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# Constructive Negotiations in Contentious Contexts

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Negotiations are often conducted in the context of ongoing contentious behavior by members of the adversarial sides. In some cases such behavior prevents the adversaries from reaching or implementing a negotiated agreement. In other cases, some behavior beyond the negotiations table hastens reaching an agreement or improves its qualities. This article focuses on large scale conflicts and examines the coercion-related conduct of the leaders and the negotiating teams of the opposing sides, of various factions within the opposing sides, and of parties not directly engaged as partisans in the conflict. It then considers how those sets of people can behave more constructively and reduce the destructive coercion of other stakeholders in the conflict. It concludes with six policy recommendations.

Negotiations are affected not only by negotiators and their superiors who direct them. Some members of one or more adversarial collectives may also influence the negotiating positions of their side to be tougher or more conciliatory. In addition, they may also act directly toward the opponents in order to change the conduct of the other side in the negotiations. Moreover, the beginning of negotiations between contending adversaries does not necessarily mean the end of coercive or even violent actions between them.[1] The coercive actions may continue at the behest of the leaders on both sides, or they may be perpetrated against the wishes of those leaders, being intended to stop or shape the negotiations.

Coercion is generally seen as harmful to negotiating mutually beneficial agreements. This is particularly evident in the Israeli-Palestinian negotiation attempts. During the negotiations that began in July 2013, mediated by Secretary of State John Kerry, leaders on each side viewed actions by the other as coercive and as sabotaging the negotiations. At the same time, however, coercion can be useful and its ill effects lessened.

## Multiple Stakeholders Affecting Coercion in Negotiations

Any side negotiating in a contentious relationship is never entirely unified. Some factions or elements of one or more sides may strive for outcomes that are harsher or more conciliatory than what the negotiators believe to be correct. How much unity there is among one side may be unclear, certainly to the other side. Police or military personnel may engage in actions that are more punitive than their civilian superiors would want, or conversely, they may be unwilling to act as punitively as their civilian commanders might wish. In any case, negotiators do not act in isolation either from others on the respective sides or from outsiders who try to influence the negotiations.

Three sets of people can affect negotiations in various coercive ways. First are the leaders directing or engaged directly in the negotiations that at times employ coercion. Two other sets of people, not directly engaged in the negotiations, may believe that their concerns are inadequately represented and thus may resort to coercion in an attempt to advance them. One set comprises people internal to one side in the talks, and includes people publicly protesting and opposition party leaders recommending different bargaining strategies. Some of them may act coercively against their own side's policies or the policies of the other side. Such people may be called spoilers, quitters, traitors, patriots, or many other names, depending upon how their actions are judged by those conducting the negotiations or by observers.[2] Finally, some engaged stakeholders are outsiders who intervene in the conflict, whether to aid one of the negotiating parties or to gain benefits for themselves. Their stake in the conflict may be to prevent it from spreading further, to help protect or advance values that are important to them, or to enhance their own interests.

## Negotiators who Coerce

Negotiation leaders often undertake coercive actions openly or covertly in order to improve their bargaining position, impose a settlement, or demonstrate resolve and toughness to their constituents. Clearly, some kinds of coercion are more compatible with negotiations than are others. In President Obama's administration, the mobilization of multilateral sanctions, combined with the offer of serious dialogue, produced an opening for substantive negotiations with Iran.[3] In June 2013, Hassan Rouhani ran as a moderate and won the presidential elections in Iran. In November 2013, Iran and the P5+1 (the permanent members of the Security Council and Germany) announced that they had negotiated an interim agreement. Iran agreed to stop and reduce several elements of its nuclear program and permit a more rigorous inspection system (even though other elements of the deal allowed Iran to move forward in R&D in more advanced generation centrifuges, and these elements offset the restraints mandated by the deal). In exchange, the P5+1 agreed to lift about $7 billion worth of sanctions.

Generally, coercion during negotiations indicates that the terms of an agreement are not viewed as readily attainable and mutually acceptable. It also indicates considerable mutual mistrust. In some such circumstances, carefully crafted mutual confidence building measures may be taken, for example, an exchange of prisoners.[4] Another possibility is to conduct secret negotiations, as was done between National Security Advisor Henry Kissinger and North Vietnamese representative Le Duc Tho during the Vietnam War.[5] These are some operational alternatives or complements to coercion.

## Insiders Influencing One's Own Side

Persons and groups trying to influence their own side's negotiating stance may press for either a harder approach or a more conciliatory approach than the one chosen by the negotiators for their own side. In some cases, the official line is attacked from both directions.

### *Hard Line Approach*

The intentions of engaged stakeholders are often to score more for their own side or their specific faction. For a party in a weaker power position, popular agitation often serves to reduce the conflict's asymmetry and gain a

hearing and an outcome that is more equitable. Thus, during the civil rights struggle in the American South, Dr. Martin Luther King, Jr. and other leaders of mainstream civil rights organizations conducted nonviolent boycotts and demonstrations in order to achieve specific outcomes. As the civil rights movement grew, some new organizations emerged that used more radical rhetoric and more militant tactics, as exemplified by the Black Power movement and the Black Panthers. This had contradictory implications for the more mainstream negotiators. On the one hand they could use those developments as a warning to their negotiating counterparts that if their demands were not met, more dire demands and acts would be taken by others on their side. On the other hand, the militancy of some on their side could and did raise fears and increase resistance from many whites.[6]

In many circumstances, negotiators believe that actions by hard line advocates in their camp undermine their negotiations, reducing the trust in them by the negotiators on the other side. For example, in 2014, during the initial interim agreement between Iran and the P5+1, many members of the U.S. Congress supported a resolution that would intensify the sanctions against Iran. The Obama administration held firm, contending that such a resolution would undermine the interim agreement, which was the basis for negotiating a comprehensive agreement. The resolution stalled and negotiations continued.

At times small groups may attempt to defame the country's official leaders as overly conciliatory toward an adversary, as happened in the attacks on Israeli Prime Minister Yitzhak Rabin. Many Jewish Israeli critics of the Oslo peace process vilified Rabin, condemning him as a traitor to the Jewish people. The attacks intensified until a Jewish religious extremist assassinated him in November 1995. His successor, Prime Minister Shimon Peres, led the government in implementing the interim agreement that had been signed shortly before Rabin was killed.[7] At the same time, Peres too believed it was important to demonstrate firmness against Palestinian militancy, a stance that in turn was met by suicide bombings against Israeli civilians. The Likud party, led by Benjamin Netanyahu, subsequently won the next elections and negotiations stalled.

In South Africa, violence escalated when the transition toward non-racial democracy began in 1990. From mid-1990, when negotiations for the

transition began, until April 1994, when democratic elections were held, about 14,000 South Africans died in politically related incidents.[8] Some deaths were caused by security forces using lethal force in policing public disorder, but much of the violence was among black groups, particularly between two ethnicities, the Xhosa and the Zulu, and two political organizations, the African National Congress (ANC) and the Inkatha Freedom Party (IFP), associated with the Zulu seeking a larger role in the emerging new system. In addition, a "third force," consisting of right wing whites linked to the government security forces, supported violence perpetrated by some of the IFP, in hopes of breaking up the negotiations. According to the Truth and Reconciliation Commission Report, the government initially was allied with the IFP, but abandoned it by June 1992.

### *Conciliatory Approach*

Often elements within one side or another seek to have the negotiators for their side adopt a more conciliatory approach in order to reach a peace agreement. For example, during a few episodes of U.S.-Soviet arms control negotiations during the Cold War, there were spikes in peace movement mobilizations conducting major public campaigns supporting more conciliatory U.S. positions. Such was the case in the mid-1960s, with opposition to nuclear weapons testing in the atmosphere.[9]

The resistance to U.S. engagement in the war in Vietnam during the Johnson and Nixon administrations took several, largely nonviolent, forms. Many different demands were made, including simple withdrawal, but also negotiating a withdrawal on terms acceptable to the North Vietnam government. The widespread resistance to the war included leading political figures, and influenced the entry into negotiations and conclusion of the agreement on the U.S. military's departure from Vietnam.[10] Some of the opposition's tactics and subsequent U.S. defeat, however, offended more traditionally-thinking Americans and contributed to a subsequent legacy of hardliners striving to overcome the Vietnam syndrome.

President Ronald Reagan's aggressive rhetoric and actions were popular with the segment of the American public dismayed by what they viewed as earlier signs of US international weakness. The militancy of the U.S. policies in the early 1980s in turn reawakened vigorous resistance, with implications

for arms control negotiations with the USSR. For example, support for a freeze on nuclear weapons spread rapidly across America through local government resolutions and large scale demonstrations.[11] Resistance was also strong and influential against U.S. intervention in Central American countries supporting right wing governments and right wing militia groups challenging left wing governments.[12]

In Israel, following the momentous visit to Jerusalem by Egyptian President Anwar al-Sadat in November 1977, negotiations mediated by President Jimmy Carter reached framework agreements for future treaties. However, negotiations for a peace treaty between Israel and Egypt stagnated. The Israeli Peace Now movement was established in 1978, when Israeli reserve army officers and combat soldiers joined together to urge their government to conclude a peace treaty with Egypt. Peace Now continued to work for a negotiated peace agreement between Israel and the Palestinians, and came to be known for its ability to mobilize mass demonstrations and conduct comprehensive monitoring of Israeli settlement activity in the West Bank.

## Outsider Interventions

Persons and groups who are not directly engaged as adversaries in a conflict can act in many ways that affect the course and outcome of negotiations between adversaries in a conflict. This may include their own use of coercion to influence the adversaries' reliance on violence. There are many different kinds of coercion that affect the conditions for negotiation, supporting harder or more conciliatory negotiation goals.

### *Hard Line Approach*

Often outsiders exert their efforts to bolster one side, usually to toughen the position in question. During the Cold War, conflicts in many countries were sustained by U.S. and Soviet government ties to opposing sides. Negotiations, if undertaken in those civil or international conflicts, were prolonged and in many cases fruitless, as the leaders of the opposing sides could hold out for victory with outside help. The end of the Cold War enabled peace agreements to be reached in some of these cases, for example in Central America and Africa. In the struggle of the ANC to end apartheid in South Africa, sanctions by external actors helped reduce the asymmetry in the

relationship between the ANC and the South African government. This ANC-encouraged pressure contributed to the South African government's decision to enter into serious negotiations with the ANC.

In recent years, non-state actors such as al-Qaeda have become the source of militant external intervention in civil and international wars. The flow of young Salafist fighters from one place to another is sometimes aided by governments, and the engagement of these militants in conflicts in Afghanistan, Iraq, and Syria affect the course of negotiations in those countries. The ramifications of such intervention vary, but generally they impede the conclusion of mutually acceptable agreements, since they tend to support uncompromising, extremist positions.

Outside interveners, including national governments and international governmental and nongovernmental organizations, increasingly affect the course of negotiations conducted by opposing parties. They may attempt to strengthen one side in the negotiations, enhancing or reducing asymmetries. Whatever the good intentions of the engaged stakeholders, their efforts may have counterproductive and destructive consequences. Awareness of such dangers can help those stakeholders on the sidelines and those undertaking negotiations to foster constructive negotiations, that is, to help achieve mutually acceptable and sustainable agreements that are more equitable than the prior conditions. Neither harder-line nor more conciliatory actions are necessarily conducive to constructive negotiations.

## Constructive Forethought and Responses

Negotiation leaders, additional inside stakeholders, and outside interveners may add to the coercive conduct in a conflict while negotiations are underway. They themselves may engage in contentious behavior, as well as aggravate it. The consequences of such conduct, however, are highly variable. Such actions may undermine and delay, even terminate negotiations. Sometimes, however, coercive actions may speed negotiations or increase the equity and sustainability of the resulting agreements; much depends on the nature of the coercive actions and their context. There are examples of various policies that leaders of the negotiations, inside stakeholders, and outside interveners may pursue that foster good negotiations with mutually acceptable and sustained outcomes.[13] A few such strategies are discussed regarding dealing with

events that threaten to spoil the negotiations, and in turn creating conditions that reduce the chance of violence and nonviolent coercion hampering the negotiation of generally beneficial agreements.

### *Strategies for Negotiation Leaders*

Negotiation leaders need strategies to overcome disruptive actions by other stakeholders. They also need strategies to mitigate and overcome the possible disruptive effects of their own coercive conduct or that of their adversaries.

Cooperation between leaders on each side to overcome spoiler disruptions can be effective in containing and overcoming disruptive actions. An excellent example of such cooperation occurred during the transformation ending apartheid in South Africa. In April 1993, Chris Hani, a popular ANC leader, was assassinated by an immigrant from Poland, a member of the right wing Afrikaner Weerstandsbeweging. The assassin was seized after an Afrikaner woman provided his license plate number. Nelson Mandela and Frederik Willem de Klerk acted together quickly to isolate the event and move the transformation forward. Mandela spoke that evening on national television to prevent the derailment of the negotiations underway, calling "for all South Africans to stand together against those who, from whatever quarter, wish to destroy what Chris Hani gave his life for – the freedom of all of us."[14] The ANC organized protest demonstrations to allow for nonviolent expressions of anger and resentment, and for its part, the government arrested a member of the Conservative Party in connection with the murder. The negotiations were strengthened by these responses and continued to a successful conclusion.

It is possible to imagine a response to the assassination of Rabin that might have limited the disaster that followed. Political leaders across the political spectrum, including Peres and Netanyahu, might have joined in condemning the political atmosphere that demonized a duly elected Prime Minister. In addition, immediately after the assassination actions might have been undertaken to fully implement elements of the peace agreements that had already been reached.

Officials may also establish procedures and institutions that help avoid disruptive crises. Thus leading officials in opposing sides may institute confidence building measures which minimize fearful surprises. This was done during the Cold War, when the opposing sides notified each other about plans

for military exercises or weapons testing and had procedures for validating compliance to agreements. In addition officials from opposing sides may conduct general conversations through informal back channels or through unofficial Track II channels to overcome dangerous misunderstandings. They may also agree upon rules of acceptable conduct, agreeing in advance to counter and try to block inflammatory language or violation of universal human rights.

### *Non-Leader Insider Strategies*

Non-official stakeholders may also act to counter violence that undermines peace negotiations. They may form multi-level civil organizations to delineate rules of conduct, as was done, for example, in South Africa.[15] The extensive violence, noted earlier, had threatened the democratic transformation of South Africa and its social stability. Appeals to stop the violence by Mandela and other ANC leaders and by Mangosuthu Buthelezi and other IFP leaders were ineffective. No single person or organization could stop the violence. Only the South African Council of Churches and the Consultative Business Movement, acting jointly, were capable of calling a broadly representative conference, the National Peace Convention (NPC). A facilitating committee invited representatives from all the major groups to a closed meeting on June 22, 1991. Five working groups were established and tasked to write reports for the NPC meeting on September 14, 1991. The reports were discussed at the convention and the result was the National Peace Accord. Twenty-seven government, political, and trade union leaders signed the NPA. The NPA presented a vision of democracy and stability for South Africa; moreover, it established a network of structures to attain those goals. These structures provided settings for persons from opposing sides to get to know each other and work together at the national, regional, and local levels.

Even without such institutionalization of boundary-setting rules of conduct, conventional understandings of legitimate conduct can set limits to violence between adversaries pursuing negotiations. Thus, mass violence by challengers to the state or the recourse by state officials to gross suppressive violence sometimes offends significant portions of the population, resulting in the loss of widespread support and eventual defeat.

Insiders who are not part of the leadership may follow a variety of strategies that undermine militant leader strategies to impose settlements, even when in the guise of undertaking negotiations. In war time this may include avoiding service in the armed forces. In other circumstances policies of government officials in relation to adversaries may be countered and resisted by a variety of actions, such as was done with the sanctuary movement to demonstrate against Reagan's policies of intervention in Central America.

Another set of strategies involves people drawn from more than one side in the conflict being negotiated. They may act jointly in various ways trying to influence the progress of the negotiations, the conclusion of agreements, and the implementation of agreements. For example, they may engage in Track II diplomacy and exchange information and ideas that they communicate to the official negotiators of both sides.[16] Groups from opposing sides may also engage in mutual exchanges that enhance understandings that contribute to formulation, acceptance, and execution of peacemaking agreements.

One such channel is the Pugwash Conferences on Science and World Affairs, begun in 1957 when persons engaged in the development of nuclear weapons and discussions about their management initiated meetings to exchange ideas about reducing the chances of nuclear warfare.[17] The participants were well positioned to develop transnational connections and to influence government officials on issues related to nuclear weapons. Discussions at Pugwash meetings over many years contributed to negotiating several international treaties, including the Partial Test-Ban Treaty, the Nonproliferation Treaty, the Biological Weapons Convention, and the Anti-Ballistic Missile Treaty.[18]

### *Outside Interveners*

Intervention by people not belonging to any of the primary parties involved in the negotiations can alleviate the destructive consequences of coercive actions between the negotiating parties. External governments and international organizations may try to prevent delivery of weapons. Also, they may impose sanctions against parties inflicting gross human rights violations. The very possibility of international punishment of human rights transgressors may help check extreme reliance on violent suppression.

Outsiders may be able to arrange meetings between high level persons from opposing sides for informal discussions, even when hostile talk and

actions are underway. For example, in 2008, then-Pugwash Secretary General Professor Paolo Cotta-Ramusino brought together current and former U.S. officials with representatives of the ruling conservative factions of Iran.[19] Their intensive talks dealt with nuclear issues and other substantive issues and how mistrust between the two sides could be overcome. Some progress was made in understanding each other's positions and underlying interests and establishing personal relations between persons who would become officially engaged in subsequent negotiations. It helped bring about changes in opposing governments that reduced coercive rhetoric and sanctions and the initiation of direct official negotiations discussed earlier.

Certainly, mediators are often an effective way to pursue negotiations, even under the duress of violence. For example, Giandomenico Picco, assistant secretary-general to UN Secretary-General Javier Perez de Cuellar, conducted intensive mediation, shuttling from one country to another in the Middle East negotiating the release of hostages from several countries seized in Lebanon.[20] Pico met with representatives of parties who would not communicate directly with each other and who had profound mistrust of each other. The release of the hostages was part of a complex set of actions by the UN Secretary General, along with the Iranian, Syrian, Lebanese, Israeli, American, British, and German authorities, Hizbollah, and the groups holding the hostages

In addition to mediation by UN officials, representatives of national governments often mediate conflicts, sometimes in conjunction with coercive inducements. A case of mediation accompanied by violence occurred in regard to Kosovo, many of whose inhabitants strove for independence from Serbia after the breakup of Yugoslavia. To settle the status of Kosovo and halt fighting there, the Contact Group (United States, United Kingdom, France, Italy, Germany, and Russia) organized a peace conference, held at Rambouillet, near Paris, in February 1999. The U.S. mediators threatened to bomb Serbia if it rejected an agreement the U.S. deemed acceptable. Serbian negotiators accepted most of the proposed agreement, including regional autonomy for Kosovo and the end of repression there. On February 23, 1999, the Contact mediators delivered the text of the proposed agreement, but with a Military Annex that accorded NATO personnel unrestricted access throughout the Federal Republic of Yugoslavia.[21] Not surprisingly

that was rejected by Serbia. Apparently the U.S. government was eager for a Serbian rejection so that NATO military action could ensue, which would demonstrate NAT0's value.[22]

On March 24, 1999, NATO aircraft (70 percent were U.S. planes) began bombing Serbia and Kosovo. Justified as a response to a humanitarian emergency, it resulted in a humanitarian calamity. Serbian repression and ethnic cleansing of ethnic Albanians in Kosovo was unleashed. Escalating bombing continued until June 10, 1999, when a new settlement was accepted that did not authorize NATO movement throughout Serbia. The terms of the settlement were hardly different than those Serbia was ready to accept at the earlier conference in Rambouillet.

In 2005, Palestinian civil society called for a campaign of boycotts, divestment, and sanctions (BDS) against Israel until it complied with international law and Palestinian rights. Several churches and other non-governmental organizations in the United States and other countries undertook various BDS actions. These coercive acts of solidarity were intended to reduce the asymmetry of the Israeli-Palestinian conflict and induce the Israeli government to negotiate in a more conciliatory manner. In many cases, the groups waging BDS campaigns targeted products and corporations associated directly with the Israeli occupation of the West Bank. Such targeting could be presented as not challenging the existence of the State of Israel, thereby lessening the possible counterproductive effects of such campaigns.

In short, coercive actions in conjunction with negotiations may help reach mutually acceptable agreements that are enduring and equitable. However, often coercive and especially highly violent actions interfere with reaching an agreement or with reaching an equitable outcome. It is important to understand how and when coercion, and even violence, can be conducted and not be counterproductive toward attainment of a mutually acceptable agreement. In general, coercion that is humiliating and conveys threats to collective survival will provoke resistance, not compliance.

## Conclusions and Policy Recommendations

The policy recommendations that follow are intended particularly for the negotiators and their leaders, although they have relevance for all stakeholders. The recommendations also depend upon what values and interests are to

be advanced, and these recommendations reflect the conviction that the outcomes are likely to be broadly beneficial if the interests and concerns of all parties are kept in mind. This is one of the basic ideas of the constructive conflict approach.

a. Negotiation leaders should engage a wide range of stakeholders, even including those who might spoil success. This helps involve many levels of each side's constituency, which aids implementation. Engaging potential spoilers can prevent them from acting to disrupt the negotiations, but must be done carefully so as not to invite spoiler behavior.
b. Excessive asymmetry between adversaries can interfere with reaching an equitable agreement. Asymmetry, particularly when largely relying on violent force, hampers negotiations. Each side in a conflict likes to negotiate from strength, not weakness, which obviously poses problems for negotiations. Negotiation leaders recognizing some value in a rough symmetry can contribute to beginning negotiations and to reaching mutually acceptable agreements.
c. Negotiation leaders should discover and attend to the concerns of the other side in negotiations. Dismissing the positions of the other side as irrational or evil yields no insight. Knowing how the other side views its own conduct can provide clues to mutually acceptable agreements. Evidence of seeking such knowledge by itself can help build trust and respect from the other side.
d. In many circumstances, mediation can bypass and avoid contentious coercion. There are a wide variety of direct and indirect mediation possibilities that can be utilized to explore possible options that are mutually acceptable.
e. Leaders of negotiations from different sides can help each other sustain constituency support for the emerging agreement. They can help each other in performing this important task.
f. When coercion is deemed to be necessary it should be precise and constrained. Nonviolent forms are preferable to violent coercion that raises the stakes for the opponent and therefore is often counterproductive. Nonviolent coercion can be more inclusive and more readily pursued in the context of desiring ultimately a negotiated settlement of some mutual benefits.

In short, coercion and even violence often occur in conflicts, even as adversaries enter into negotiations to settle their conflict. This analysis should make it clear that insiders and outsiders, leaders, and other society members often can find ways that contentious behavior can be employed, but not obstruct the chances of negotiating equitable and enduring agreements. Indeed, it is possible that some kinds of coercion will contribute to more constructive and sustainable agreements, if they are undertaken thoughtfully, taking into account broad considerations.

## Notes

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