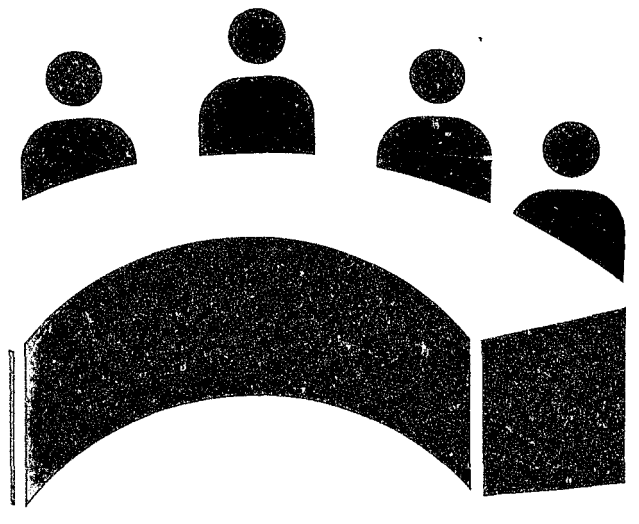

CENTER FOR
THE STUDY OF
FOREIGN AFFAIRS

INTERNATIONAL NEGOTIATION

ART AND SCIENCE

REPORT OF A CONFERENCE ON
INTERNATIONAL NEGOTIATION,
JUNE 9-10, 1983

EDITED BY
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Introduction

John W. McDonald, Jr.

Probably no subject is as important today as the technique and practice of negotiation and mediation. The problems of the world are increasingly complicated and numerous. The fates of nations and peoples are inextricably linked as communication and technology bind us together. At the same time, war (as an extension of diplomacy) has become an unthinkable alternative, and people are looking for a way to fight violence without giving in to it.

All too frequently in the past, diplomats and negotiators have been left to learn the art of negotiation on their own. Few concerned attempts have been made to help practitioners to share what they learned and to work closely with academics who are trying to investigate the field and to test various theories and methods of negotiation.

Therefore, when the Center for the Study of Foreign Affairs was established in late 1982, it was decided that one of its areas would be conflict resolution and negotiation and that an attempt would be made to bridge the gap between the practitioner and the academic in this field. The Center, a part of the Foreign Service Institute, provides a facility for Foreign Service officers to reflect and work on research projects of interest and encourages cooperation between the State Department and the foreign affairs community. Its approach, and the approach of the Foreign Service Institute in general, is to synthesize the best of the practitioner's experience and skill and the best of the theoretical and conceptual work of the academic.

To initiate specific programs in the area of negotiation, the Center organized two conferences, one in December 1982, and the second in June 1983. The conferences were attended by practiced negotiators who have been involved in resolving some of the key issues of our time and by academics who have pioneered research in conflict resolution. The names and short biographies of participants follow this introduction.

The task of the first conference was to help the Center staff develop a plan or a framework within which the art and science

of negotiation could be examined. The second conference, a major, two-day event, was conceptualized at the first conference. The goal of the second conference, which is the subject of this volume, was to map out the field of negotiation, to find out what the field we call negotiation really is, and to explore how negotiation can be taught.

This volume contains the major presentations of conference participants in an abridged form. Bits and pieces of the discussion that followed each presentation are included as inserts throughout the volume. These selected remarks communicate the flavor and drift of the discussions and often raise important questions or comment on a presentation. I hope that readers will find both the presentations and discussion selections useful as a first step or a survey of this very complex and vital field. Please note that this volume includes quite an extensive bibliography.

I would like to thank in particular Leo Moser, director of the Center for the Study of Foreign Affairs, and his deputy, Edward Malloy, for the outstanding job they did and to commend them for bringing together the extraordinary talent in the field of negotiations represented at this symposium and reflected in this publication.

Since the June 1983 conference, the Center for the Study of Foreign Affairs has held several case-study symposia to look in depth at specific negotiations and to try to make some generalizations about them. These symposia bring together as many of the actual participants as possible. The first of these was on the Panama Canal Treaty negotiations, the second on the Falklands/Malvinas Islands dispute, the third on Cyprus and the fourth on Zimbabwe independence. Others are being planned. The Center plans to publish the abridged proceedings of these symposia as companions to the present volume.

On behalf of the Center for the Study of Foreign Affairs, I would like to thank all participants for the time and effort they have contributed and for their cooperation as this volume was being published.

Participants

The following people participated in the June 9-10, 1983, Conference on International Negotiation or in the Preparatory Negotiation Conference in December 1982, during which general plans for subsequent conferences and symposia on the subject of negotiation were formulated. Their speeches, papers, and discussions provided the material for this volume.

Thomas Colosi is vice-president for National Affairs of the American Arbitration Association. He was formerly deputy director of the National Center for Dispute Settlement and has had a long career as a mediator and arbitrator. Colosi is co-editor of *Federal Legislation for Public Sector Collective Bargaining* (Washington, D.C.: International Personnel Management Association, 1975).

Robert Coulson is president of the American Arbitration Association, the major alternative dispute resolution agency in the United States. He is a member of the International Council on Commercial Arbitration and has written several books on arbitration and mediation.

Jonathan Dean is currently a senior associate of the Carnegie Endowment for International Peace. He served in Vienna as U.S. representative at the Mutual and Balanced Force Reductions (MBFR) negotiations. Prior to that Ambassador Dean was deputy U.S. negotiator in the Four Power Berlin Agreement with the Soviet Union.

Edward J. Derwinski is counselor of the U.S. Department of State. A former congressman from Illinois (elected to the 86th and each succeeding Congress until 1982), Derwinski served on various U.S. delegations to multilateral organizations. He was chairman of the U.S. Delegation to the Interparliamentary Union from 1971-72 and a member of the Foreign Affairs Committee.

Roger Fisher is professor of law and director of the Harvard University Negotiation Project. He served long in the government and practiced law in Washington, D.C. He is the author of *International Conflict for Beginners* (Magnolia,

Mass.: Peter Smith, Publishers, 1969) and co-author of *Getting to Yes* (Boston: Houghton, Mifflin, 1981).

Fred C. Ikle is undersecretary of defense for policy. He has had a long career in public service. From 1973-77 he was director of the U.S. Arms Control and Disarmament Agency. Ikle has written several books, including *How Nations Negotiate* (Washington, D.C.: Georgetown University School of Foreign Service, 1982). The work was originally published in 1964.

Stephen Low is director of the Foreign Service Institute and former U.S. ambassador to Nigeria and Zambia. In the latter capacity, he was a member of the U.S.-U.K. missions to Southern Africa negotiating a resolution to the Rhodesia/Zimbabwe problem. Low has been part of the Foreign Service since 1956.

John W. McDonald, Jr. is currently the coordinator for multilateral affairs at the Center for the Study of Foreign Affairs, Foreign Service Institute. Previously he served in the Bureau of International Affairs, Department of State. Ambassador McDonald has represented the United States in a number of multilateral negotiations. He served as deputy director general of the International Labor Organization from 1974-78.

David C. McGaffey is coordinator of political studies, Foreign Service Institute. He has been a Foreign Service officer since 1967.

Jack Mendelsohn is dean of the School of Language Study, Foreign Service Institute. Until recently, he served as the representative of the Arms Control and Disarmament Agency to the START negotiations. Mendelsohn has been a Foreign Service officer since 1963.

Leo J. Moser is director of the Center for the Study of Foreign Affairs, Foreign Service Institute. He was formerly chief of mission of the U.S. Embassy in Vientiane, Laos. A Soviet area specialist and Chinese language officer, Moser has been with the Foreign Service since 1954.

John Edwin Mroz is president of the Institute for East-West Security Studies and a member of its governing board of directors. He has written *Beyond Security: Private Perceptions*

Among Arabs and Israelis (New York: Pergamon, 1980) and *Influence in Conflict: Third Parties and the Arab-Israeli Dispute* (Elmsford, N.Y.: Pergamon, 1985). Mroz has conducted regular consultations with Middle East governments and organizations on a broad range of political and security matters. From 1976 to 1981, he served as executive vice president and director of Middle East Studies at the International Peace Academy in New York.

David Newsom is a member of Georgetown University's Institute for the Study of Diplomacy. He is a former undersecretary of state for political affairs, assistant secretary of state for African Affairs, and ambassador to the Philippines, Indonesia, and Libya. Ambassador Newsom joined the Foreign Service in 1948.

Gerard I. Nierenberg is founder and president of the Negotiation Institute. He has written a number of books on negotiation: *The Art of Negotiating* (New York: Hawthorn Books, 1968), *Fundamentals of Negotiating* (New York: Hawthorn Books, 1973), and the *Art of Creative Thinking* (St. Louis, Mo.: Cornerstone, 1982). Nierenberg is partner in the New York law firm of Nierenberg, Zeif and Weinstein.

Dean G. Pruitt is a professor at the State University of New York at Buffalo. He is active in social psychology programs and research. Pruitt wrote *Negotiation Behavior* (New York: Academic Press, 1981), and edited (with R.C. Snyder) *Theory and Research on the Causes of War* (Englewood Cliffs, N.J.: Prentice-Hall, 1964).

Howard Raiffa holds the Franch P. Ramsey Chair in Managerial Economics at Harvard University. He is author or co-author of numerous works on decision-making, including: *The Art and Science of Negotiations* (Cambridge, Mass.: Harvard University Press, 1982), *Games and Decisions* (New York: John Wiley and Sons, 1957), *Applied Statistical Decision Theory* (Cambridge, Mass.: Harvard Business School, 1961), and *Decisions with Multiple Objectives* (New York: John Wiley and Sons, 1976).

Harold H. Saunders is resident fellow of the American Enterprise Institute for Public Policy Research. He has had extensive government experience in foreign affairs. From 1978-81 he was assistant secretary of state for Near Eastern

and South Asian Affairs (during the Camp David Accords, Egypt-Israel Peace Treaty, and the Tehran hostage crisis).

Louis B. Sohn is professor of international law at the University of Georgia. Formerly he was professor of international law at Harvard University. He has participated on U.S. delegations to many international conferences, most notably the Law of the Sea Conference. He has written numerous books including *Cases on United Nations Law* (2nd ed. Brooklyn, N.Y.: Foundation Press, 1967), and *International Protection of Human Rights* with T. Buergenthal (Indianapolis, Ind.: Bobbs-Merrill Co., 1973).

Lawrence E. Susskind is professor of urban studies and planning at the Massachusetts Institute of Technology and executive director of the Program on Negotiation at Harvard Law School.

Israel Unterman is a professor at San Diego State University and president of Unterman Associates. He has had long experience as an international management consultant. Unterman served as professor of management at the Central American Institute of Business Administration, founded by Harvard University.

William Ury is associate director of the Harvard University Negotiation Project. A consultant on negotiation and mediation, Ury co-authored *Getting to Yes: Negotiating Agreement without Giving In* (New York: Penguin Books, 1983).

Paul C. Warnke is partner in the Washington, D.C., law firm of Clifford and Warnke. From 1977 to 1978 he was director of the U.S. Arms Control and Disarmament Agency and chief U.S. negotiator at the Strategic Arms Limitations Talks. Warnke was assistant secretary of defense for international security affairs from 1967 to 1969.

I. William Zartman is professor of international politics and director of African studies at the Johns Hopkins School for Advanced International Studies. He has taught abroad and has written several works on Africa and the Near East. On the subject of negotiation, he has edited or co-authored *The Fifty Percent Solution* (New Haven, Conn.: Yale University Press, 1983), *The Negotiation Process* (Beverly Hills, Calif.: Sage Publications, 1978), and *The Practical Negotiator* (New Haven, Conn.: Yale University Press, 1983).

Diane B. Bendahmane, the co-editor of this volume, is a Washington-based writer and publications specialist with experience in international relations and development assistance. She has worked for the Carnegie Endowment for International Peace, *Foreign Policy* quarterly, A.T. International, the Peace Corps, and the World Health Organization.

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Negotiation: Theory and Reality

I. William Zartman

Negotiation is the process of combining different positions into a single unanimous joint decision. It is the process of making a decision when there are no rules about how decisions are made or when the only rule that exists is that the decision must be unanimous. This is particularly common not only on the floor of Congress, but also in international relations.

Abraham Negotiates with God

One of the interesting questions about negotiation is whether it can be taught and learned or whether people are born with a sense of negotiation in the seat of their pants. I can think of no better way of answering this question than by going back to the first recorded case of negotiations. Practitioners of diplomacy will certainly remember the events. Abraham was talking to the Lord and was trying to find a way of saving the city of Sodom. He had known the Lord for a while and the Lord knew him, having chosen him for important things, and they looked at each other, each trying to find arguments that fit and to show his way of thinking. And Abraham said to the Lord, "Lord, if we could only find some righteous men in this city, you as the epitome of righteousness would not destroy righteous men simply because the city is a horror of unrighteousness." That seemed like a good argument to the Lord, who was susceptible to that kind of reasoning. He admitted that he would not and Abraham threw in a number like 50, and the Lord allowed that that might work. And then Abraham said that actually the numbers were not that important; if there are 30 people, you still would not do in 30 just to do in the city, seeing as how righteous you are and how you have this reputation of righteousness to keep alive. And the Lord allowed that that, too, was a reasonable proposition. And they kept on going until they got down to 10. At that point Abraham might have been running out of round numbers. The agreement was struck that if there were 10 righteous men in Sodom, the city would be

spared. Well, you know what happened. They could not find 10 righteous men in Sodom and the city was destroyed.

Abraham was a pretty daring and skillful negotiator. What he did was lock in on a principle out of which he thought he could make a deal. And, in fact, the principle was agreed to. It was a principle that was congruent with both the nature of the problem and the nature of his adversary.

Abraham found a formula for getting an agreement on the problem that he wanted to solve and then applied that formula to a series of successive details. That gave him a concise agreement within the general principles that had been established.

The Three Functions of the Negotiation Process

There are certain functions that are generally applicable to the evolving processes of negotiation. One is diagnosis: trying to find out what the problem is, what the other side is susceptible to in the way of appeals, what the ingredients of the situation are, what the other side wants, and what one wants oneself. Second is formulation: finding an over-arching principle or formula which will define the problem, since problems can be defined in many ways. A workable principle will be the basis for an agreement. For example, exchanging security for territory was established as an overarching formula for trade-offs between Egypt and Israel. Finally there is the function of applying this general principle to a particular detail out of which one can construct an agreement between the parties. Experience shows that these functions must be carried out in order for the negotiation process to be effective.

The Psychologist's Perspective on Negotiations

I want to take a psychologist's perspective and say something about why we have these stages in international negotiation (diagnosis, formula, and implementing details). These stages are essential because of man's mental limitations. We just cannot think of everything at once, and we cannot talk about everything at once. This means that whenever negotiations involve many issues or highly interrelated issues, we are going to have to go through this process of first developing a formula and then moving on to the details.—Dean G. Pruitt

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However, while there is a general succession of functions, there are no neat, clearly delineated periods of negotiation. Human activity does not work that way. Even the passage from night to day is not that clear. As one moves into formulation, one continues to diagnose, and as one moves into the detail phase, one continues to be concerned about whether that formula is, in fact, applicable to the problem and the solution.

Turning Points

Negotiators have sensed differences in the atmosphere and in the ease of coming to an agreement as negotiations proceed. There seem to be changes in the nature of the process, separated by turning points or moments. One moment somewhere in the beginning is certainly what one might call the "moment of seriousness." It is the moment when both parties realize that it actually is possible to arrive at a solution to the problems by a joint decision, since their expectations are perceived to be within range of each other. This point may come before formal negotiations ever begin, and often takes the form of a declaration or commitment to succeed in coming to an agreement, even before any details of that agreement are known. But it may also arise during the negotiations, after the sessions have already begun with "no guarantees" between the parties. It is also conceivable that not only the details but even the principles of the encounter may still be undecided at the time of this first turning point, although, because such a moment tends to commit the parties to reaching agreement, it is more likely that they will use this moment to establish those principles not yet agreed upon. Thus, the first turning point usually opens the formula phase.

Another moment later on down the road is the "crest" or the "hump"—the time when enough has been decided in negotiation that the sides are satisfied with the agreement. This is clearly toward the end of the process and is particularly important because it marks the moment when the agreement itself enters into the calculations of each party. Up to this point, each had goals to defend; now they have the additional goal of defending the agreement negotiated thus far and anticipated in the light of these negotiations.

It is a very tricky moment—it is a moment when it becomes in the interest of each side to slip in something, to try to get a little something extra because the other side is not likely to

Irreducible Interests

Formulas are not always, or even often, made up on the basis of principles of justice. Instead they usually simply consist of the two parties' irreducible interests glued together with some creative problem-solving by the parties themselves or by a mediator if the parties are not able to engage in creative problem-solving. A good example of this is Henry Kissinger's early mediation attempts in the mid-1970s. The Egyptian army was surrounded by the Israeli army at the end of the 1973 war, and there was a problem of getting food and medical supplies to the soldiers. There was a road down which these supplies had to move and both the Israelis and the Egyptians wanted control of that road. Kissinger came in and developed a formula.

First he analyzed what the parties' interests were. For the Israelis it was actual control; they wanted to be sure that no military material moved down that road. For the Egyptians, it was an appearance of no Israeli control. Having diagnosed the nub of the issue in terms of the two parties' basic interests, Kissinger was able to come up with a formula for agreement. There would be a neutral third party, the United Nations, that would man check points on the road out in the open, and there would be Israeli military surveillance of the road from a distance. Both parties' basic interests were satisfied.—Dean G. Pruitt

overthrow the agreement over some little detail. The eyeball-to-eyeball moment in the SALT negotiations in Moscow was when the Soviets tried to slip something in about submarine-launched missiles.

Finally there is the closing moment of deadline when it becomes important to the sides to agree before they lose the opportunity.

An understanding of the role of such turning points also helps one come to terms with another question that is important to negotiators: when should the big issues be brought up—at the end, at the beginning, or at some point more difficult to determine in the "middle?" It is often agreed that "the tough one" should not be posed at the very outset. It is better to take on lesser questions in order to build up a spirit of communication and compromise, and to put together the elements of a referent image that will provide an acceptable context for the tougher issues. In brief, the tough issue of an agenda cannot be

treated directly (although it may or may not be talked about) until the first turning point, the "moment of seriousness," has been passed. By the same token, the "crest" cannot take place until the tough issue has been handled, since the lesser issues are not likely to provide enough support and commitment to outweigh the unresolved ones.

Perceptions

Negotiation is a matter of manipulating perceptions, in a number of different ways. One has been discussed, the matter of bringing together the perceptions of both sides of their goals in such a way that a jointly satisfactory formula is achieved. This is partly a matter of packaging, fitting the pieces in the basket in such a way that most of them are included and fit together. The formulas of "no offensive weapons in exchange for no invasion" in Cuba, "territory for security" and "boundary-in-depth toward global settlement" in the Mideast disengagements, and "one-man-one-vote under paired U.N.-South African transitional administration" in Namibia are all cases of effective packaging, and the fact that they left Castro in Cuba and South Africa still (for the time being) in charge of Walvis Bay shows that effective formulas do not have to cover all the items in dispute.

A second aspect of manipulating perceptions concerns the parameters of vision of the two parties. Negotiation does not involve only an exchange of offers and concessions to make the offers finally fit together. Offers are measured against two other notions: expectations of an outcome, and estimates of an outcome without agreement (security points). If expectations are high, a given offer will be less acceptable than if expectations are lower. But this means that one way of making an offer more acceptable is to lower the other party's expectations, if one does not want to improve the offer. Congressional commitments, public opinion, legal obligations, and manifest incapacity are all ways of showing that the opponent's high expectations are simply unrealistic. Nonetheless, the lowered expectation must still be higher than what the other party could get on the conflict track, minus the heightened cost of getting it. Such calculations may sound unrealistically precise, but they take place every day within negotiating teams, and they must.

A third aspect of manipulating perceptions concerns the frills and feelings that surround the parties' vision. If parties

Design of a Conference

I would like to take Bill Zartman's formula and add a subheading to it and talk about the model of the conference itself. I am not talking necessarily about the size of the table. But I am talking about the design of the conference.

In 1979 I was involved in a conference to negotiate a treaty against the taking of hostages. This, of course, was a very delicate thing with Libya and Syria and the Soviet Union. Thirty-six countries were involved in the process. They met for three years, three weeks at a time, with no success whatsoever.

Before the last meeting, we looked at the model of what had happened before and why it had failed. We felt that it had failed because the previous sessions were public and on the record. In other words, every speaker was simply talking to his home audience, making the points that the Foreign Office had said he should be making. Nothing was happening. We were trying to develop a treaty which would fill a legal hole so that a hostage-taker had to be either extradited for prosecution or prosecuted where he was arrested.

We tried something different in the third and probably final three-week session. After the opening morning we proposed that this same group of 36 nations turn itself into an informal working group not open to the public. That meant no records of any kind, no secretariat, no press and therefore, in practice, no speeches since no one was there to listen.

The delegates immediately got down to work and we negotiated and interacted informally, ten to twelve hours a day. The last day of the three-week session we re-convened in plenary session, open to the public, and adopted a draft treaty. I am convinced that the conference model made the difference.—John W. McDonald, Jr.

were machines, the calculation of results would be quicker and coldly scientific. But human beings are doing the negotiating, which means that they are inefficient because they are unsure of their information and because their feelings get in the way.

A party to a dispute wants to be assured of the legitimacy of its concerns, in part because they matter and in part because legitimacy is the key to participation in a joint settlement. A party must therefore make plain its recognition of the other's legitimate interests. Understanding and recognition can be

used to obtain their counterpart. (Everyone but the parties directly involved has recognized this aspect of the Palestinian dispute, for example.)

Another affective value is trust. Since a dispute involves a contest of goals and a negotiation involves partial dissemination of information about values and purposes, parties in a dispute do not trust each other. Yet parties in an agreement must trust each other, for they depend on each other for the implementation of the agreement and the settlement of the dispute. Trust therefore cannot be a precondition of negotiation but must be built bit by bit over its course. Any kind of trust-building mechanism written into the process—such as early payments, verification points, and punishment for breach of contract—is helpful in constructing an agreement. It also eases the process by limiting the need for a lot of loophole-closing clauses, which are in themselves encounters of distrust.

Negotiations to Prevent Wars

Negotiations to prevent wars are, after all, a paradox because they use conflict to force conciliation. The element of the conflict is important and has to be maintained; otherwise, the other side would not be interested in shifting to a mode of conciliation and away from a mode of conflict. The danger, however, is that the tool can become the end and the chosen means of achieving goals rather than simply the means of reinforcing the conciliation or negotiation between the parties.

Thus, negotiation to prevent war presupposes that two parties are heading toward war and that they are doing so because there are matters of dispute between them that they consider worth the price of war. It also presupposes that at least one of the parties believes that it can obtain a favorable decision on its own terms through war and that at least one of the parties believes that it must prevent the other from obtaining such a decision by threatening war too. Therefore, to work its way out of this situation a party must do three things. First, and continually throughout the ensuing process, it must ascertain what it and the other party are really after, what are the necessary components of the dispute, what are the appearances and misperceptions that can be dispelled, and what rearrangements of the stakes are possible to meet the primary concerns of both sides. Second, it must show the other party that its conflict track

is blocked, either by being outright impossible as a way to the goal or by being simply too expensive. Third, it must show the other party that there is another, conciliatory track that is open and that leads to a reasonable degree of satisfaction of its goals.

When we have identified these kinds of functions and taken them apart, I think we can talk better about how to carry out the negotiation processes, not in general, but in specific cases.

The Art of Negotiation Can Be Taught

These suggestions of concepts, of phases, points, methods, and particular types of negotiations suggest that there is something that can be taught about the process. A lot of progress has been made in trying to understand what is going on in negotiation, and there is a lot of progress to be made in the future. In looking at the process, and comparing cases, anecdotes, and analogies, we can understand something in general about negotiations and find that there is a useful continuing row to hoe which is of interest both to practitioners and to people who study the theories and concepts of negotiation.

Teaching Negotiation

The Foreign Service Institute decided that the central subject for the Center for the Study of Foreign Affairs should be negotiation, mediation, and conflict management. I do not believe there is any richer repository of experience in negotiation than exists in the Foreign Service; however, we have not made the effort to create a body of knowledge so that we can profit more broadly from that experience.

Most professional diplomats were brought up with Harold Nicholson and his definition of diplomacy as the management of international relations by negotiation. But none of the courses or the textbooks on diplomacy described what the art of negotiation is. What we know we learned by doing. It is only recently that the subject has been developed into a legitimate area of inquiry. We are only beginning to train Foreign Service personnel in negotiation. At present we have a five-day course in negotiation which we give three or four times a year. The course has been well received, but we think we can teach it better. This conference, and others to be planned, is part of that effort.—Stephen Low

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The Art of Negotiation within the Congress

Edward J. Derwinski

In Congress there is not much talk about negotiations. What is practiced is not politics either, but high level statesmanship; that is what all members of Congress will tell you. Their adversaries are politicians; they are statesmen. They stand on principles and do not compromise them. This is the position members of Congress strike when negotiating with people who are either philosophically out of step or from another region.

So when we discuss negotiation within the Congress, we have to remember that it is not generally admitted to exist. When Congressmen discuss the making of decisions in Congress, they do not talk about deals being struck. For the record, there is usually a good deal of political posturing. In other words, what is going on is not much different from what happens in diplomacy.

Compromise in the Conference Committees

There are some points where it is obvious to everyone that negotiation does go on in Congress. The most visible official negotiations in Congress are the House-Senate conferences. They are the only stage of the legislative process in which the House and Senate actually work together. The procedure is for the House and Senate to pass bills of the same basic nature but with a number of different details. Then members sit down in the conference committee and split the differences. If the House stipulates $100 million for an item and the Senate $200 million, the general tendency is to say, "Okay, let's take $150 million." That occasionally gets complicated by budget considerations and other factors, but as a general rule, dollar amounts are split rather evenly.

Often both the House and the Senate permit amendments—very often sweeping amendments in terms of political philosophy or policy changes—to be offered to a bill with the "gentleman's understanding" that they will be dropped in conference. Therefore it is not unusual for the House and Senate

conferees to come together and open by saying what portions of their general language they will drop immediately. In most cases the tactic is to drop an amendment in conference, and then go back to its original supporters and say, "Look, we fought for your amendment, but the other body just wouldn't take it." That is the standard tactic in getting rid of extreme language or handling individual problems with constituents that may have existed in one or the other bodies.

Often, the language of these dropped amendments then ends up in the "conference report." The report might say, for example, that it is the hope of the Congress that the Agency for International Development or the Agriculture Department will act in such and such a fashion. It amounts to gratuitous advice. However, a year or two later a member could still say, "Well, remember that in the conference report, we suggested you follow such and such a policy." Anything that may be borderline in terms of practicality is put in the conference report and not written into law.

Logrolling as Negotiation

A classic kind of negotiation in Congress is what is called "logrolling." This applies particularly to issues involving public works projects and agriculture. The art of logrolling (or of negotiation) reaches a high level in these two fields.

In public works projects—dams, bridges, highways, etc.—the first thing to understand is that for any House bill you need at least 218 members who have projects in their districts; in the Senate the number is 51. The standard tactic for a proponent of a public works project is to tell a senator or representative, "Look, you have a dam in this bill; therefore, you will support the entire bill. If you don't we'll drop your dam." The idea is to get the necessary numbers together so that, regardless of some lemons in the package, everyone who has a piece of the action will support the entire package. The deal usually includes supporting every committee position. It means beating off amendments that would trim the bill back or that represent somebody's last-ditch effort to add a little project in his district. It is fairly clear. If members of Congress want a dam or bridge or an irrigation project in their district, they support the entire public works project. If they do not, they could lose their little item. That is logrolling in its purest form, an art of negotiation.

Agricultural interests play the game pretty much the same way. We Americans are periodically told that American farmers represent 4 percent of the population. Some of us wonder where this 4 percent gets the political clout to continue all their subsidies. What they do is very interesting. The agriculture people from North Carolina, where agriculture means tobacco, discuss their problems with the man representing the rice growers in Arkansas or California. The sugar beet growers in Minnesota and sugar cane interests in Louisiana and Hawaii and the wheat and corn and soybean and other producers just gather together in one great big happy family to be sure there is a subsidy for every commodity. They put those numbers together again so that they have at least 218 supporters in the House and 51 in the Senate. A supporter of the tobacco subsidy automatically becomes a supporter of the wheat subsidy, or the sugar quota, or the soybean subsidy, or whatever else follows.

Negotiation within a Highly Structured System

The opportunity for negotiation, personal or institutional, is almost infinite within a highly-structured system such as the Congress of the United States. Practices have been developed over years of interaction and experience. There are people there who provide the corporate memory about how one does things appropriately and inappropriately. So it is a finite system, and it is quite different from the system that one copes with when one goes beyond the nation's borders. There is a distinction between any negotiation which takes place within any structured system, be it the United Nations or OPEC, and those which take place between, for instance, the government of the United States and the authorities in Tehran during the hostage crisis. In that instance there were two systems operating with each other that could hardly communicate with and understand each other.—Harold H. Saunders

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The greatest practitioners of this kind of negotiation are the heavily subsidized dairy interests. You will not find a representative of the dairy industry who is not an ardent supporter of the tobacco subsidy. That is practicing the classic art of negotiating by getting together enough of a force to pass legislation

that if voted issue by issue would fail. This is done in diplomacy as well.

Staff-Level Negotiations

One of the most interesting forms of negotiation in the Congress does not involve the members but their staff members. This is particularly important in the Senate.

At the present time, the average senator is spread very thin. These days U.S. senators have become, if not world figures, at least national figures. They spend most of their time on the public relations aspects of their work and often have very little time to study legislation. As a result, the Senate staff member who is assigned to a specific topic becomes the person to negotiate with—not the senator. One of the inherent problems is that one cannot tell from talking to a senator's assistant if, in fact, that senator is following the issue at all. The assistant may be striking out on his own. That applies to all 100 senators.

These days Congressional staff people conduct their own negotiations, put a bill together, and then try to sell it to the members. So when you hear within the State Department that a particular senator favors this or that legislation or policy, you are never sure that the report is accurate. What you may be doing is negotiating with a staff member who has not bothered the senator with any details. One of the tricks is to bypass the staff to get to the member. The member then gives an order and all is changed.

"Political" Years

In Congress the art of negotiation, and therefore the art of compromise, is best practiced in odd-numbered years. Even-numbered years are political years, election years, in which compromise becomes much more difficult. The general rule followed in Congress is to deal with all the difficult issues in the odd-numbered years and to take on just the bare bones items in the even-numbered years. However, politics has raised its head prematurely because of early campaigning for the 1984 Presidential election. As early as 18 months before the election, there was a cattle stampede of candidates and a great deal of press speculation on what impact every governmental decision would have on the 1984 election. This kind of press speculation makes negotiations extremely difficult, especially between the Execu-

tive Branch and the Congress. It also complicates life in the Congress, because it fosters premature political posturing.

Negotiation and compromise work especially well during a lame duck session. Then negotiations go very, very smoothly because there is no political motivation. It is amazing how easily some issues can be resolved by negotiation under those circumstances.

Despite the fact that most members of the House and Senate will say that they are motivated entirely by pure political philosophy, party loyalty, or regional loyalty, the facts of life are that there is an awful lot of practical negotiation going on. Rules and traditions allow for it; they have been perfected in great measure and, except for the brief period before an election, the system works very well.

A Model for Negotiation and Mediation

Thomas Colosi

There is a great deal of negotiating going on domestically and internationally, and those who know how to negotiate well are usually richly rewarded. However, we still do not teach the principles, theory, process and skills of negotiation in our society. We do not teach it in our secondary schools or in our schools of government. Our business and law schools are just beginning to teach the subject in a meaningful way.

Although we do not teach negotiation with any uniformity, practitioners such as those presenting papers at this conference provide various and sundry groups with education and training in the negotiation process. For example, in addition to the Foreign Service Institute, I work with the American Society of Association Executives, a very prestigious group of people who manage a range of associations, from those that distribute medical supplies to those that make truck vehicle bodies. It is the private sector personified. Large law firms also have expressed needs for training in negotiation. I have trained 45 attorneys from a firm in Washington, D.C., to give them a better idea about the arts and skills of negotiation. Similarly those involved in school desegregation disputes, native American land takeovers, land use or environmental disputes, prison disputes and so on are beginning to note a greater need for training in negotiation.

The model for training these groups, which I am about to describe, was developed through much trial and error. As a practitioner, I believe that that is probably the approach I am most comfortable with. The model now used links the articulated training need and the sophisticated world of negotiation.

Common Confusions about the Negotiation Process

The process of negotiation often is confused with other decision-making processes such as litigation. Many people have a perception of how the litigation process works, and they conduct themselves in the negotiating process much like they be-

lieve people should conduct themselves in the litigation process. As a result, they are far too adversarial and argumentative, thereby creating unnecessary problems for themselves.

The second confusion is the belief that the *essence* of negotiation is extremely complex when in reality the essence is quite simple and very human. The negotiation process provides the parties or disputants an opportunity for parties to exchange promises and commitments through which they will resolve their differences and reach an agreement. Trust is key to the success of any negotiation. Groups and individuals will not exchange promises or commitments that they really expect to see fulfilled with groups or individuals they do not trust. When trust is low, communication is low. When communication is low, mutual education cannot take place, and education is the most constructive thing that can take place in any negotiation.

The third confusion is the idea that negotiation is a simple process. People believe that all you do is sit there, and if you are not the spokesperson, you take a few notes, make a few comments, and caucus, and the negotiations somehow go forward. The model I have developed helps communicate some of the concepts, and shows the complexity of the negotiating process. Here the model is somewhat simplified for the sake of clarity. Over the years (and with several modifications), it has shown itself to be valuable in transmitting both the fundamental and some of the sophisticated elements of the processes of negotiation and mediation. This model has been expanded successfully from bilateral relationships (commercial transactions, labor-management relationships) to trilateral relationships (as in prisons and partnerships with three principals) to multilateral relationships (environmental, community and international disputes) and expanded further to include various neutral third-party involvement, such as conciliation, mediation, fact-finding, and arbitration.

The Conventional Perception of Bilateral Negotiation

Negotiations are typically depicted as involving one entity sitting across a bargaining table from a second. One side presents its demands or proposals to the other, and a discussion or debate follows. Counterproposals and compromises are offered. When the offers are eventually accepted on both sides of the table, the dispute is settled and an agreement is signed.

Within this model, all the interesting and relevant action is presumed to occur back and forth between the two sides. The model also assumes that both sides are monolithic, even if represented by bargaining teams. The way in which the participants are billed—labor vs. management, prisoners vs. guards, environmentalists vs. industry, nation vs. nation—assumes that all team members share a common goal, common objectives, and the same set of demands, agree on a strategy for handling the opposition, and have come to the table with equal enthusiasm for the negotiating process.

Delegations Are Not Monolithic

I remember attending one world conference where the Japanese delegation had 93 delegates and, when asked why, it turned out that they could not agree on who was going. So six different ministries went and sent back six different sets of telegrams to Tokyo. We never did figure out who made the final decisions.

At another conference, during each of the three weeks a different minister headed the West German delegation. They could not agree on which ministry was in charge. The net result was that the delegation had no impact whatsoever on the final outcome of the conference.— John W. McDonald, Jr.

Unfortunately the conventional model of negotiation obscures much of the richness and complexity of the bargaining process. In actual practice, bargaining teams seldom are monolithic. Team members often have conflicting goals, strategies, objectives, tactics, perceptions, assumptions, and values. In order to have an effective negotiation, some sort of consensus must develop internally before agreement can be reached with the opposite team, which should be going through the same consensus-building process.

Stabilizers, Destabilizers, and Quasi-Mediators

Within each team, members usually hold quite different attitudes. Some tend to settle at any cost. They may be called

"stabilizers." They seek agreement with the other side to avoid the disruptive consequences of nonsettlement. Depending on the context of the case, stabilizers see nonsettlement as reverting to lengthy, expensive, or disruptive alternatives, such as litigation, strikes, demonstrations, riots, and wars. These people usually understand negotiation to be a stabilizing process and bring others to the negotiation table in the hope that nonsettlement could be avoided. A second general type, the "destabilizers," do not particularly like the negotiation process. Destabilizers tend to disagree with most of the proposals of their own team and all of the counterproposals of the other side. They would rather see the dispute settled by adjudication or by disruption through raw contests of will and power than by compromise on a given position. The terms that the destabilizers would accept are far more stringent than those acceptable to the stabilizers.

In the middle on each team there is a third type, the "quasi-mediators," who play several roles. They are usually spokespersons charged with responsibility for the success of the effort. To those sitting across the table they may simply look like other negotiators, but within their own team they often act as a mediator between the faction of stabilizers and the faction of destabilizers.

Horizontal, Internal, and Vertical Negotiations

Relatively little true negotiating goes on horizontally across the table. Instead, speeches are made, symbols and platitudes are thrown out, emotions are displayed, and some signaling occurs. If the communication is healthy, the two teams use the contact time constructively to educate each other on each other's position and rationale across the table. Except for this opportunity to educate and to learn, however, all of this may be less important than the activity going on internally within the negotiating team.

A team is rarely independent of a larger constituency. It is at the negotiating table because it has been sent there to accomplish something. In the context of private sector labor negotiation, for example, management's vertical hierarchy is the company's leadership; for the union's bargaining committee, it is the international union and, most times, ultimately the membership who must vote to decide on a proposed contract. There are almost always important negotiations that take place be-

tween a team and its vertical hierarchy at one point or another in the negotiating process.

Marshalling the Appropriate Opposing Negotiators

Just finding the right people to negotiate with can be very difficult. The worst thing you can do is begin to negotiate with some outstanding bureaucrat who has no power or who is about to be shot or who does not represent the primary interests you are trying to deal with. In collective bargaining, for example, you have to find out who to talk to. You should know more about the other side than you do about your own side. Then, in addition, you must persuade your adversaries that it is in their interest to negotiate. Once you have gained their approval of the process (and that is sometimes impossible and sometimes barely possible) you have to select your own team. Negotiating with your home team can take a lifetime. You should try to settle those conflicts in advance. At the State Department, you have to settle conflicts with other parts of the government, with the business interests, and with social interests, and so on, before you are prepared yourself to go to a negotiating table.—Robert Coulson

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The negotiating team members are continually being re-educated through the horizontal negotiations occurring at or near the negotiating table. Thus, they are frequently far more advanced in their thinking than are their constituents or the final decision-makers back home in the vertical hierarchy. The resulting gap can be a dangerous trap for all concerned. Part of the art and skill of being a negotiator is recognizing how far from the constituents the bargaining team has moved. Negotiators must also know when and how to go back to educate their own constituents. In the same way, spokespersons or quasi-mediators must continually recognize just how far they are or have moved from the stabilizers and destabilizers on their own team. They must not get so far ahead of the parade that they can no longer hear the music.

Sometimes the vertical hierarchy will tell negotiators what they should achieve at the negotiating table, but after several sessions with the other side the negotiators may come to believe that they simply cannot deliver what was asked. It is within this

context that negotiation between the team and its own vertical hierarchy takes place.

Internal Team Negotiations

Resolution of differences between the stabilizers and destabilizers is a prerequisite for effective negotiation with the other side, as well as for reaching accommodation with the team's own vertical hierarchy. When a team is considering making an offer, for example, the stabilizers will probably want to present a generous package while the destabilizers may not want to offer anything. The quasi-mediator must begin to explore with the stabilizers why the concessions might be excessive and probably unacceptable to the team's vertical hierarchy and to discuss with the destabilizers why the proposal may be good and why the team should not be so rigid, since the costs of nonsettlement may be unacceptable. Much like a neutral third-party mediator, the quasi-mediator may choose to meet jointly and separately with the stabilizers and nonstabilizers.

It is easy to see why internal negotiation tends to be far more extensive than the horizontal negotiation that goes on between the two teams across the table. Each proposal and counterproposal that has been brought up will be discussed and perhaps debated during the internal team negotiations. Unfortunately, if the team is not well disciplined, this discussion may take place at the table for all to see.

Outside Forces

The activities that are important for the potential outcome of a given negotiation are far richer and more widespread than the actual discussions at the conference itself. There are a few exceptions to that, but it is true in most negotiations. The signals of intent, of capability, of staying power and the things which shape our own and our partner's expectations and those of our adversaries in the negotiations are affected by a great many things outside the conference room. And, even if we focus on it, those of us who are in the government are not always able to marshal all these outside forces and dynamics that impinge on the outcome of negotiation.—Fred C. Ikle

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Multi-Party Negotiation

The most important difference between two and multi-party negotiation is that the latter opens up the possibility of various configurations or partial agreement. For example, if there are three parties—A, B and C—they may come to full agreement or no agreement, but they also may be able to forge alternative side deals. Any two parties may strike a deal that disregards the interests of the third party. Were A negotiating with just one other party, it could simply weigh any proposed settlement against the consequences of nonagreement. Here, however, A must also compare a possible settlement with both B and C with the advantages of different agreements with B alone or C alone.

Moving from three parties to four, five, and beyond increases exponentially the number of theoretical alliances, the opportunities for partial agreements, and subsequent problems that may flow from a lack of full consensus. Even when the particular circumstances of a given case make some theoretical alliances unlikely, it should be clear that communication and fact-gathering become progressively more difficult as the number of negotiators increases, as necessary as they may be. Indeed, the complexity is even greater than might at first be apparent. Some coalitions may hold for the entire negotiation, but often alliances shift with various issues or over time, as events, personalities, and loyalties change. Full consensus-building among multiple adversaries thus is always a most difficult and delicate balancing act.

Finally, the presence of so many parties at the table usually will mean that there is much more business to transact. The important education process, described earlier, is more difficult and usually requires much more time, as the negotiators at the table have the additional burden of carrying far more information back through their various vertical hierarchies, each of which has its own decision-making process. It is not unusual for multilateral disputes to take months, even years, to settle.

Quasi-Mediators and Mediators

Up to this point no outside, neutral third party has been introduced to the core model of negotiation. Outside mediators enter disputes for a very specific reason: to fill a trust vacuum that exists when an impasse is reached among and within the

parties. The quasi-mediator and mediator play separate yet related roles; although both use the creation and maintenance of doubts to move other negotiators closer to settlement. The quasi-mediator, like the other negotiators, has personal, organizational, and institutional stakes in the outcome of the negotiation process. The truly neutral mediator does not. The quasi-mediator also has some power to make decisions about substantive and procedural issues. Whatever power the mediator might enjoy is procedural if the parties are in agreement with the process and judgments of the mediator.

Role of the Mediator

The third-party neutral mediator's first job is to obtain the trust of all parties. This is not an end in itself, however, rather a means (a temporary one at that) toward larger objectives. Mediators win trust principally by carefully demonstrating by obvious and subtle behavior that they are truly neutral.

There are a number of techniques that mediators may use to demonstrate their neutrality and win the parties' trust. Mediators must, for example, listen and not say very much in a joint conference and in early caucuses; likewise, they cannot reveal their emotions and personal attitudes. Taking care to express only positive or neutral opinions of the groups involved in the dispute is one important approach. Mediators must avoid giving any impression that they would bad-mouth any party behind its back. They should listen to any party's ideas with an open mind not just to obtain a comprehensive view of the problem, but to set an example by showing that there is little risk in entertaining other points of view. Mediators should emphasize they are participating only to help the parties, and that they have absolutely no decision-making authority regarding the substance of the issues. Mediators must also assure the parties that their conversations will be held in strict confidence.

Mediators may also be able to use other processes for gaining trust. For example, parties who are leery about entering mediation nevertheless may be willing to engage in third party fact-finding. Viewed narrowly, fact-finding is a process for gathering information for the purpose of better understanding and organizing the issues, positions and rationale in a dispute, and giving advice about possible settlement areas. In fact-finding, unlike arbitration, the parties are not bound by a fact-

finder's recommendations. Sophisticated mediators, however, see broader potential in fact-finding. Disputants who initially would have refused to mediate might engage in fact-finding because each party is secure in its perception and analysis of the "facts." After some informal fact-finding and some careful prodding by the mediator, they might agree to come to the table with the mediator.

Preparation of a Mediator

It is very striking how "naked" a mediator is. If two parties are negotiating with one another, presumably each has a command over the necessary analytical material; one party may even be sitting on part of the ground that is being negotiated about. If it is the other side who lost the ground, that side formerly owned it and knows a lot about it. An American secretary of state entering a situation like that as a mediator is very vulnerable.

America never controlled the ground on either side of the Suez Canal or the Golan Heights. We do not know where the oil fields are. Therefore the preparation of a mediator, giving him his own independent analytical base, is essential. The president of the United States or the secretary of state cannot be out there by himself, to be taken to the cleaners by the side that has the better knowledge. Over the nine years I was engaged in this process, an American mediator never got caught short not knowing something. As a matter of fact, there were Egyptians who did not know where their own oil reserves were when we knew where the reserves were in relation to the lines that were being placed on the ground above them by one of the negotiating parties. That preparation was terribly important.—Harold H. Saunders

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The process of enhancing trust in the mediator is not without risk. Inexperienced mediators frequently feel somehow empowered by the confidence and acceptance that the disputants may quickly show toward them. Mediators must keep in mind, however, that their perception of power often flows from the parties' need to fill the trust vacuum. Furthermore, their perceived power is only an early and temporary phenomenon in a developmental process that should ideally lead to the empower-

ment of the negotiators themselves through the help of the mediator.

Having obtained the parties' trust, the mediator must next work to transfer it from himself to the negotiation process. The parties must be shown that it is the negotiation process that is the way through their problem. They must understand the process before they can value it. Specifically, they must become comfortable with the negotiation process, experiment with it, and use it to achieve actual successes. In the early stages of a dispute the best kind of intervenors often will avoid substantive issues, and instead concentrate on procedural matters as they work to educate the parties about negotiation and mediation. The parties should know that mediation is available if they want it, but they should not move into mediation until they really need it.

Because negotiating skills are not taught in our society to any great extent, there is very poor understanding about how the negotiation process works. As a result, many people do not trust the negotiation process *per se*. Indeed, the concept of trusting a *process* is not even part of conventional thinking. People tend to concentrate instead on whether or not another *party* should be trusted. When there is a trust vacuum, however, this orientation creates a major problem: it may be too big a leap from no trust to trust in another person. Some interim step is needed.

Once the interim steps have been taken, once there is trust in the mediator and in the negotiation process, the professional mediator must work very hard to transfer that trust to the parties themselves. This can occur in two ways. First, the mediator acts as a "role model," showing the parties the importance of listening and showing respect for other people's opinions and limitations. The mediator helps the negotiators create an environment where it is safe to trust the other party by encouraging the negotiators to develop a statement of a mutual goal. Second, trust is established among the parties through practice. The preliminary stages of negotiation involve some cooperation among the parties in relatively simple process decisions. These may involve minor procedural matters, "housekeeping issues," if you will, yet over time they provide a shared experience that allows the parties slowly to develop a more trusting relationship, one that is essential when high stakes issues are approached.

The core model of negotiation presented here does

contemplate an outside, third-party mediator when necessary, though, as was stressed, some of the negotiators themselves may perform important mediating functions. Quasi-mediators may work within their team or between a team and its vertical hierarchy to try to build agreement. In cases where there is enough trust among the parties to allow these sorts of exchanges, there may be no overriding need for an outside, third-party mediator. Where trust is lacking, however, such a mediator can help generate it.

Mediation is simply an extension of the negotiation process. Effective mediators rely on the same tools that effective negotiators use: the creation and maintenance of doubt. In some instances, of course, neutral outside mediators may be able to use this approach more effectively than the parties actually included in the dispute. When one negotiator questions another negotiator's views, the statement may be dismissed out of hand as being self-serving. Because neutral, outside mediators are perceived as having no stake in the terms of the settlement, they may well be more successful in getting disputants to reexamine a position. By and large, of course, it is not the mediator's role to tell disputants that they are wrong, but it is certainly proper for the mediator (much like the negotiator) to try to convince the parties to think through all the possible consequences of the stand they have taken. This sort of probing, thorough questioning almost always leads to the creation of doubts.

The Mediator's Capacity to Raise and Maintain Doubts

Effective mediators create and maintain doubts by raising questions about alternatives and implications that the negotiators may not have considered or fully appreciated. Like any good negotiator they avoid flat statements. If, for instance, a mediator wants a negotiator to think about the reaction of the negotiator's superiors to a certain proposal, the mediator is better off asking, "What would your boss say?" rather than declaring, "Your boss would not support you on that." The same axiom would apply in a situation where a mediator and a negotiator are discussing a negotiator's decision to leave the multilateral negotiating table. Assuming that the negotiators are using full consensus in their decision-making process, the mediator might privately say to the reluctant negotiator, "The other

parties might come to some decision in your absence. Have you considered the implications of your not being present to veto decisions that would hurt your side?" The use of questions rather than statements gives negotiators more room to respond and more freedom to consider what the mediator is saying. It also allows the mediator to play a more neutral, laissez-faire role as declarations tend to be more leading and value-loaded than questions. The negotiators are thus subtly encouraged to take maximum responsibility in the negotiation process.

As noted earlier, most important negotiating takes place in the internal team caucuses. As a consequence, this usually is where the mediator is most active as well. Private meetings are usually the best forum for the mediator to raise doubts, so it is here that most probing will be done.

During horizontal (across-the-table) negotiations, assuming the atmosphere is conducive, each team tries to educate the other about their respective positions and rationale. The negotiators try to raise new doubts in the minds of their counterparts. As a result, a new set of assumptions and proposals may become plausible. (New issues and problems may arise, as well.) In this phase of negotiation, the stabilizers and destabilizers tend to open up to each other in the caucuses when these new concerns are discussed. If the quasi-mediator is unable to create doubts in the destabilizer's mind, an outside, neutral mediator may be enlisted before the team resorts to autocratic decision-making or internal disciplinary measures to bring the dissenter along. Committed to stability, which is represented by settlement, the mediator concentrates on internal team negotiating and similarly tries to raise doubts about the viability of nonsettlement in the minds of the destabilizers. Sometimes the emphasis is less on outcomes and more on process. If the destabilizer does not trust the negotiation process, the mediator must raise doubts about the viability of competing process alternatives.

Parties Who Will Not Settle

It should be noted that a few disturbances on a negotiating team may be healthy, as they assure to some extent that the stabilizers and quasi-mediator will be forced to consider the negative aspects of a potential settlement. However, what can a mediator do if an entire team is comprised of destabilizers?

Some negotiators enter the process quite willing and demonstrate a strong commitment to meeting with the other side to

discuss the issues. They may spend days huddling with their counterparts, caucusing among themselves, and reporting back to their constituents. Yet in spite of all this activity, these negotiators are more committed to just talking rather than to settling. For them negotiation may only be a device to stall for time. They may be waiting for the other side to exhaust its financial and or other resources. They may have calculated that in time public opinion will shift in their favor. Time may be needed to prepare a lawsuit, launch a media campaign, or use some other external pressure on the other side. It may simply be that these "negotiators" prefer the *status quo* to any foreseeable alternative.

Negotiations to Deflect Political Pressures

Negotiations are not always intended to reach a conclusion. They are sometimes intended as a deflection in the face of political pressures. I do not mean to suggest that there are such negotiations going on now, but there have been historical cases where Presidents pressed to do something have begun negotiating. I think there have been cases where it has been made clear to the negotiators that they are not to reach a conclusion.—David C. McGaffey

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A group may privately know that it never wants to settle, or it may simply be buying some time to assess its priorities. Perhaps an organization may enter negotiations just to keep its future choices open; this is particularly likely if it has only begun to research the issues, hire staff, and assemble resources. If negotiation is being forced while the hierarchy of an organization is still in flux, the negotiators at the table may have to stall until these lines of responsibility are more sharply defined. A negotiation team may simply believe that no settlement is possible, but it may desire to continue the negotiation process until its vertical hierarchy fully appreciates this fact and is prepared for the consequences. This is particularly important if an organization has much at stake in settlement, such as proving to its members its effectiveness in solving problems or in winning against adversaries.

How can a mediator tell when a team is using negotiations

to bide time? Often, of course, it is as simple as asking. Mediators who have the trust of the team may find that negotiators will talk to them openly in caucuses about their expectations and intentions. The negotiators may be carrying out orders from their vertical hierarchy, instructions with which they may not entirely agree. In such a case, the negotiators may be searching for something to bring back to their constituents (the vertical hierarchy) which will convince them that settlement is superior to any competing strategy. The mediator's informal assessment of the case can be just such evidence. The negotiating team may be able to use the mediator's assessment to foster doubts among their own constituents in order to lessen their resistance to settlement.

There are cases, of course, when the negotiators are not candid about their desire to use the process to stall. The team may agree with the instructions of its vertical hierarchy, or it may have decided on its own to play for time. Negotiators who oppose settlement do not fully trust the activities of the mediator who is working hard for resolution.

How can the mediator penetrate the defenses of the negotiators to learn their real aspirations? One technique is to test the negotiators with alternative proposals, asking them how they would respond to hypothetical offers. Because the negotiators can never be certain if the mediator is floating actual proposals from the other side, they may reveal hints about their real agenda. This is particularly true if the mediator dangles a very sweet sounding proposition. Experience as a negotiator usually helps a mediator recognize responses and intentions of the negotiators. The most important qualities of a mediator are the ability to listen and to analyze.

Mediators always must be extremely careful to emphasize that such offers are strictly hypothetical and should *not* be read as messages from the other side. There are three distinct dangers: erroneously raising the expectations of any of the negotiators, misrepresenting any side in any way, and violating their own standing as neutrals. To be effective, mediators must avoid these pitfalls yet at the same time avoid appearing too tentative or coy if they are to plant the seeds of necessary doubts. The "trial balloon" must have both plausibility and desirability. The negotiators who are examining it must be made to perceive that there is risk in expressing noninterest in what actually could be an attractive approach.

The mediator's approach of using reasonable hypotheticals serves different purposes at different stages of the negotiation. In the early stages, the mediator may properly interpret a negotiator's reluctance to discuss hypotheticals as revealing some lack of trust or even a lack of interest in settlement. It may take time before the parties are ready to disclose their true priorities to the mediator. If this reticence persists even as the final deadline approaches, however, the mediator may well be justified in doubting the negotiators' willingness to accept any settlement. Conceivably, the reticence could still be related to distrust of the mediator, of course, but if that is the case, it may be time for someone else to fill that role or for the parties to bypass the mediator. (It is the negotiators who are responsible for making this decision.) A far more likely explanation for the negotiators' reluctance to respond to reasonable hypotheticals is that there may be simply no settlement that they are prepared to accept.

Once it has been determined that a team is negotiating just to buy time, a mediator faces a situation between the contending parties that is similar in many respects to the internal process that occurs within a team between stabilizers and destabilizers. The destabilizers are those who must be convinced by the quasi-mediator (and the stabilizers) to remain at the table, to listen to the message of the other teams, to consider their arguments, and ideally, to revise their positions to enable their negotiating team to offer deliverable proposals. The quasi-mediator first tries to raise doubts in the minds of the uncooperative teammates about the consequences of nonsettlement. (What losses would be incurred: a strike, litigation, violence? Can the group afford such losses?)

A team dedicated to non-settlement occupies the same position in horizontal negotiations as the destabilizer does within the team. It, too, may be uninterested in settlement. In this instance, however, it is the mediator rather than the quasi-mediator, who steps in. Although the person is different, the role is much the same. The mediator relies on the same basic technique of raising doubts about the team's decision to stall, probing to see if all the implications of nonsettlement have been evaluated.

In spite of the important parallels, there is at least one distinction between the two situations. In the case of an internal negotiation, a stubborn destabilizer may be overruled by what-

ever form of discipline the parent organization uses to control its members. The quasi-mediator and stabilizers, therefore, can control the internal team bargaining process if they ultimately can invoke the disciplinary machinery. (Again, in some instances a third-party neutral mediator may be called in by the quasi-mediator to help with the destabilizer on the team.) When it is used successfully, the team is able to negotiate across the table as an apparently monolithic force. By contrast, the neutral mediator has no such force to apply when working between two negotiating teams. What should such a mediator do when it is clear that an entire team is opposed to any agreement—even after the mediator has attempted to raise all possible doubts about that strategy, yet for some reason the team wants to prolong the negotiations? Does continuing to help such a team violate the mediator's own fundamental commitment to settlement?

Not Every Dispute Should Be Negotiated

Many disputes should be left alone. Certainly the United States should not feel it has to resolve every dispute. Because the United States has a vested interest in almost everything that happens in the world, it will not be regarded as impartial in many disputes that it might be tempted to stick its nose into.

There is no peace. Even in domestic disputes, there is no peace. There is always conflict and hostility and competition. In world affairs, there is certainly never going to be peace. There is always change and a need for change. If a country tries to settle disputes that it should not, it will be accused of standing in the way of change. It may be doing a disservice to people who want change and should be involved in conflict.—Robert Coulson

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Although the mediator is deeply committed to settlement, this commitment rests on an even more basic belief that settlement is in the interest of the negotiators. Yet if it becomes obvious that a party has carefully considered its position and has determined that settlement is not in its interest, then after appropriate probing the mediator ultimately must accept the party's own judgment.

In such instances, the mediator must decide whether or not to participate in a negotiating process that will not produce an agreement. One productive role that he might take on would be to help the parties develop and implement a process for managing an active conflict that they cannot bring to a close. The outside neutral may also let the parties know that he or she stands ready to continue to mediate, should conditions change enough, in the parties' minds, to warrant such an effort.

The Mediator's Values

The mediator intervenes to help the parties reach some settlement. But what kind of settlement should the mediator be helping the parties to reach? Professional opinion is sharply divided on this issue. One group of practitioners and theorists contend that mediators have a professional obligation not simply to help the parties reach agreement, but to assure that the agreement is somehow a "good" one. Those that emphasize the quality of agreements are particularly concerned that settlements are fair to the disputants, that they are efficient, that they are comprehensive with respect to the issues in contention, and that they are not likely to fail.

Others contend that any settlement reached by the disputing parties is a "good" settlement, and that a mediator should be concerned only with helping disputants to agree. Proponents of this view believe that mediators who attempt to make an agreement "fair" or "workable" necessarily must turn to their own system of values and that doing so constitutes an irresponsible imposition of personal objectives or values upon the wills of the disputants. Fairness and feasibility, it is argued, are inherently subjective commodities; mediators who try to impose their values and perceptions of what is fair and workable have gone far beyond their authority in my opinion.

This second group characterizes the mediator as value-free. "Any settlement is a good settlement," they would say. To a large degree, the model of negotiation developed here is consistent with the view that settlement is paramount.

At times, the mediator will feel that the negotiators may be moving toward a settlement but that it is not a "good" one. To a limited extent a mediator may probe and question each negotiator's decision-making process but must cease raising doubts once satisfied that the negotiators have thought through the implications of their choice. Strictly speaking, even granting

Hidden Agendas

I attended the U.N. World Conference on Technical Cooperation among Developing Countries in Buenos Aires in 1978. Halfway through this meeting a hidden agenda, which had nothing to do with the formal agenda, emerged. That is something that one has to be very attentive to and look out for because usually in these major meetings, there is some kind of hidden agenda.

This hidden agenda was the first move on the part of the Group of 77 (now a group of 125 developing countries) in a power play to make the General Assembly of the United Nations the all-important, all-powerful centerpiece in the U.N. system. In other words, they were trying to insure that all important issues would move into the U.N. General Assembly for decision where the G-77 of course, have an overwhelming voting majority.

At this particular meeting, they proposed, out of the blue, that the 48-member nation Governing Council of the United Nations Development Program become a council of 158 member nations. The U.N. Development Program is supported and financed by voluntary contributions from member states, as opposed to assessed financial contributions, which are required by treaty to be paid by states because of their membership in the organization. Most of the 11 heads of delegation represented the leadership of this 140 nation gathering but they were not familiar with how the United Nations operated, how the U.N. Development Program was funded, or what the difference was between assessed and voluntary contributions. It was a matter of explaining in considerable detail and at some length how this mechanism worked. In the process, we were actually also developing a trust relationship. To me that is an absolutely essential factor in the success of any negotiation, to try to let the other people know that you are really not out there to shaft them, that you are trying to work together to come up with a common solution. And so, a great deal of time was spent convincing the group that if they increased the size of the Governing Council, the U.S. Congress, which was the principal contributor to the substance and funding of the U.N. Development Program, would dry up their funding completely. In other words, the goose that laid the golden egg would be killed.

At 3 o'clock in the morning we developed a common perception that it was to the mutual advantage of the developing world and the developed world to keep the U.N. Development Program fund intact and have it continue to be controlled by the 48-nation Council rather than by 158 nations. After that understanding was finally achieved, it took us only three hours to develop the kind of face-saving formula that we needed to get us over the hump and into a successful conclusion of the world conference.—John W. McDonald, Jr.

mediators this limited responsibility gives them some measure of influence in decision-making as related to process choices but not choices in the substantive areas of dispute. So that this influence is not abused (and so that it does not compromise their neutrality), mediators always must remember that the negotiating process belongs to the negotiators.

Conclusion

The bilateral model described here is based on the assumption that the negotiating process can be managed once better understood, that the groups who are going into a negotiation can sit down and establish an overall goal, develop an overarching strategy, and set objectives and appropriate tactics along a time-line. I encourage scrutiny of this model and some of the concepts and theories that flow from it by the international community. This is a particularly difficult challenge, because as more and more parties are added to the bilateral model the result is a complex multilateral model that must also be superimposed with multi-cultural and attendant national interests and language differences. The model has potential application whether the subject matter of negotiations is essentially political, economic, or military. It is important to note, in addition, that this model is appropriate to analyze the negotiations that occur among various federal agencies, as well as with private commercial interests, attendant to many international negotiations.

Domestic Models of Conflict Resolution: Are They Relevant in the International Context?

David Newsom

Some of us have expressed reservations regarding the concept of federal training in international conflict resolution. We question to what degree domestic conflict resolution techniques can be transferred to the international scene. What has concerned me most is that there is an unreasonable expectation that the models being created to explain and study negotiation and mediation will provide new clues to the resolution of difficult international conflicts, clues that presumably have not been found or used before. Many of the theoreticians have not begun to address the totality of the real issues that govern the failure or success of international negotiations. In my view someone who was suddenly thrust into a serious international negotiation with only these theoretical models to go on would suffer from shock, frustration, and difficulty in understanding what was going on.

There are many very basic differences between what we can do within the United States and what we can do outside. Without denying the relevance of domestic models, those of us who have been involved in the resolution of international conflicts feel that these models only begin to touch the complexity of disputes between and among nations. Now let me suggest some of the significant differences.

Conflict resolution within a domestic environment takes place, particularly in this country, under the umbrella of a society with a common body of law and a judicial system and certain broad understandings about how conflicts are resolved. Arbitration is accepted as an acceptable tool. Litigation is possible if all other approaches fail. But in the international realm, arbitration is only reluctantly and occasionally accepted in international agreements. The United States is among those nations that refuse to accept without qualification the jurisdiction of an international court.

The United States found in the Iran case, for example, that we achieved certain moral satisfaction, perhaps, by taking our case to the International Court of Justice, but we didn't get the hostages out.

Second, international disputes are not between individuals or organizations, but they are between separate political systems, often very different one from the other. Politics determines not just the issue, but also how the issue will be resolved. The theoreticians hope that those specifically trained in international negotiation will be utilized in major crises. This assumption is not warranted. The United States did not look for an experienced mediator or diplomat skilled in conflict resolution to send to Central America. It chose a former senator to whom the administration owed a favor. Admittedly, he has knowledge of Central America and perhaps he will be successful. But the point is that in international disputes, the ideal will more often than not give way to the reality of political requirements.

Third, the bureaucratic complications of an international negotiation, particularly one involving the United States, are far more complex than in domestic negotiations. A great deal of negotiation goes on within the U.S. government and within a delegation before we enter an international conference. The internal debate is intense. Unlike some of the models which paint the picture of different views being ironed out within negotiating teams, in most cases negotiating teams have some very precise instructions which limit that process in an international negotiation. Teamwork becomes extremely important.

Fourth, negotiators on international disputes operate under very serious constraints. They are not "decision-makers." Even when a President goes into a negotiation, he carries a degree of restraint and baggage because of our constitutional system. Negotiators go into a negotiation with those that they represent looking over their shoulders, and reading the numerous telegrams that are circulated within the bureaucracy to determine whether they're following instructions, whether they're weakening or should be recalled or reprimanded.

While hypothetical trial balloons might be used effectively in a domestic setting to get reactions, they can be very dangerous in international negotiations and can be easily taken for official feelers, often to the political embarrassment of the mediator and the government. It's hard to imagine domestic nego-

Domestic Dispute Settlement Experiences

A great deal of the theory of domestic dispute settlement comes from the field of labor relations, collective bargaining, and to some extent grievance arbitration. However, that may be the least likely place to find useful analogies for international negotiations. Collective bargaining is unique to this country. It takes place under a specialized statutory setting in which the parties must negotiate at the end of their previously negotiated collective bargaining contract. They negotiate under highly structured rules partially developed by custom and partially by law. The union has the right to demand that the employer sit down and negotiate, and the government, the Federal Mediation and Conciliation Service, or some state agency is obligated or encouraged to provide a mediator to help them. So, in no way can the labor relations setting be closely comparable to what takes place, for example, in the Arab-Israeli controversies.

Nor are the negotiating techniques used in business disputes particularly relevant. Commercial parties in this country are represented by attorneys who have developed their own methodology for how negotiations take place. If a businessman cannot resolve a dispute on the phone or in a preliminary negotiating meeting, the lawyers take over.

One approach that does have applicability to international negotiation is the increasing use of joint conciliation or the mini-trial in commercial disputes. Those processes point out that businessmen and their lawyers are aware that they must reach into the corporate structure to find people who have the motivation and capacity to settle a dispute. In a mini-trial, trial lawyers are brought into an informal hearing where they make a presentation, not to a jury or to a judge or to an arbitrator, but to top executives in the two corporations.

In joint conciliation, top executives in the company are designated to resolve the dispute on the basis of their business interests rather than on obscure considerations of legal principles.—Robert Coulson

tiations taking place in the same kind of intense spotlight that shines on international negotiations.

Promises by U.S. negotiators are severely restricted by Congressional review, the authorization and appropriation process, and, in the case of treaties, by the ratification process. The stakes in many international negotiations are far greater than in any domestic negotiation. Failure can have extreme consequences. At some point the question has to be asked whether a

dramatic victory in a negotiation is really in the interest of the country. Is humiliation of the other side in our national interest? There is a longer-term view that needs to be injected into international negotiations.

Skill is required not only in understanding the mechanisms of negotiations, but also in assessing the strengths and weaknesses of another culture and another body politic. This is a theme or an aspect of training for international conflict resolution that needs to be stressed more. To some this may come as a natural art, but for others it requires many years of experience and exposure.

The objective of a mediator is to induce doubt, but in international disputes the doubt is not cast only on the merit of your own position or on the position of the other side. Doubts have ramifications beyond the negotiations; they can affect national morale and even political stability. International negotiations are but a part of a larger significant environment; they are not a game unto themselves.

We can all enhance our understanding of the negotiation process through looking at domestic models. International conflict resolution, however, is more than negotiating. It requires an understanding of the dynamics of our own internal politics as they bear on our foreign policy and on the ability to assess the political scene, not only in this country, but also in the country with which we are negotiating.

The Problems of Pluralism

In the U.S. government the internal dynamics in the Executive and in Congress are a very active process that impinges on how negotiators proceed, limits what they can do, and helps shape the outcome for better or worse. By and large, it is a handicap that we are such a pluralistic government, not just a pluralistic democracy, which we want to be. While it may be said that it sometimes helps if you can tell some other country that we would like to be more obliging and give more economic assistance but Congress won't let us or we would like to continue this form of assistance but there's a law which forces us to cut off those countries which don't do such and such, this interplay of authority and the intense energies and time devoted to the internal interaction do impose a handicap on the United States in international negotiations. Maybe it's unavoidable, but it is important to recognize it.—Fred C. Ikle

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Teaching the Art and Science of Negotiation

Howard Raiffa

A few years back I initiated a course at the Harvard Business School in the art and science of negotiation. The approach that I took was to start, as a mathematician would, with simple problems and then build up. I started off by looking at two parties in a negotiation in which there is one single issue at stake—money, for example. I then went on to two parties with many issues, and then to many parties with many issues. For the most part, international negotiations concern two parties with many issues or many parties with many issues. However, a lot of the points that I want to make can be made more simply by referrring to the case of two parties with one issue.

Role Playing

The pedagogical format that I use is to start off with lots of real cases. The Harvard Business School has a vast store of such cases that I culled through looking for problems that illustrate something interesting in the area of negotiations. Then the students and I discuss the real cases, and I present a metaphorical or allegorical simplification, a simplified version, looking at just the essence of the problem. After that I have the students play the roles of different parties. A student might, in one case, play the role of a manager, in another case a union, or, if it's a merger, another company. They negotiate or resolve some of these role-playing simulations and fill out statistical forms. For example, if it is a simple labor-management game, one person plays labor and the other management. If there are 200 students involved, which is typical for a given year, there may be 100 replicates of people playing that identical game.

The students in that game are given some common information and some confidential information. Sometimes there are specified rules, but lots of times it is up to them how they resolve the issues. When the game has been played, I then collect the material, find out what happened, make statistical analyses, discuss with the students what works and what doesn't

work, try to come to various conjectures in the allegory, and then apply the insight to the real world. Invariably people say, "Well, you've left such and such out of the real world, so therefore what you get in the allegories might be misleading." So the question we collectively explore is what is the essence of the real world situation that we have abstracted out, and how should the allegory be changed to capture this reality?

A Simple, One-Issue Case

Here is a simple situation that I use. There is a halfway house in Sommerville, a town abutting Cambridge, that is a home for about 20 young people that have had some sort of psychological problem. They would like to move their residence to a larger place in a less hectic atmosphere. Presently a developer, who wants the land that the halfway house is on, appears on the scene. The land might be suitable for a condominium or a shopping center. A negotiation then takes place.

There are two parties: the seller, representing the halfway house, and the developer or buyer. For the most part both sides can be thought of as monolithic. It is not like having a State Department and a Defense Department that are at odds with each other but both on the U.S. side of the bargaining table. It is a simple case where there are essentially two parties. They are going to do this negotiation. It is not a repetitive situation. There is no linkage. We don't have to worry that, if we grant some concession in a national treaty with the Philippines, we will have to do the same with Turkey and Spain, etc. There is no linkage of that kind. A single issue is involved: how much money will the developer pay for the house so that the young people can locate somewhere else?

No agreement is required. If they cannot agree, they break off the negotiation. No ratification is required. There is no threat. The developer does not threaten to put up a noxious dump next to the house if the seller won't make a deal. Nothing like that is involved. The single threat is that if the seller does not agree to the price, then the two parties cannot get together and do business. There are no formal time constraints as you would have in a case where there is a strike impending.

Contracts are binding. The parties could sign a contract and the laws of the land would support them. The negotiations are done in private. They are not done with reporters there.

There are no leaks, no public statements. Essentially the people are cooperative, civil antagonists. They have reputations at stake. There are no interveners, mediators, arbiters. This is a typical type of problem, albeit extremely simple.

What happens is that I give confidential information to the buyer and to the seller about what other opportunities there

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An Imaginative Approach

We need more creative thinking in negotiations. The MBFR (Mutual and Balanced Force Reductions) negotiations in Vienna started with a proposal by the Western participants that both the Warsaw Pact and the NATO Alliance reduce their forces to an equal level in the Central European area, an equal level of 700,000 men for ground forces. The nature of our proposal dictated that these reductions would have to be from the present level to this desired level and that we should present our figures on what the size of the forces were now in order to compute the reductions.

After some years of discussion, the Soviet Union and its Warsaw Pact allies presented figures on the size of their forces in the Central European reduction area. Their figures were 150,000 short of our own figures. We re-examined our figures to see if there was a possibility of a sizable error. We could have accused the Soviet Union and made a very strong point of fraud and deception, but we did not think that this would advance the negotiations. We decided instead to ask for a value-free comparison of the figures of both sides on the same forces so that we could identify where we might have made a mistake.

However, we came up against Soviet values of secrecy. They were willing to give us a certain number of data, but not enough to carry out a detailed comparison. Later some of us thought that perhaps we could solve this question by sampling inspections. We proposed inspections of the other side's forces by both sides. The Warsaw Pact has agreed in principle, but it is unlikely that they would agree to inspections prior to and independent of reductions.

A former member of our negotiating team asked me one day why it is that we really do insist on knowing what the figure is at the present time before making reductions. Aren't we more interested in Warsaw Pact reductions to this agreed common ceiling and having an adequate method of assuring ourselves of checking compliance than we are with the size of the force that they now have? I considered that another imaginative and perhaps more fruitful approach. The future will tell.—Jonathan Dean

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are, and then they negotiate. What is tremendously surprising is that, in spite of the simplicity of the negotiation, the outcomes are vastly different from each other. For example, the confidential information to the seller is, "Don't settle for less than $300,000." The buyer is told confidentially not to offer more than $550,000 because he can do better on the outside somewhere else. Thus, in this case there would be a zone of agreement between $300,000 and $550,000. The seller might offer his price after a lot of discussion about how desirable the property is. He might say he would be willing to sell for $650,000. He's not saying that that would be the last price. The buyer might say that he didn't intend to pay more than $200,000. They may come down. The seller may go from $650,000 to $500,000. The buyer might go up to $275,000. And so the protagonists engage in a negotiations dance. Maybe they finally settle for $400,000.

Another pair with identical information might settle for $325,000. Another pair might settle for $500,000. Sellers are told not to settle for less than $300,000, and yet some don't understand the instructions and will settle for $275,000; others will settle for $575,000. It is important for people to understand that no matter how clear you are, people will misinterpret.

I am interested, as an analyst, to determine just how the final outcome is affected by who opens, the value of the opening offer, and the value of the counter-offer.

Naturally, it is important not to apply these experimental cases directly to reality; but the insights you get from the experimental domain very often touch off a deeper mode of thought for people who are involved in realities of this kind.

How Analysis Can Help

One of the things that we do is to make an outline of how analysis can help. We ask a number of questions to prepare for negotiations. What happens if you don't come to an agreement? What are the other alternatives? It isn't so easy to identify the alternatives and cost them out. What is the best alternative to a negotiated agreement? What are some of your aspirations in these negotiations? How do you project yourself into the position of the other party? What are their opportunities? What is their best alternative to a negotiated agreement? What can we find out about how they negotiate, about their responsibility,

etc.? What are the conventions for this type of negotiation? How honest are they? How open are they? How adversarial? Can negotiation be done in stages? Does it have to be done all at once? How credible are commitments? Do they say this is the bottom line and then back down?

Various elements can be discussed: opening gambits, the dynamics of the negotiation dance, closing the deal, etc..

In this case there was a seller and a buyer, and if the seller gets more, the buyer gets less. So the nature of a one issue problem is that if one side wins more, the other side wins less. But, of course, both sides can lose if there is a zone of agreement and they cannot identify it or agree where to settle within it.

Negotiating Many Issues

Typical problems, especially those of relevance to international relations, have many issues and there is a possibility for joint problem-solving. A typical problem might be something like this. The Associated Metropolitan Police Organizations (AMPO) is negotiating a contract with the city about starting salaries for police officers; the maximum salary for police officers; vacation time for officers with less than five years seniority

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Interests and Positions

People do not often tell you about their interests, but you can guess, if you put yourself in their shoes. In fact, a mediator gets his power by having an ingenious solution, figuring out and knowing the interests of both sides and making them dovetail. So does the negotiator. A lot of brainstorming work, a lot of good ideas, can pay off and can lead to a well-crafted option taking the interests of the other side into account.

In the Falklands dispute, Secretary of State Alexander Haig announced that he had succeeded after hours of talks to clarify the positions *of the parties. That just made it harder. Their* interests *were not anywhere near as incompatible as their* positions. *Britain was interested in avoiding a bad precedent for aggression and Argentina in putting everything back on their map—these were interests that were potentially reconcilable. But the positions—"recognize our sovereignty before we'll leave" and "get off before we'll negotiate"—made the confrontation more difficult.*—Roger Fisher

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and more than five years seniority; the status of 14 officers under suspension because they broke the rules; the percent of two-men patrol cars; creation of the right to strike; etc. This is more typical of what actually happens.

Both sides are essentially monolithic. There is common information to both parties, and then there is confidential information to each side, just as there was in the simple case. The results of this simulated exercise are usually very surprising to the students.

The groups of players, after settling various contracts, discuss how they carried out their negotiations. Both players in the first group are reasonably satisfied because each got more than he or she was told to get. Group three, however, comes in with a different story to tell. In group three, the city does a little better than the city player for group one, but the police do a little worse. Group four reports, and their evaluation is a revelation to the others. How can group four get a better value for the city and a better value for the AMPO player? Something must be wrong. After a while they realize that it is not a strictly competitive game; it is possible for both AMPO(4) to do better than AMPO(3) and City(4) to do better than City(3)—simultaneously! Group three was not jointly efficient. They left joint values on the table. It was possible for each of them to do better. This happens all too often in reality.

The harder the problem, the vaguer the problem, the more inefficient outcomes are. And when you include differences in attitudes towards uncertainties, time value of money, risk aversion, symbolic issues, it is very often the case that both sides leave potential joint gains on the table. It is the role of the analyst, the mediator and the intervenor, to see how outcomes can be jointly improved.

Increasing the Complications

Let us move to the next level of complication: there is two-party bargaining, but each party is not monolithic. For example, Ambassador Ellsworth Bunker is trying to negotiate what happens in the Panama Canal. First of all he has to be briefed, but he finds out there are many players in the U.S. government, and they don't agree with each other. His job is to negotiate externally, but probably 95 percent of his effort is on the internal conflict within the U.S. government.

There are interesting questions here. Should internal differences be clarified and mediated before going external? If that is done, negotiations can be more efficiently pursued externally, but locking in a compromise position internally can also put the negotiator in a straightjacket when he negotiates externally. It may be better to live with internal confusion. The synchronization of internal and external negotiations is a rich field for investigation.

As an analyst, I am increasingly interested in international environmental disputes: the ecology of the Antarctic Ocean or the carbon dioxide in the atmosphere. Negotiators must argue the merits of their cases, but they don't know the physical facts. There is a need for some mutual learning. How do they learn together and still protect their own interests? That is a beauty of a problem.

Understanding How Negotiations Work

For about 15 years of my life, I watched negotiators I was trying to learn from and finally came to the realization that they did not know what they were doing. If something went wrong and I asked, "Well, why did it go wrong?" they could not tell me. If I asked, "What did you do right?" they could not tell me. The insight I got was that no one knew. You can assemble a group of great people who have taken part in great negotiations for a discussion, and they all come up with completely different reasons for why the negotiation was successful and how it worked.—Gerard I. Nierenberg

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The Pre-Negotiation Phase

Harold H. Saunders

A Larger Process

Crucial as it is, around-the-table negotiation is only the last stage of a larger process for resolving major international conflicts by peaceful means. In many cases, persuading the parties to a conflict to commit themselves to a negotiated settlement is even more complicated, agonizing, and time-consuming than reaching agreement once negotiations have begun. This is said with a full understanding of how difficult reaching agreement can be.

Policymakers in the White House, the Department of State and corporations need to think in terms of a process which deals with the obstacles *to* negotiation as well as the hurdles *in* negotiation. Unless we enlarge our scope somehow, we're not constructing a theory that is going to be as useful as it might be to the President and the secretary of state in conducting our foreign policy.

In urging that we enlarge our scope, I'm acutely aware that I'm walking into the academic buzz saw called a "definitional problem." When are we talking about negotiation and when are we talking about the conduct of international relations? I. William Zartman and Maureen Berman say in the *Practical Negotiator,** "Long before the first formal session begins, the negotiation process begins with the decision made by each party to explore the possibility of negotiating." My question is, what do we do before that decision is made? Zartman and Berman present a three-stage model which begins with what they call the "diagnostic phase" in which efforts are made to bring about negotiations. My argument is simply to reach back even further and more extensively into the period before a decision to negotiate is made and to analyze it in added detail.

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*(New Haven, Conn.: Yale University Press, 1983), p. 9.

Conflict Resolution vs. Conflict Regulation

Europeans believe that Americans are only interested in solving problems, and that it's the Europeans who know how to manage or regulate conflict. They don't think every problem has a solution.

I believe that that is a stereotypical view of American foreign policy. This thing called the peace process or the negotiating process in the Middle East has itself provided a way of regulating conflict. In the 1970s we didn't think we were going to solve the Palestine problem or end the Arab-Israeli war. We weren't that crazy. What we thought was that we had a process going which was the essence of our strategy for coping with the Middle East. By pursuing an Arab-Israeli settlement aggressively, we got closer to the Saudis, we built joint economic commissions with them and the Egyptians and the Tunisians and the Jordanians during a period when money was accumulating and American business wanted to go there. We also got closer to Israel and built Israel's military forces at the same time. It was a strategy which encompassed our whole approach to an important region of the world. The effort to achieve and conduct a limited series of step-by-step negotiations and reach small interim agreements was the centerpiece of that strategy.

I want to raise this question: When is the secretary of state conducting the foreign relations of the United States by carrying out a strategy for regulating and managing conflict—not resolving it—and when is he actually negotiating? Are we talking about conflict resolution or conflict regulation? When do foreign policymakers pull out the books on negotiating theory?—Harold H. Saunders

Developing a Theoretical Framework

There are two reasons for suggesting a larger process as the framework for teaching and research in this field. First, many of the world's most intractable conflicts force us to spend much of our effort on the pre-negotiation phase before a decision is made to negotiate. We need to know a lot more about how to produce that decision. Second, analyzing the pre-negotiation phase more fully may enable us to establish useful links between negotiation theory and the conduct of diplomacy and foreign policy.

In the Middle East the whole diplomatic and political process designed to produce a negotiation has become the center-

piece of diplomatic strategy. In the mid-1970s, policy statements frequently featured these words: "The pursuit of an Arab-Israeli settlement is the centerpiece of American strategy in the Middle East." At a time when Iran was stable and the Persian Gulf security system intact, this was a reasonable statement because pursuit of an honorable, just, and secure peace was an objective which leading governments in the Middle East could accept. Our cooperation in achieving that objective enabled us to improve relationships on both sides of the conflict. Today, following the collapse of Iran, the resulting disintegration of the Gulf security system, and the Soviet invasion of Afghanistan, we can no longer call the Arab-Israeli-Palestinian "peace process" *the* centerpiece of American strategy, but it still remains central to our policy in the Near East.

The purpose of this discussion is to lay out a framework for analyzing specific elements of this larger process. The purpose is not to provide detailed analysis of the pre-negotiation phase but rather to see whether we can frame a perspective which is useful. Such a theoretical framework could provide pegs on which to hang specific analyses of various elements of the process. It may be a useful device in teaching the elements of negotiation and diplomacy and may suggest for policymakers and diplomats a way of thinking about strategy for crisis management, negotiation, and peacemaking that in itself can become the essence of policy.

If we do not understand where we are in this larger process, we may use the wrong instruments in trying to move it forward. For instance, by the end of the 1970s, many Americans came to think of the Arab-Israeli negotiations in terms of the familiar pictures of Egyptians and Israelis sitting across tables from each other—with lawyers exchanging texts, military men exchanging maps and timetables, and political leaders meeting to sign agreements. Most Americans forgot the nearly 30 years, the terrorist and retaliatory attacks, the five armed conflicts that preceded those across-the-table negotiations. We forgot those years when one side would not even talk of peace with the other, when face-to-face negotiations were impossible. Now as we move beyond the Egyptian-Israeli peace treaty to face the Israeli-Palestinian problem, we have had to shift back to first gear and recognize that once again we are back in the early stages of the peace process where people do not recognize each other and will not talk with each other, and where neither side

is committed to a fairly negotiated settlement with the other. Anyone coping with this problem will be painfully aware that negotiation is not the only element in resolving conflict—getting to negotiation may be much more complex than working toward agreement once actual negotiation begins. Moreover, if we try now to use only the techniques of the negotiating table in this phase we may well overlook the instruments of influence that could make a difference.

The Middle East Example

My point of view is based on looking at some of the steps that led to negotiation of the Egypt-Israeli Peace Treaty or that now block Israeli-Palestinian negotiations. In the Arab-Israeli-Palestinian context, we spent almost 30 out of 35 years when people would not recognize each other, would not even talk with each other. However, Egyptian President Anwar Al-Sadat decided that he wanted to break the impasse and negotiate peace with Israel in the early 1970s. He systematically reviewed a series of options—the European option, the Soviet option, the American option, the oil option, the military option—and he concluded after almost a year of exploration that the only way to produce a situation where negotiation might even be a possibility was to go to war, not to get his territory back, but to get the United States and the Soviet Union more heavily involved and to redraw the psychological map of the Middle East. Recall what Sadat did—he went to war; he made some initial gains; he got two armies across the Suez Canal. Then the war took a turn. The Israelis were pouring across the Canal behind Ariel Sharon, surrounding the Egyptian Third Army. At that point the Americans moved in, barely got a cease-fire, and with that military situation on the ground, Sadat proclaimed victory. It doesn't square with what the military analysts saw on the ground, but what Sadat was doing was fulfilling his second objective. His predecessor Gamal Abdel Nasser had said, "How can I negotiate when I'm flat on my back with a sword at my throat?" So Sadat went to war to erase the humiliation of 1967, and he proclaimed victory. Where do we fit that kind of action into our theories of negotiation?

Another example is Sadat's famous trip to Jerusalem. All the standard rules were broken. First, Sadat was not a good negotiator. Second, he took to Jerusalem a negotiating position that was utterly unacceptable, and he delivered it to the Israeli

Parliament face-to-face: Israeli withdrawal to the 1967 borders, the restoration of Arab sovereignty in East Jerusalem, an independent Palestinian state—all absolute red flags to the Israeli people. But they responded warmly because Sadat understood that what the Israelis really wanted was recognition, not in the diplomatic sense, but acceptance as a people. Sadat went to Israel and said, "I accept you as the Jewish people. I accept you as a Jewish state in the Middle East. I recognize the State of Israel. We will make peace with Israel. We will live in normal relations with Israel. Let there be no more war between us." That was the message. It wasn't a negotiating position; it was something else. It was outside the scope of negotiation.

A final example is the present block to negotiation: the Palestinian-Israeli-United States stand-off. To set the stage for this observation, I need to recall a conversation with Golda Meir about ten years ago. She was talking about the Egyptian closure of the Suez Canal. What she said was, "I still remember the sign on the door in that little Russian town where I was a girl. It said, 'No Jews.'" The closure of the Canal is the sign in the Middle East, "No Jews; no Jewish state; no Arab recognition of Israel." The essence of the stand-off was expressed beautifully by the PLO's number two man after the Palestine National Council meeting in Algiers early in 1983. He said of the Reagan Administration initiative of September 1982, "If President Reagan would change just one word in his plan, everything with us would change completely. That one word is 'self-determination'." He wasn't making a negotiating point; he wasn't saying change the formula, but he was saying that the sign is still up on the door: "No Palestinians." President Reagan has called for resolving the Palestinian problem "in association with Jordan"—not by treating the Palestinians as a people entitled to separate political expression of their own identity.

Removing the obstacles to negotiation is the critical first task in the process of moving toward negotiated agreements. That may require different approaches and instruments than those required at the negotiating table.

A Four-Stage Process

Defining the Problem. The first stage is *defining the problem.* How people define a problem begins to determine what they will do about it. The definition of interests and objectives is a profoundly political act and not just an abstract academic exer-

Defining the Problem

If I have a worry about Hal Saunders's four phases, it is his emphasis on defining the problem and on the need to agree on a common definition of the problem before proceeding to the table. Now there is undoubtedly some truth in this, but I wonder if it does not exclude too much. The Egyptian-Israeli peace was produced precisely because Egypt saw the problem as being one of sovereignty, and Israel one of security. In other words, because they defined the problem and their own interests differently, they were able to come to agreement. They might not have been able to come to agreement if they both defined the problem as sovereignty or both defined the problem as security. If a common definition of the problem is required, then one might not reach agreement in cases where it is only possible to agree on some solution that might benefit both sides.—William Ury

cise. Prolonged national debates take place over these issues. Bringing a nation to consensus or majority opinion on the shape of the problem and national objectives is a necessary prelude to serious negotiation. One can legitimately argue that this subject belongs in a study of national decision-making and not in a discussion about negotiation. Perhaps so, but for the policy-maker looking toward negotiating resolution of a conflict, the two are not separable. Trying to negotiate without recognizing that negotiation will be impossible until the parties share some common definition of the problem leads to failure.

In the Arab-Israeli-Palestinian conflict, the basic problem is that people don't agree what the problem is. What is the Palestine problem? In the 1940s, it was very simply defined. It was a problem of two peoples who had claims to the same land: a rising number of Jewish immigrants and the Palestinian Arabs that were already there. Both had legitimate claims of one sort or another. How could they establish a peaceful relationship with each other? The problem had roots deep in religion and history and overtones as fresh as the experience of decolonization and nationalism of the postwar period.

What happened to that definition of the problem? In 1949, Israel was established as an independent state, and the problem became a state-to-state problem. The Palestinian people, who had been one-half of the equation in the 1940s, were left as

refugees or second-class citizens. The Arab states said, "We will play the Palestinian-Arab role in Palestine." And then for 20 years it became a state-to-state conflict. We talked about the Arab-Israeli conflict, not about the Israeli-Palestinian or the Jewish-Palestinian-Arab problem.

In the late 1960s, the Palestinian Arabs began to reassert their sense of nationalism saying, "We are a people with our own identity. We are entitled to a place of our own on the stage." They established the Palestine Liberation Organization (PLO) as their representative. In 1974, the Arab governments stepped aside and proclaimed the PLO as the "sole legitimate representative of the Palestinian people." In 1975 the U.S. government stated that the Palestinian dimension of the Arab-Israeli conflict was, in many ways, the heart of that conflict.

At Camp David in 1978, the governments of Egypt, Israel, and the United States declared in effect that there could be no solution to the Arab-Israeli state-to-state conflict without a resolution of the problem of the Palestinian people. In short, after 30 years we again came to define this aspect of the larger Arab-Israeli conflict as a conflict between two peoples seeking political expression of their identity in the same land.

Today in Israel and the United States there are a large number of people, including the government of Israel, who do not accept this definition of the problem. They still see it as a state-to-state conflict between Israel and neighboring states with the Palestinians not recognized as a separate people but simply as "Arabs" who can be absorbed as ethnic minorities in existing Arab states. Others believe that there will be no resolution of the Arab-Israeli conflict until the Palestinians are recognized as a people with a separate identity in their own right and have the opportunity for full political expression in the "land of their fathers."

Level of Leadership

The leaders of negotiating teams are not chosen necessarily on the basis of competence. The level is determined by protocol. Over the last 20 to 30 years there has unfortunately been an escalation in the extent to which very senior officials are involved in high-profile negotiations.—David C. McGaffey

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The point is that efforts to deal constructively with the problem must begin with efforts to establish a common enough definition of the problem to assure that parties to a negotiation would at least be addressing the same issues. If this seems abstract, remember the numerous acts of terrorism in the past decade designed to demonstrate that the Palestinians are a people capable of political action in their own name. Remember persistent PLO refusals to say simply and authoritatively that they would make peace with Israel. Remember political efforts at the United Nations and other international organizations to establish observer status for the PLO or to obtain diplomatic recognition for the PLO from most of the world's governments. Remember Israel's efforts to prevent these moves and refusal to sit with the PLO. And remember that in the summer of 1982 Israel went to war to destroy the organized Palestinian movement which Israel's government regarded as a potential threat—not to the physical integrity of the state of Israel but to the exclusive Israeli claim to all the land west of the Jordan River. How can one bring about a serious negotiation involving these parties without positioning the issue so negotiators will not simply use the negotiation as another instrument for blocking movement?

Commitment to Negotiate. The second phase in the peace process is producing a commitment to a negotiated settlement. Before leaders will negotiate they first have to come to the judgement that the present situation no longer serves their interests. This judgement can be complicated by the introduction of a time factor. For example, it is easy to see why the Palestinians would judge that their present condition of living under military occupation or dispersal does not meet even their minimum objectives. But they allow themselves to believe that time ultimately favors them with the numerical superiority of the Arabs. It is also easy to see why in the short term some Israelis might judge that the status quo gives them the best of all worlds because they are in control of the territories they want but do not have to assume political responsibility for them other than as an occupying power. But some Israelis are uneasy when they look at the consequences if Israel incorporates a 40 percent Arab minority. At present, neither side has made the judgement that it does not like what it sees in the future and must negotiate.

In addition to judging that the status quo is unacceptable,

each party must judge that the substance of a fair settlement is available. Leaders on each side must be able to see the shape of a possible settlement that they could live with. They also need to believe there is some possibility of overcoming suspicion and achieving a secure and peaceful relationship with their adversaries.

An incident from Henry Kissinger's shuttle diplomacy will illustrate this point. More than a week into the 35-day shuttle which produced the Israeli-Syrian disengagement agreement of May 1974, reporters in the back of Kissinger's airplane asked him what he was discussing. He responded that he was talking about the principles of a settlement. There was amazement on the part of the press. "Principles? Two weeks? How can you talk about principles for two weeks?" The press asked, "Have you got a text?" "No, we don't have a text." "Have you got lines on a map?" "No, we don't have a map." (That was a little bit untrue, because we always went into a negotiation with our own draft of the final agreement, but it wasn't on the table at that time.) The point was that Kissinger knew that it was essential to talk the parties toward a common view of a settlement before committing anything to paper. If drafting began before there was a common picture of the objective, arguments over words would begin to obscure arguments over substantive issues.

A third factor contributing to a commitment to a negotiated settlement is a judgement that the balance of forces will permit such a settlement. The Arabs have normally seen Israeli military power as precluding a fair negotiation. Syrian President Hafez Al-Assad is quite open in saying that the Arabs cannot negotiate a settlement of their conflict with Israel until they are Israel's military equal. President Sadat recognized that it would be a long time before the Arabs would achieve military parity with Israel, so he went to war for the limited purpose of drawing the United States and the Soviet Union into more active diplomatic efforts to negotiate a settlement. He sought to put big power political weight on the scale beside the limited Arab military power which had demonstrated its capacity at least to administer a serious psychological shock to Israel and significant war losses. The question is how the balance of forces can be structured to produce a realistic hope of a fair negotiation.

We need to understand a lot more about how to analyze the balance of forces in a pre-negotiating situation and how they

can be changed. Today neither Israel nor its Palestinian enemies are committed to a negotiated settlement.

Arranging the Negotiation. The third phase in the peace process is arranging a negotiation once the parties have committed themselves to negotiate. Whereas the commitment to negotiate is a political decision which can be made known in a variety of general ways, the effort to arrange a specific negotiation tends to focus on more detailed terms of reference for the negotiation and dealing with those physical arrangements which may have political implications. This phase, along with the fourth, has received far more attention in the literature on negotiation and requires less attention here. Suffice it to say that the central aim in this phase is to reach agreement on the objectives and procedures for the negotiation. This can involve doctrinal debates over a dictionary of diplomatic codewords as well as arguments over the "shape of the table." One can live in this phase for months and even years.

Negotiation Itself. The final stage of the "peace process" is negotiation itself. Extensive studies have been written on this part of the process, and I will not discuss it here. It should be underscored, however, that negotiation lies only as the fourth phase in a prolonged political process where the pre-negotiating phases may take much more time and effort than the negotiation.

Negotiation in Strategy

I have used the Middle East for my examples, but it would seem to me that one might, for instance, analyze the development of U.S.-Soviet relations and negotiations in the 1970s within a similar framework. Taking that approach integrates the diplomatic and the negotiating processes so as to make both instruments in a longer-term strategy for dealing with the other superpower.

It might be a fair criticism of this approach that it stretches the theory of negotiation beyond the breaking point. That may well be. My argument then would be that we still need a larger framework within which to relate negotiation to other parts of the foreign policy process.

The Power of Theory

Roger Fisher

The difference between war and peace is simply a question of how we deal with our international differences. We can expect an endless supply of international differences. They are a certain result of conflicting values, conflicting perceptions, and conflicting interests. Except where one country physically imposes its will on another—or abandons all hope of influencing its decisions—countries are engaged in negotiation. Each is communicating with another for the purpose of exerting influence. Building an MX missile, saying "We will never negotiate," or even dropping a bomb are all part of the negotiation process if done to send a message, and the purpose of that message is to bring about a favorable decision by the other government.

It seems useful to define negotiation so broadly in order to understand the process better. The key elements of that process are the same, whether the communication takes place at a table, over the phone, or by smoke signals, and whether it is accompanied by threats or smiles, whether it is called negotiation or confrontation.

Today, the countries of the world deal with their differences in ways that are extremely expensive, highly dangerous, and inefficient. The process tends to exacerbate relations among nations, making it more difficult rather than easier to reach agreement on other matters. And the results that are reached are usually far from optimal. The United States and the Soviet Union each waste tens of billions of dollars a year on military hardware because we do not jointly have the skill to reach comparable levels of relative danger and security at lower cost. If we were both more skillful in dealing with our shared and conflicting interests, we could be no worse off than we are today at far less cost. At Geneva, our arms negotiators read prepared statements at each other across a table and try to extract the most information in exchange for the least. At the United Nations, foreign ministers and ambassadors make speeches largely intended for home consumption. Meetings

drag on with results as predictable as those of a minuet. Collectively, as a group of nations, we are not adept at reconciling our differences in ways that maximize joint gains.

Long Negotiations

A great many negotiations have an awfully long lifetime. Negotiators go from one conference to another, to meetings, to bilaterals, to multilaterals, back into conference and what have you; the issues often reach far back into the past and there have been forks in the road that were taken way back five, ten, or fifteen years before. These may, to a large extent, have prejudged the outcome on a particular set of issues.

This is particularly true in arms control. The structure, the categories, and the outcome not only of SALT I but also of SALT II were shaped in the Johnson Administration.—Fred C. Ikle

In certain areas—I am thinking about national security negotiations—protracted negotiations almost certainly guarantee there will not be a good outcome, mainly because one cannot control the factors away from the table.—Jack Mendelsohn

Speedy Negotiations

It is impressive that speedy negotiations work well. We have been dulled to the notion that negotiations are endless. It was just twenty years ago when President Kennedy said, "I want to negotiate a treaty with the Russians to ban all nuclear tests except those underground." Ten days later, the text of such a treaty was agreed upon. That is a model we might keep in mind. One can, in fact, proceed at a less than glacial pace.—Roger Fisher

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Lack of Attention

Of all the explanations for the dangerous and inefficient way in which we deal with international differences, lack of sustained attention to the negotiating process is one of the most persuasive. We have tended to focus our attention on substance rather than process. From necessity, government officials have had to deal with the urgent at the expense of the important, and with the "practical" at the expense of the theoretical. We have

also tended to focus our attention on what we do *not* want to have happen, rather than on what we *do* want to have happen. We wish to avoid aggression, so we build nuclear weapons. We wish to avoid nuclear war, so we try to control the weapons. We have thought a great deal about what we don't want other countries of the world to do and about weapons that we ourselves do not want to use. But we have thought far less about how we want to deal with our differences. We have not thought much, for example, about how we would like the Soviet Union to negotiate with us—and how we might make good negotiating behavior more likely by making it more rewarding.

We Should Generate More Theory

The kind of hard thinking about negotiation that has been missing is theoretical thinking. It is not just collecting anecdotes or data about how diplomats in fact negotiate. We need to sort those facts into useful categories. We need some hypotheses about cause and effect. We need to go back and forth between facts and generalizations, constantly refining the generalizations and testing them against experience.

What we should be doing is working to develop more general propositions about interactive decision-making among parties that have both shared and different interests. We need both descriptive and prescriptive theory. As a first approximation, I would say we should be working to develop four kinds of generalizations.

1. *Useful categories* are scientifically true distinctions about aspects of the negotiation process. But it is not enough for them to be true; they should also be useful. The task is to find descriptive categories which are useful prescriptively. In the study of reptiles, for instance, distinctions could be drawn among snakes by length. It is more useful, however, to be able to distinguish between poisonous and non-poisonous snakes because that will help us generate wise advice about how to deal with snakes.

2. *Hypotheses about cause and effect,* like useful categories, are descriptive generalizations. Again, we are looking for those statements which are both true and useful prescriptively.

3. *Rules of thumb* are prescriptive guidelines about how to negotiate. We have a great many of these today: "Speak softly and carry a big stick." "Open negotiations by advancing your maximum position." "Never yield to threats." "Never give up

something without getting something in return." A major goal of work on negotiation theory is to improve the quality of such advice. A rule of thumb may be wise and valuable even though it will not "work" in all cases. The test of a good prescriptive generalization is not that it will produce the best result in every case. The test is rather that it is the best prescriptive generalization we can produce. In teaching young lawyers how to argue cases in court, we advise them never deliberately to deceive a judge as to the facts or the law. I think that is the best general advice I can give, even though it is possible that in some situations a lawyer might be able to deceive a judge, win an important case, and never be found out.

Machiavelli's Question

What is the best advice you can give a Prince? I like Machiavelli's question. I think it is the best question in the world. His advice is not the best in the world, but the question is very good.

The best advice depends upon what the purpose is. Every statesman, like every poker player, wants first of all to win the hand. He wants to win the hand now. He wants to protect his interests right now.

Second, the statesman, like the poker player, has an interest in future hands. He wants to be in a position to affect the future game. He wants some chips on the table. He wants a reputation, assets, power, and the ability to affect the future.

Third, while both statesmen and poker players may stop at victory and power, they really have an interest in the ongoing relationship. Their chips will mean nothing if someone blows up the house or burns it down or pulls out a gun. They have an interest in peace—an interest in a working relationship with fellow players.—Roger Fisher

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4. *Analytical methods and tools* constitute another form of prescriptive theory. Rather than consisting of rules of thumb that will produce wise decisions in most cases, analytical methods and tools are designed to help a negotiator figure out just what to do in a given case.

Generating valid and useful generalizations is a matter of insight, trial and error, and sustained effort—combined with an

open mind. It means going back and forth between fact and hypothesis—between the particular and general. It also means searching for generalizations which are valid across a broader and broader range of data. If the physical sciences provide a guide, we acquire wisdom by stepping outside a narrow field, such as "metallurgy" and looking for generalizations that apply in the broadest possible field; such as "matter," or even generalizations that relate matter to energy.

In order to improve the international negotiation process we should be looking for generalizations that apply not just to diplomacy but also to negotiations over legal, family, neighborhood, racial, environmental, business, or other disputes. We are looking for distinctions and similarities, and for ideas wherever we can find them.

Illustrative Theories

For several years a few of us at Harvard University have directed some time toward improving the theory and practice of negotiation. We have been working cross-problem, cross-discipline, and are beginning to work cross-culture. We think we are making progress. Many of the ideas we develop appear to be nothing more than common sense—but that is probably all to the good. Let me try to illustrate the potential power of theory by sketching out a few ideas. The theory we have been looking for is not just 162 tips to good negotiating, but rather bigger ideas that provide a framework to help organize one's own experience, making it easier to learn from experience.

Here are some examples of categories and rules of thumb we have developed.

Relationship issues vs. substantive issues. A valid distinction can be drawn between relationship issues (such as those of perception, emotion, ability to communicate, mutual understanding, confidence and trust) and the substantive issues or merits of negotiation (such as questions of price, dates, specifications, and other terms of a possible agreement).

The following rules of thumb are based on this distinction.

- Deal with both sets of issues concurrently, but separately.
- Do not try to obtain concession by threatening a relationship. (Threatening a relationship damages it; even getting a concession will not repair the damage.)

- Do not try to improve a bad relationship by making concessions. (Appeasement does not work; rewarding bad behavior is more likely to generate more bad behavior.)
- Disagree without being disagreeable. (The more serious the difference, the more important it is to be able to communicate effectively and efficiently.)
- Insist that maintaining an effective working relationship connotes neither approval nor disapproval of conduct.

The Importance of a Good Relationship

I was talking last week with a man from Citibank who said he liked very much what I said about the efficiency of negotiations. He said he was out in Indiana trying to negotiate the close of a loan, and the bank president was pouring coffee and telling stories about fishing, and doing all sorts of things. The Citibank man said, "The people out in the midwest in small towns, they don't understand efficiency."

I backed off and said, "You're a banker? Which is more important: one-fourth of a point on the interest rate or an ongoing relationship?"

He said, "The relationship is the one thing that is really important."

I said, "You sound like somebody who is engaged in courting and who says, 'Look, let's get this date over with.' You're confusing the transaction with the ongoing relationship."

A transaction is a useful way to build a relationship, but if your primary purpose is the ongoing relationship, if the primary purpose is being able to deal in the future, you want to understand your objectives and then how to use each transaction to enhance that relationship.

Internationally it is probably true that the relationship is more important than the outcome at almost any negotiation. If we had a good working relationship with the Soviet Union or with Cuba or with other places in this world, if the relationship was better, the particular decision made this week or next week or next month would not be as significant.—Roger Fisher

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Positions vs. interests. A valid distinction can be drawn between statements of position (demands, claims of right, things to be insisted upon) and the underlying interests which those

positions are intended to serve (wants, needs, concerns, hopes, and fears).

Rules of thumb:

- Look behind positions for underlying interests.
- Avoid arguing about positions. (It tends to lock you both in.)
- Talk about interests, theirs and yours.
- See the negotiation task as one of reconciling legitimate interests, not compromising positions.

Inventing vs. deciding. A valid distinction can be drawn between generating options (a range of possibilities that may be worthy of consideration) and making decisions (committing oneself to accept or reject a given option).

Rules of thumb:

- First generate many possible ways of resolving a difference; decide later.
- Each side should generate a range of options privately before getting involved in formal negotiations.
- Where possible, the parties should engage in side-by-side joint brainstorming, free from making any commitments.

What the parties will do vs. what the parties ought to do. A valid distinction can be drawn between focusing discussion on what the parties are willing or unwilling to do and what the parties ought to do, as measured by some objective criteria (such as precedent, law, custom, expert opinion or minimum cost).

Rules of thumb:

- Insist upon talking about what the parties ought to do.
- Convert a contest of will (in support of unprincipled, stubborn positions) into a battle for legitimacy (as each side seeks to demonstrate that it is more willing than the other to accept a result dictated by respect for fair and impartial principles).
- Jointly search for fair standards to which both parties can defer.

Physical power vs. negotiating power. Here there are three separate descriptive categories. First, a valid distinction can be drawn between military capability and the ability to influence

another government to make a decision that we would like it to make. Second, a distinction can be drawn between the physical ability to impose on others a result that we desire and the physical ability to impose a result that no one wants (even though it hurts others worse than it does us). Third, negotiating power (the ability to influence the decisions of others in our favor) can usefully be sorted out into the following categories:

- The power of knowledge and skill.
- The power of a good relationship (they trust us; we can communicate effectively).
- The power of a good alternative (we can walk away to an attractive situation; they can't).
- The power of a good option (an elegant solution; an optimal reconciliation of interests).
- The power of high legitimacy (what we seek is fair by standards they respect).
- The power of commitment: a positive commitment (we have made a firm offer; all they have to do is accept); a negative commitment (we have made a threat or otherwise tied our hands; their only chance of agreement is to accept our terms).

Rules of thumb:

- To enhance our international negotiating power we should acquire military weapons that can physically impose results we might desire (like stopping a ship at sea without sinking it, or stopping a tank without damaging it or its crew).
- We can enhance our power in a negotiation through acquiring knowledge of the other side's interest and perceptions.
- We can enhance our negotiation power by being trustworthy.
- To enhance our negotiation power we should maintain good working relations with potential adversaries. (It is easier to change their minds if we know where their minds are.)
- We can enhance our negotiating power in any given case by developing and improving our best alternative to a negotiated agreement.

- We can enhance our negotiating power by designing solutions that take into account the other side's interests as well as our own.
- Other things being equal, we are more likely to get a solution satisfactory to us if it looks legitimate to the other side by their standards.
- A threat or other negative commitment is likely to *reduce* total negotiating power unless it is used only as a last resort, and then only to the extent consistent with legitimacy, maintaining a good relationship, and the power of an elegant solution that takes into account the interests of both sides.

Complex ideas are presented here in cartoon simplicity, as though all international negotiations took place between two parties, each of whom had neither allies nor constituents. But the above list of propositions illustrates the kind of theory that we should be developing, criticizing, and refining or discarding to be replaced by better ideas.

Analytical Tools

Another kind of useful theory is the analytical tool which can help us diagnose a given negotiating situation. One of the tools that I find most basic and helpful is a chart or balance sheet of the other side's currently perceived choice. We are rarely writing on a clean slate. At any given time in a negotiation we can ask ourselves how the other side perceives the choice they think we are currently asking them to make. What is the decision they hear us demanding? And what are the probable consequences which they see as following their decision on either side of that choice? Such a chart can provide us with a starting point. We know that they have not yet acted as we would like. Putting ourselves in their shoes helps us identify what needs to be done in order to change their minds.

If, for example, we wished to negotiate a solution which would require Soviet troops to withdraw from Afghanistan, we might prepare a Currently Perceived Choice Worksheet illustrating the choice of withdrawing as the Soviet Union might see it today. A draft of this worksheet appears here as Figure I.

A related analytical tool is a Target Balance Sheet (Figure II) to be used in trying to figure out how we want the other side to see their choice at some hypothetical time in the future when

FIGURE I: Currently Perceived Choice Worksheet

A Choice for the Soviet Union (May 1983): Shall we withdraw from Afghanistan as demanded by the West?

If "Yes"	*If "No"*
−It looks like a humiliation of Soviet military forces.	+We can fight on, with no chance of being militarily defeated.
−The Karmal government we have been supporting will be overthrown.	+We continue to support those who work with us.
−The CIA may help establish anti-Soviet government in Kabul, with U.S. military bases, spying equipment, etc.	+We prevent an anti-Soviet government from being established in Kabul.
−We abandon Afghanistan to which we have committed so much.	+We can eventually incorporate Afghanistan into the USSR.
−We may encourage separatist and extreme nationalist elements within the USSR in central Asia.	+We discourage excess nationalist movements within the USSR.
	+We can always withdraw later if that ever appears to be a good idea.
But:	
+We reduce the international political cost of having the Soviet military suppressing a nationalist resistance movement.	−The high international political cost in Europe, Africa, Asia & Latin America of our "military suppression" in Afghanistan continues.
+We end Soviet casualties.	−Rapprochement with China remains difficult.
+We remove one obstacle to better relations with China and the United States.	

FIGURE II: Target Balance Sheet

A Possible Future Choice for the Soviet Union: Shall we accept the "X plan" for a ceasefire in Afghanistan?

If "Yes"	*If "No"*
+We can call it a "success."	−Long-term fighting in Afghanistan can be expected.
+We end the international political embarrassment of Soviet troops killing Afghan nationalists.	−International political embarrassment of Soviet troops continues.
+We can avoid having an anti-Soviet government in Kabul.	−We continue to alienate even communists abroad.
+Western intervention in Afghanistan will stop.	−Afghanistan remains an irritant to relations with China and the West.
+Soviet casualties in Afghanistan will stop.	−Soviet casualties continue.
+One obstacle to good relations with China has been eliminated.	−We face growing pressure to attack sanctuaries in Pakistan.
	−Costs of a few billion dollars per year continue.
But:	
−Karmal and other leaders are out and will leave the country.	+We have a pro-Soviet government in Kabul.
−Some degree of internal anarchy is likely.	+The West is excluded from Afghanistan.
−Afghanistan may serve as a dangerous model for excess nationalism within the USSR.	+We continue to support those who cooperate with us.
−The West may call it a Soviet failure.	+We reduce any risk of tribal extremism within the USSR.
	+Eventually we should be able to grind down the Afghan resistance.

we might reasonably expect them to say "yes" to the choice with which they are then confronted. How would the Soviet Union have to see the question of withdrawal so that we might reasonably expect them to agree to withdraw? Realistically, what would their future choice have to look like so that both we and they would be satisfied? Unlike the Currently Perceived Choice Worksheet (which is an assessment of facts), a Target Balance Sheet is a planning document, to be prepared by cutting and fitting. We are trying to design an end point; we will be trying through negotiation to get them to see their choice in something like these terms, hoping that if we are able to create such a situation they might then decide as we would like.

A rough Target Balance Sheet of a possible future choice that might cause the Soviet Union to decide to withdraw its forces from Afghanistan is included here as Figure II.

These bits of theory are intended to make the point that better theory about the international negotiation process could be useful and is sorely needed.

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Negotiation and Cross-Cultural Communication

Israel Unterman

Negotiating Skills Can Be Taught

My first research in negotiation was reported in a paper accepted by the Academy of Management. It described an experiment in which a group of students to whom I had taught negotiating skills competed in an exercise with a comparable group of MBA students who had not received any training. The resulting statistics were blatantly obvious in providing evidence that skill training was a significant factor.

Furthermore, in recent years in San Diego I have invited extremely experienced, high level, business, professional and governmental executives to participate in a negotiation marathon with a group of MBA graduate students who have had four or five sessions in negotiation skill training. The students have also read *Getting To Yes* (Roger Fisher and William Ury, New York: Penguin Books, 1983). With only this brief exposure to negotiation skills, the students comported themselves so well vis-a-vis the far older and vastly more experienced executives that many of the invited executives subsequently complimented me in writing on the students' skills. These experiences suggest that skill training in negotiation can provide a balance to, or even outweigh, many years of practice.

The Basic Skills

From the array of necessary skills that enter into almost all negotiations—the purchase of a used car or a new home or the negotiation of an international trade treaty—several basics have been selected for teaching purposes.

One is the ability to prepare a flexible scenario. The student is expected to devise a set of modified, strategic plans and approaches. Since any single plan may not be effective, several must be developed and the students prepared to implement each. If more than one person is involved in the negotiation,

the scenario must identify the appropriate role for each team member.

Two full sessions are devoted to the study of selective barriers and gateways to communication. What are the assumptions about opposing teams that team members have and which color their behavior and their communications? Students must also be aware of and investigate the management of the internal communications and assumptions within each team.

Body language is another basic area of study. Negotiators must be aware of what their own body language communicates, what behaviors are typical of their own culture, and of the vast differences in meaning implicit in the non-verbal communications in other cultures. One study, written some years ago, suggested that 93 percent of all communication is non-verbal. It might be added that, of the remaining 7 percent, half of that is composed of the polite or genteel "white lie." Relying on words alone to communicate accurate meanings, whether within a negotiating team or across the table, might prove unnecessarily misleading.

Exercises in the use of voice and the need for congruence in words used and their presentation constitute another basic area of study. Parallel with this group of exercises is another set designed to enhance the ability to listen. Listening without prejudgment is a skill learned only with difficulty and with practice. Students must become aware of their own listening styles, how they filter what they hear, and where they need further study or practice.

Toward the end of the course, a psychologist and/or psychotherapist discuss the importance of understanding the use of emotions in the negotiation process. It is emphasized that each negotiator would do well to understand his or her own emotional responses during the negotiation—in particular, those of anger and anxiety. Stress as a positive experience, to be used to enhance rather than hinder a negotiation, is also explored. How to identify stress response and what coping skills may be helpful during a negotiation session are also a part of this section.

Finally, all students must compose an ad hoc agreement at the very end of the negotiation. Being able to arrive at some agreement at the close of a negotiation is a significant and basic skill. Students are expected to understand the costs of time and expertise.

Teaching Methodology

Since students retain little of what is learned in the standard lecture methodology (one study indicates that college graduates retain only five percent of what was taught in their lecture halls), it has proven useful to devise a variety of experiential teaching methods. One method uses a group of case histories I wrote based upon my own business experience. These cases include both quantitative and non-quantitative problems. An example of the former might be the acquisition and merger of a company by another, where the statistics may be confusing and five or six issues must be resolved. A non-quantitative case would be one dealing with the problem of busing for school children and involving a school board, parents, etc.

The semester's course is designed to move from the simple to the more complex, from single issues with simple numbers to those with a mass of data, a multiplicity of issues and a variety of possible outcomes. The readings include *Getting To Yes,* as mentioned, *The Art and Science of Negotiation* (Howard Raiffa, Cambridge, Mass.: Harvard University Press, 1982) and a book of my exercises, to be published in 1985. The mid-semester examination requires the student to prepare a one-to-one negotiation with three alternative scenarios and a single issue. For the final examination, each must write of a negotiation which has more than one person on each team, several alternative approaches, and three or four issues to be negotiated.

Problems in Negotiating Across Cultures

The above describes an approach to teaching negotiation in a single college semester. However, the problems of teaching about cross-cultural negotiation are far more complex and are often discussed. The discussions tend to fall into two different theoretical models. Theory A hypothesizes that the volume and intensity of international negotiations have produced a group of people who might be characterized as working within an "internationalized culture." The differences in their sociocultural backgrounds have diminished or been eliminated. Thus, stereotyped images, educational background and language differences are immaterial to the cultural factors involved in cross-cultural negotiations. Theory B suggests that, while the outward manifestations of the international negotiators may well be similar, their internal objectives, motivations,

and methodologies may differ greatly, depending on their individual cultures. There is literature available supporting each theoretical approach. However, a major part of the literature is experiential and anecdotal. Little controlled research is available.

The Pilot Project

To answer the need for controlled research yielding empirical data, I have designed a pilot project for the Foreign Service Institute. Its goals are as follows.

1. To identify the main elements of the negotiation process, both in internal and cross-cultural negotiations.
2. To learn how people of different nations reach common decisions.
3. To determine whether there are significant, conceptual differences about international negotiations.

The first stage of the project has been to refine the research design. Nationals of Japan, Israel, Mexico, Iran, Venezuela, and two other nations are participating. (A national is defined as a person who has lived in the United States less than five years.) Teams of four nationals have negotiated with my MBA graduate students and with American businessmen. The San Diego Chamber of Commerce has been helping locate foreign national businessmen for the study. Thus, there are included two tiers of cultural variables: the younger students and the older businessmen. For each nationality there are a minimum of four negotiations. When the project is complete, more than 265 people will have negotiated, with 96 others serving as observers. Most of the observers have some facility in the languages of the non-American teams. Each observer has a list of specific variables to evaluate and describe. To try to prevent monocular vision, three observers are present at each negotiation.

To control the variables, each negotiation includes the same exercise. The NASA case, written by Thomas R. Colosi, was selected, as it seems to have no political implications. It is a fantasy about being stranded on the moon. It is brief, can be used in a laboratory setting and includes three levels of decision-making: self-decision, internal team negotiation, and cross-cultural negotiation. It is hoped that this exercise tunes out a

great deal of environmental, economic, and political static, while spotlighting the cultural factors.

Each negotiation identifies more than fifty variables which are to be analyzed and charted using a computer. Furthermore, the teams will be videotaped so that the process can be more fully studied at the Foreign Service Institute. The study is particularly directed toward illuminating differences in motivations and behavioral patterns.

Preliminary Critique of the Methodology

Graduate students and some faculty have had the opportunity to review the methodology thus far and have offered some critical observations:

- All of the pilot project has been conducted thus far in the United States. It is possible that the behaviors and motivations of the foreign nationals would be different if the negotiations took place in other countries.
- The NASA case may not be appropriate for the experiment, as many of the participants felt that "landing on the moon" was too remote. They found it difficult to involve themselves emotionally in the situation.
- Despite the use of three different observers for each negotiation, there is too much opportunity for the observers to introduce their own American value system into the evaluations, contaminating the descriptions and implications.
- The variables selected as significant for observation are an outgrowth of an American education and a particular American cultural milieu. They may or may not be significant for transnational negotiation.
- It is quite difficult to involve eight business-people in a study requiring five hours of their weekend time without honorarium or other rewards. Furthermore, the pilot project revealed that some foreign business-people are reluctant unless they have all the details of the potential negotiation and the case study *prior* to the meeting. However, providing such information would negate the entire experiment.
- The definition of a foreign national as living in the United States less than five years may be too long a time

period. Many may have already become acclimatized to American culture.

Preliminary Findings

The study has just got started, and, since we do not yet have the use of a computer to analyze the data, findings to date are very tentative.

- One preliminary finding of the pilot project is that various disciplines deal with the problems of negotiation using unique nomenclature and processes which may be alien to some of the American representatives.
- In a number of negotiations the foreign nationals discussed among themselves the importance of two pistols to the American team, believing Americans are highly motivated by armaments. Thus, several of the foreigners made assumptions about the American value systems and successfully acted on those assumptions.
- Some national teams behaved pleasantly with each other but became obviously hostile when meeting with the American teams. This was also true with two other American teams vis-a-vis one particular national group.
- A common observation was that American team members usually addressed their remarks to that foreign national most adept in English. The Americans made little attempt to recognize the need for understanding among all the foreign team members.

No Losers

The basic difference that I find between private dispute resolution, such as a lawsuit or the more classic across-the-table negotiation, and government-to-government negotiation is that in private litigation or negotiation you want the other side to lose. In the case of government-to-government negotiation, you cannot have a loser, because your side will lose too if the deal does not stick. What has to be done is to work out a solution which will be reasonably fair to both sides so that the penalties are worse than sticking with the deal.—Paul C. Warnke

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It is apparent that diplomatic and trade representatives work to improve their understanding of actual differences in international negotiations and decision-making. Some believe that these cultural variations influence both the process and outcome of the negotiations. The more we can learn about cross-cultural differences, the greater the likelihood of positive closure for each international negotiation. The study described has been designed to provide additional data and tools to help American representatives in international negotiations.

Program for the Conference on International Negotiation

LOY HENDERSON ROOM, STATE DEPARTMENT

JUNE 9 MODERATOR: Harold Saunders, American Enterprise Institute

8:30	Registration Opens
9:00–9:30	*The Role of Negotiation in Congress;* Edward J. Derwinski, Counselor of the Department
9:30–10:45	*Negotiation: Theory and Reality;* I. William Zartman, Johns Hopkins University, SAIS *Discussants:* Dean G. Pruitt, State University of New York at Buffalo.
11:15–12:30	*Mediation and Negotiation;* Thomas Colosi American Arbitration Association *Discussants:* Laurence Susskind, Massachusetts Institute of Technology
2:00–3:00	*Reaching An Optimal Settlement;* Howard Raiffa, Harvard University
3:00–4:00	*Roundtable Discussion*

JUNE 10 MODERATOR: John W. McDonald, Jr., IO, State Department

9:00–10:15	*Pre-Negotiations;* Harold H. Saunders, American Enterprise Institute *Discussants:* William Ury, Harvard University, and Robert Coulson, American Arbitration Association
10:15–11:30	*International Negotiation: The Power of Theory;* Roger Fisher, Harvard University *Discussants:* Louis B. Sohn, University of Georgia, and Jack Mendelsohn, State Department
11:45–1:00	*Negotiation and Cross-Cultural Communication;* Israel Unterman, University of San Diego *Discussants:* Jonathan Dean, Carnegie Endowment, and David C. McGaffey, State Department

2:00–3:30	*Practitioners Look at Negotiation; A Panel Discussion* (Chairman: Roger Fisher): Fred C. Ikle, Under Secretary, Defense Department; Louis B. Sohn; Jonathan Dean; Stephen Low, State Department; and John W. McDonald, Jr.
3:30–4:00	*Closing: The Next Steps:* Harold H. Saunders, John W. McDonald, Jr., and Stephen Low

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