (or *'aish*) demands of employment and growth. Although there is a leading organization, al-Nahdha, and a new identity current, neither is fully dominant and both have to negotiate “horizontally” with other organizations and ideas. The moderate Islamic identity is pulled by heart and vote to the “right” by the salafists and pushed to the “left” by the mass of liberal society, but a striking aspect of Tunisian events is that, in the absence of a strong organization

² This is captured in Rubenstein's (1982) two-move game, generally considered quite theoretical.

³ This statement suggests that Rachid Ghannouchi would have acted like Morsi if Nahdha had received a majority, but counterfactuals are hard to prove.

for the liberal side, the Nahdha-led government negotiates “vertically” with civil society, as a continuation of the process by which the overthrow itself was accomplished.

Pacting is a special twist on the first pattern, when two dominant forces hold each other in check in a seesaw bargaining relationship. As long as neither can eliminate the other, the two continually negotiate formulaic terms of procedure—elections and constitution—and the common challenges of substance, as in Egypt and Yemen with rather different components. The SCAF in Egypt moved the fulcrum of the seesaw in August 2012 when it took over the interim constitutional functions, but President Mohammed Morsi kicked the fulcrum twice in the opposite direction in December 2012 when he claimed full powers and promulgated a hastily written constitution. The SCAF responded by simply removing Morsi. Thus pacting is inherently unstable because its very dynamic incites each party to try for a permanent advantage and unseat the other, if only in defense against the other’s presumed tactic in the same direction—a veritable security dilemma.

Adapting occurs when the Old Order is strong enough to resist the challenge of the *intifada* but only by adopting milder versions of its demands and only when the demands are themselves moderate or adoptable. Negotiations occur secretly within the corridors of the Old Order and tacitly between sides. The *intifada* is too absolutely and relatively weak to enter into a pact or to form responsible coalitions, as in Morocco and Algeria. Exterior pressure is necessary to keep the reforms on track because the *intifada* does not have the bargaining power to supply pressure, but if the reforms are neglected

the weak *intifada* could turn stronger, much as in the repressing case.

Repressing occurs when the Old Order is so strong that it can quash the *intifada*, without adopting any of its demands as in the adapting scenario. But the uprising can be expected to appear again, probably with lessons learned, participants wisened, and radicalism accentuated. Complex internal negotiations on proper policies tear apart both sides, to the profit of the hardliners, and preventing solid negotiations between the sides. Repression is merely a return to the status quo ante hardened, inviting a new and more explosive *intifada* later on. Again, external pressure is the only way to move the “victorious” repressors to reforms on their own and toward opening up the system, short of a more serious explosion.

Fragmenting is the result of a Long Track uprising, which eats up the moderates and opens up the fissures among identity claims—ethnic, religious, regional, generational, personal (Zartman 1980). The politics turn to violence and elimination, not only of the other side but also of others on the same side, destroying the unifying impulse of the original *intifada* and preventing effective negotiations for coalition or for future visions. Attempts to create New Order through elections and constitutions are pushed aside by New Disorder until some sort of dominance is established, as in Libya and Syria. The Longer the Track, the more irresolvable the fragmentation.

PROCESS

Major characteristics of the Arab Spring negotiating process stand out across these patterns. One has to do with the *structure of the negotiations*. The negotiation process is robbed of an important player—*those*

who made the revolution, leaving a vacuum, to be filled by the most organized parties—the Islamists, and the military where it exists. Universally, the spontaneously demonstrating young people, unemployed or employed in middle- and lower-class jobs, university graduates or dropouts who had no job future, the social media generation, the people who sought above all *karama* (dignity) and meaning for their lives—have been bypassed, by their own and others’ actions. By themselves, because they have no faith in organized politics, as the Old Order had trained them to do. They want immediate action, in ways they could not comprehend but only demand, and when new and leftover politicians arose to exploit the situation, the uprisers saw further reason to turn their backs to parties, elections, votes, and organization, falling back on demonstrations and threats of violence, or simply reinforced alienation.

Furthermore, the *muntafadin* have been formed to avoid formation by their own technology, the social media, excellent for bringing people together to execute flexible strategies but inappropriate for structured organization. Leadership, message nodes, and direction are shifting, transient and replaceable; structure is fluid multimode networking but not established line and staff, without clear command and control; formulation and visioning is under continual and disjointed discussion, if at all. Only in the politics of fragmentation do the young leaders and activists find their place, and find themselves in a position to effectively challenge older generation dominance (al-Zubaidi 2012, Quandt 1969).

As a result, the necessary element for participation in the negotiations is *organization*, one of the three sources of bargaining power along

with legitimacy and the threat or use of violence. The key to the evolution of the different patterns is the ability to create a coherent and cohesive structure for participation in the transition. The *muntafadin* lack what it takes; of the sources of bargaining power, they have legitimacy and violence but not organization. The identity issue of Islamism has been important to recruiting adherents for the various Islamic formations but their success was above all the result of their organizing ability, prepared under duress under the Old Order and expanded when the Old Order fell. Although they were under cover or abroad under the Old Order, they bided their time as the *intifadat* unrolled, jumping on the train and then taking over the locomotive when it appeared to be the vehicle of the future. They were busy recruiting, providing social services, benefitting from an attractive identity message and from the claim of having suffered most under the Old Order. This focus on internal cohesion and extremist refusal has allowed the Islamist organizations to bid for the political center and present themselves as moderates and nationalists as well as parties of a religious identity.

But it takes two to negotiate. In the pacting and adapting regimes, the opposing organizations—the Egyptian military, the Yemeni Salehists, the Moroccan monarchy, the Algerian junta—are in the ring because of their organization, as well as legitimacy and control of violence. Where such organizations are absent, the only negotiating partner is civil society, heir of the *muntafadin*, reduced to tacit (albeit effective) negotiations, as in Tunisia. The whole liberal party scene is a poor player—disorganized and far from even the threat of violence, armed only with legitimacy. The parties have been crushed by the mukhabarat (secret police) of the Old



Order and have not yet recovered. By the same token, adapted, repressed, and fragmented societies it is the central authority that is organized, armed, and legitimate.

Thus, counter-intuitively, negotiations for coalition are much more actively pursued within groups than between them; that is, probably because of their organizational weakness, groups negotiate to *maintain their coherence rather than to build up allies*. Although the various grouplets that formed the original *intifadat* continuously reached out to make successful mass protests focused on a single goal: “Get out! (*Dégage! Irha!*),” building national transitional councils thereafter proved difficult. Groups and parties focused on their own internal cohesion, an attitude that hardened as the struggle continued and entered a violent phase. In Syria, where the 18-month search for an umbrella organization ended in a National Coalition of Syrian Revolutionary and Opposition Forces whose contrived name and unpronounceable acronym testified to its cobbled nature (through Western intervention, in addition) and its rapid

failure. Fragmentation kills the ability to conduct negotiations for formulation just as it does for negotiations for coalition, leaving the participants weak and exhausted when the struggle is over and open to having the revolution snatched from them by better organized groups awaiting the opportunity.

But once the overthrow was achieved, the groups are still unable to coalesce into a single movement. The first election after an overthrow is usually one of testing individual and group strengths rather than rushing into alliances and coalition parties; normally, when the strength of various groups is established they then turn to negotiating common fronts and larger coalitions with other groups, usually against an external enemy. This has not taken place in the Arab Spring. In Tunisia, 18 months after the *intifada* an attempt at a “big tent party” in Nida’ Tunis elicited a rival counter-coalition, and then a third one that seeks to fill the gap between the first two. It took Egypt two years to see a National Salvation Front contain the squabbling non-Islamic parties.

A second broad and common characteristic, concerning the goals of the negotiations, is the *absence of a dominant vision of society*. As they move from the unity of overthrow to the consensus of a new constitution, the actors need to establish a common basis for the New Order. In South Africa during the miraculous process of system transformation 1990-1994, the opposing parties established a set of basic principle² on which the constitution would later guide the final constitution (Sisk 1995). This has not been done in the Arab states. While early elections and Islamic organizations have tended to focus on the identity issue, it hovers at a very abstract level of social norms of behavior rather than as a blueprint for a New Order, and *sharia'a* is not a constitution (despite the cry *islam huwa al-hall* (Islam is the solution]). For the moment, three years after the *intifadat* broke out, the constitutions appear to be a rather liberal project for the New Order. In neither Tunisia, Libya, nor Egypt does *shari'a* appear as the sole basis of the legal system, and rules of participation are liberal to the point of offering protection even to the salafists.

Yet the societies are uneasy, and the conduct of the Islamist parties has neither confirmed nor at least not dispelled the unease. The record of Mohammed Morsi as president in Egypt has aped the behavior of Hosni Mubarek, in a very determined winner-take-all policy. Despite assertions of moderation and commendable, repeated concessions in the constitutional negotiations, statements of some Nahdha spokesmen and governments reluctant to control salafists and insecurity have raised a hue and cry from Tunisian society. Confronted with an ideology, the liberals and modernist society have values but not a doctrine. Islamists draw their legitimacy from otherworld revelation and

interpretation, liberals from earthly pragmatism and logic. Negotiation in this situation takes the form of zero-sum distributive concessions, not of positive-sum integrative construction.

As a result of the uprisings, the ideological orientation of society has shifted, or at least broadened, to include religious politics (Brynen et al 2012). Whether this shift is left or right, or forward or backward, is a subject of the ongoing debate over identity underneath the negotiations for formulation, and indeed it is all of these directions in some measure. How much of a shift it represents is not only a matter of debate but of future evolution; as already noted, parties—including the minority parties—take their positions of the moment as a result of their situation, which they previously created, not as a result of a pre-established plan of action. Secularism, civil liberties, and modernizing globalization are neither absent nor defeated. What is involved is more a broadening than a total shift. But this makes integrative negotiations unusually difficult.

Finally, on the *frame of negotiations*, when domestic Arab Spring negotiations fail, *international intervenors have to step in*. Intervention is often considered a foreign military exercise, but the more frequent characteristic is one of external intervention to encourage or restore the domestic negotiation process putting the uprisings on the Short Track and hastening a smooth transition. External negotiators tried to broker an early transition in Libya, Syria, and Yemen; only the last made any progress. Thereafter, foreign states and many NGOs have tried to help negotiations to overcome some of the structural problems noted above. The most notable case is the multiple efforts in mid-2013 to bring the two pacting forces in Egypt to cooperate in an effective transition,

to no avail. The drama is that when negotiations between the parties of the *intifada* are needed most, in fragmented uprisings and transitions, foreign efforts have been ineffective. The most notable case here was the effort of US Secretary Hilary Clinton to bring together a National Transition Council in Syria, which succeeded only momentarily

So, in sum, why did the *intifadat* of the Arab Spring follow in only varying degrees the ideal type of evolving from a grassroots uprising, marked with negotiation at every stage and level, to provide working coalitions and a consensual formula for a New Order through a new constitution? The ingredients of an answer have been laid out: When the negative, procedural consensus over the elimination of the authoritarian figure reached its goal, it fell asunder with the introduction of the religious question, the disarray of the liberal current still reeling from the numbing effects of the mukhabarat, and the disinclination of the *mun-tafadin* to organize. The more the negotiations slipped into distributive bargaining, the further they moved away from a consensual formulation. When the dominant Islamic force was confronted with an opponent—SCAF in Egypt, civil society in Tunisia—it was forced into tacit negotiations that led to a security dilemma and overthrow in the first case, but—still hopefully—to a successful constitutional process in Tunisia.

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UNFINISHED BUSINESS; WHY INTERNATIONAL NEGOTIATIONS FAIL

Guy Olivier Faure, editor, with the collaboration of Franz Cede, University of Georgia Press, August 2012

Most studies of negotiation take completed negotiations as their subject and explain how the outcome was obtained. But some negotiations do not end in a signed agreement but rather break up and end where they started. Analysts have paid little attention to these. How can their "outcomes" be explained? This question frames the inquiry of this book. Rather than feel sorry, it is more useful to draw lessons from such a lack of results. There is as much, if not more, to learn from a failed negotiation as from a negotiation ending up with a mediocre outcome.

Thirty-five factors causing failures in negotiations have been found. Six of them appear quite prominent. On the side of the actors, demonization is a widespread process that nullifies all efforts to interact in a positive way. The inability to adapt the negotiation process to the external changes that may occur during protracted negotiations within a turbulent environment is another major cause. Improper mediation is also debilitating when the mediating party does not have enough means of influence or not enough will, commitment or interest to facilitate an agreement. In a number of situations there is simply no ZOPA (Zone of Potential Agreement) and none of the parties realizes it, as they do not know each other's security point. Trust is a most difficult condition to build, especially in a negotiation bringing together foes that may be inclined to see the bargaining table as another arena for war. Ultimately, one must have a sense of timing and a sense of ripeness when to offer to open and close the deal. These causes are analyzed in detail, in concept and in application to cases in this book.

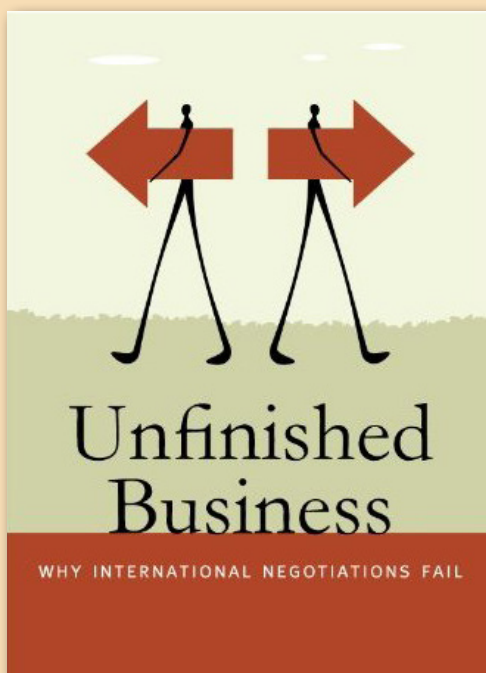


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PAUL MEERTS

DURHAM PIN WORKSHOP ON RECONCILIATION AND NEGOTIATION



At the invitation of the Durham Global Security Institute (DGSI) the Steering Committee of the Clingendael Processes of International Negotiation (PIN) Program delivered a Reconciliation Workshop at Durham University on Friday 11 October 2013. DGSI brings world-leading researchers and practitioners together to focus on the interface between defense, development and diplomacy with a view to helping to prevent conflict, stabilize violent situations and prepare for future threats.

The Workshop had been organized in the context of the prospective book on Reconciliation and Negotiation, edited by PIN-members Valerie Rosoux from the Catholic University of Louvain and Mark Anstey from the Metropolitan Nelson Mandela University in Port Elizabeth. As such it was a continuation of earlier Workshops and Roadshows in Port Elizabeth (2012) and St.-Petersburg (2013).

William Zartman from the School of Advanced International Studies of Johns Hopkins University opened the Program by indicating the importance and the characteristics of reconciliation in its connection to national and international negotiation processes. In his closing

address he summarized the day and analyzed the subject by already sketching an outline for the concluding chapter of the book and the lessons to be drawn for both theory and practice.

Under the chairmanship of Mikhail Troitskiy from Moscow International State University (MGIMO) Valerie Rosoux and Rudolf Schüssler (University of Bayreuth) spoke about the concepts and the ethics of reconciliation. Paul Meerts (Clingendael) chaired the second morning session in which Anthony Bash (Durham University) and Mark Anstey emphasized the theological and the power dimensions of reconciliation. Both panels were followed by lively discussions with the audience.

In the afternoon Stephen Lyon (Durham University) and Elise Feron (Kent University) highlighted the cultural and gender perspectives of reconciliation. This session was chaired by Guy-Olivier Faure from Sorbonne University. Cecilia Albin (Uppsala University) guided the last panel with Mordechai Melamud (PIN) and Nick Lewer (Durham University) speaking on the Israeli-German and the Sri Lankan cases. The discussion with the participants in the room was intense and very rewarding.

WILBUR PERLOT AND MIKHAIL TROITSKIY

PROCESSES OF INTERNATIONAL NEGOTIATION (PIN) ROADSHOW IN ST. PETERSBURG, RUSSIA (MAY 23-24, 2013)



At the Roadshow, members of the PIN Steering Committee and invited guests presented their latest insights and research agendas on international negotiations. **Professor Irina Novikova, Dean of the School of International Relations of Saint Petersburg State University** and host of the two day visit of PIN to Saint Petersburg, opened the Roadshow with a word of welcome.

In his Roadshow talk, **Professor I. William Zartman of SAIS, Johns Hopkins University**, addressed the “who and when” of negotiations. According to him, the study of negotiation was originally skewed in favor of the what of negotiations, namely, the subject and content of negotiation. However, the who and the when are equally, if not more, important. These include the choice of moment when negotiations should be started; there needs to be a hurting stalemate in the negotiated dispute. The parties also need to have at least minimal trust in the successful outcome of negotiations. Only then will the dispute be ripe for resolution. For example, a mutually hurting stalemate brought the Israeli-Palestinian talks to conclusion in Oslo in the 1990-s. However, in Syria as of Spring 2013, no mutually hurting stalemate materialized so no resolution to the civil conflict was in sight at that time.

According to Zartman, the most difficult task for mediators in a conflict is to ripen the situation through changing the perceptions or bringing about a mutually hurting

stalemate. If there is no ripeness in a conflict, mediation becomes all about creating ripeness.

Professor Guy Olivier Faure of Sorbonne University talked about asymmetric negotiation and dealing with terrorists. He characterized the relationship between negotiators and terrorists as the most antagonistic one: there is no shared value system. The terrorists’ goal is seldom to force negotiations. On top of that there are terrorists that just want to punish. While it might be possible to negotiate with politically-motivated terrorist groups, such as ETA, Chechen extremists or FARC, negotiating with religiously-driven terrorists presents a much greater challenge given that their narrative does not allow for a common framing of a problem between terrorists and the government.

Mikhail Troitskiy, an associate professor at Moscow State Institute of International Relations, talked about the implications of arms control negotiations between the United States and Russia for international security. Arms control talks is an area where the phenomenon of leadership by negotiation becomes manifest: the two nuclear superpowers – the US and Russia – hold the key to the survival of the whole international community. If Moscow and Washington prove reluctant to proceed with further nuclear cuts – bilaterally or in a multilateral setting – other would-be nuclear-weapon states would get

a convenient excuse for dragging their feet on nuclear reductions and reassessment of nuclear deterrence as the basis of national security strategy. The posturing of the US and Russia in terms of nuclear weapons undermines the ethical reasoning against nuclear weapons. The debatable notion that mutually assured destruction deterred the two superpowers from mutual aggression now helps to justify actual and potential regional nuclear arm races.

Professor Valerie Rosoux of Catholic University of Louvain addressed the historical evolution of Franco-German negotiations. Her research question bears on the ways to negotiate with the hereditary enemy. France and Germany present a fascinating case for each of them used to define the other as the opposite while at the same time admiring the culture of the other. The most recent historical round of their negotiations began against the backdrop of a military and moral defeat of Germany, so the German resources in the negotiation were strictly limited. However, the sides needed each other. The interests for both sides finally matched after the end of the cold war for both domestic reasons and the fear of the USSR. These negotiations led to fundamental changes in German and French identities as well as their mainstream historical narratives. Franco-German negotiation is an open-ended process that has continued far beyond the post-war reconciliation.

Andreas Lange and Martin Kesternich, respectively, a professor at Hamburg University and a researcher at the Centre for European Economic Research, presented a case study on climate change negotiations. According to them, for a long time little attention has been devoted to fairness and perception in climate change negotiations. The fairness issue is about who should shoulder the largest burden of limiting greenhouse gas emissions. Should the "polluter pays" principle apply universally or should pollution levels be calculated in the historical perspective? Should absolute or per capita pollution volumes be used as the principal criterion in negotiations? In a bid to find "fair" answers to these questions, Kesternich and Lange conducted a survey amongst climate change negotiators across the world. Their study established significant differences in the understanding of "fairness" among different groups of countries: the Group of 77 developing nations prefers to stick to the historical perspective while the EU insists on the polluter pays principle. Without addressing the core issues of fairness, the researchers concluded, a negotiated solution to climate change problems will remain unrealistic.

Mordechai Melamud, a former official at the Comprehensive Test Ban Treaty Organization (CTBTO) discussed the viability of the Helsinki process for establishing a nuclear-weapon free zone (NWFZ) in the Middle East. He noted that the progress in global nuclear disarmament talks has largely stopped. A breakthrough may be achieved by regional NWFZ agreements. For example, the entire Southern hemisphere falls under such an agreement. The Helsinki process was supposed to help countries in the Middle East reach a NWFZ agreement.

However, it is difficult to define the Middle East as a region by making up an exhaustive list of countries that are part of the Middle East. There are also two states that need to be involved if the NWFZ agreement is to acquire any meaning: Israel and Iran. However, one of these countries is known for having nuclear weapons while the other is believed to develop nuclear-weapon technology. The second difficulty arises from the uniqueness of the concept that some key negotiators and mediators seek to apply to the Middle East – that of a Weapons of Mass Destruction Free Zone. This leads to the dramatic increase in the number of regional stakeholders and severely complicates the negotiations. According to Melamud, these factors largely account for the failure so far to reach visible progress in negotiating a zone free of WMD in the Middle East.

Fen Hampson, a professor at Carleton University and a Program Director at the Center for International Governance Innovation analyzed new challenges in international multilateral negotiations and diplomacy. He proceeds from the assumption that the success of multilateral negotiations has been generally limited in the past decade: consider climate change, non-proliferation, future of the Internet, finance or trade talks. Being posted to Geneva is considered a death sentence by Canadian diplomats. However, where the old institutional settings have failed or are failing, part of the gap in decision making has been filled by new institutional settings, involving both state and non-state actors. One such innovative framework is in unilateralism, for example, the G20 which scored a lot of points regulating the financial markets. The G20 may now pick on other issue areas, such as energy, global climate change or transnational crime. The formal multilateral machinery is malfunctioning, but the informal machinery is picking up the pieces, Hampson concluded.

19 AND 20 MARCH

PIN meeting and roadshow in The Hague

24 AND 25 MARCH

PIN present during the negotiation biennale in Paris, including a PIN panel on 24 March

MARCH 2014

Release of *Banning the Bang or Bomb?; Negotiating the Nuclear Test Ban Regime*, eds by I. William Zartman, Mordechai Melamud and Paul Meerts, by Cambridge University Press

MARCH 2014

Publication of a Clingendael Policy Brief on on-site inspections based on the CTBT book

APRIL 2014

PINPoints #40 published

SEPTEMBER 2014

PIN workshop/ conference on Focal Points, possibly in Germany at the Beyreuth University

OCTOBER 2014

Publication of a Clingendael Policy Brief (topic to be determined)

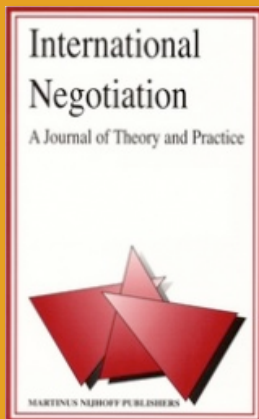
NOVEMBER 2014

PINPoints #41 published

SECOND HALF OF 2014

Release of *Intifadat; Negotiating a Social Movement*, ed by I. William Zartman, by Georgia University Press

(all dates are subject to change, please see our website for the latest updates)



INTERNATIONAL NEGOTIATION: A JOURNAL OF THEORY AND PRACTICE

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