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Note: This paper uses US English (with punctuation and rule of style).

NEGOTIATION:

THE MOST IMPORTANT FUNCTION OF DIPLOMACY

1) INTRODUCTION

Geoff R. Berridge observes that negotiation is one of the functions of diplomacy and correctly identifies the other diplomatic duties, including gathering of information, clarifying intentions and promotion of goodwill. He nonetheless asserts that negotiation is “the most important function of diplomacy”¹ if the latter is conceived in a broader sense. Jean-Robert Leguey-Feilleux, on the other hand, sees

¹ G.R. Berridge, *Diplomacy: Theory and Practice*, 3rd ed. New York: Palgrave, 2005, pp. 27, 214 -215.

negotiation as one among several functions of diplomacy. He said: "Diplomacy serves a large variety of functions, and negotiation, albeit important, is only one of them."²

A premise in this argument is that, in today's international relations, negotiation takes place more often than the other functions. While the trend has declined in bilateral relations, it is much dominant in multilateral diplomacy. Though at times ceremonial and symbolic, summit level interactions are equally frequent. Mediation is also undertaken as "a special kind of negotiation designed to promote the settlement of a conflict."³

My diplomatic experience informs me that the importance of negotiation is not exaggerated. As discussed below, evidence suggests that disputes and conflicts permeate every sphere of our existence. Diplomacy is of constant resort and negotiation is pervasively utilized.

Inspired by Berridge's instructive discussion, I have chosen negotiation as a theme of this paper. I draw from his analysis of the subject in Part I of his book. I supplement that with other insightful works, notably R.P. Barston⁴ and Leguey-Feilleux.⁵ I also seek to confirm that diplomacy has increased in content and complexity, and negotiation is a major preoccupation of those engaged in it, making

² Jean-Robert Leguey-Feilleux, *The Dynamics of Diplomacy*, Colorado: Lynne Rienner, 2009, p. 5.

³ G.R. Berridge, p. 194.

⁴ R. P. Barston, *Modern Diplomacy*, 3rd ed., Harlow: Longman, 2006.

⁵ Jean-Robert Leguey-Feilleux, *The Dynamics of Diplomacy*.

it the most important function of diplomacy. I am able to pass judgment on the reasonableness of such an assertion builds upon my 14 years of diplomatic experience in multilateral diplomacy at the United Nations. It is this background that provides me confidence to place reliance on ‘what I know’ about negotiation.

Below, I first define diplomacy and its related function of negotiation. Secondly, I discuss some broad changes in modern international relations. Thirdly, I sum up salient elements and dynamics of negotiation. Fourthly, I share my own experiences on certain themes of the negotiation process. Before the conclusion, I refer to the recently revived Middle-East peace talks to add currency to some key dynamics of negotiation.

I have noted the caution that the three-stage negotiation model, as developed by students of the subject “is an analytical construct”⁶ based primarily on high-stakes negotiations involving parties that were or still are at war. The situations and characters of the parties to a conflict differ, and so the capacity and ability of those involved in mediation efforts. Unforeseen complications at any given phase of negotiation may arise and hinder such a ‘scientific’ chronology of proceeding. Negotiators may be tempted to ‘back-track’ or even skip the subsequent sequential stage(s). I also bear in mind the distinction between regular inter-state and the

⁶ G.R. Berridge, p. 28.

rather delicate, and usually uncertain, process of hostage negotiation.⁷ The latter has unique dynamics and modes of intervention.

2) WHAT IS DIPLOMACY AND NEGOTIATION?

In the evolution of international relations, diplomacy and negotiation have meant different things to different people at different times. To some, diplomacy and negotiation are just two distinct words meaning the same thing. In *The Diplomat's Dictionary*,⁸ Chas W. Freeman Jr. provides a plentiful mix of definitions offered for the two activities, from both ancient and modern opinion-makers of diverse background and persuasion.

a) Diplomacy

Freeman cites⁹ Napoleon Bonaparte, who said diplomacy “is the police in grand costume;” Ambrose Bierce, says it is “the patriotic art of lying for one’s country;” Lester B. Pearson, that it “is letting someone else have your way;” Ludwig Boerne, that it “is to speak French, to speak nothing, and to speak falsehood;” and last but not least former Chinese Premier Chou En-lai, that “all diplomacy is continuation of war by other means.”

⁷ R.P. Barston, pp. 61 - 62.

⁸ Chas W. Freeman Jr., *The Diplomat's Dictionary*, Washington, DC: US Institute of Peace Press, 1997.

⁹ Freeman Jr., *The Diplomat's Dictionary*, pp. 71, 73, 74 and 75.

Irrespective of the variations in several aspects and tone, these and other definitions carry a common theme. Diplomacy occurs for a purpose. Freeman has also cited¹⁰ Cardinal Richelieu indicating that diplomacy is “not at incidental or opportunistic arrangements, but at creating solid and durable relations”; Charles de Martens and Harold Nicolson respectively saying that it is “the science or art of negotiation” and “the management of the relations between independent states by process of negotiation”; Ernest Satow, quoting Edmund Burke, who sees it as a “skill or address in the conduct of international intercourse and negotiations”; and Sisley Huddleston who states that it is “the art of lubricating the wheels of international relations.”

Berridge has also focused on the objective of diplomacy and its methods, stating that: “Its chief purpose is to enable states to secure the objectives of their foreign policies without resort to force, propaganda, or law.”¹¹ If adequately resourced and done skillfully, he emphasizes, it is “a major ingredient of power.”¹² Diplomacy can also be a means to orchestrate violence, but in this paper I take the positive definition from Huddleston, an English journalist (1883-1952).

¹⁰ Ibid., see pp. 70 – 80 for complete citations.

¹¹ G.R. Berridge, p.1.

¹² Ibid., p.1.

b) Negotiation

Variable but related definitions have also been offered for negotiation. Again, Freeman, Jr.,¹³ provides extensive definitional work on the subject and its associated aspects. Amongst the most perplexing in his reservoir is the attitude ascribed to Soviet negotiators on the concept of ‘negotiability.’ This is the extreme approach that: “What’s mine is mine, what’s yours is negotiable.”¹⁴ This is not uncommon as part of today’s diplomatic negotiation strategy. But, obviously, if tenaciously opposed negotiators showed up at the negotiation table both wielding this model, the certainty will be a stalemate and *status quo*. Such an attitude connotes arbitrary unwillingness to make compromises.

In highly antagonistic disputes between unforgiving rivals, persistent inflexibility in negotiation is unhelpful. In cases of open hostility, it could lead to further escalation. Experience shows that resort to open confrontation and violence is a means favorable to those well equipped in the art of warfare and aggression. Some analysts have noted that at times a carrot and stick (threats and incentives) approach¹⁵ is also usually applied by the powerful to induce agreement. But, consistent with the definition I adopted above on diplomacy, in this paper I define

¹³ Chas Freeman, Jr., *The Diplomat’s Dictionary*, pp. 177 - 196.

¹⁴ *Ibid.*, p.177.

¹⁵ Chas W. Freeman, Jr., *Arts of Power: Statecraft and Diplomacy*, pp.71-72, discusses what he terms ‘Grand Strategy’ involving diplomacy and military force to preserve vital national interests.

negotiation as a concerted effort by protagonists to reach a mutual resolution of what is in dispute through cordial means.

3) FEATURES OF MODERN DIPLOMACY

The founding tenets of diplomacy may have remained intact, but there is sufficient evidence¹⁶ that diplomatic practice has gone through significant changes. Since the early days through its recognizable modern roots in the Ancient Greek city-states system, diplomacy saw elaborate change and adaptation over centuries and decades. This process gained momentum during the 'Italian Renaissance' and the French system (or the so-called Richelieu era), which unveiled the truly most current version of diplomatic practice. Starting particularly with the 19th Century, a lot continued to evolve much rapidly. The post-World War II period saw a proliferation of regional and international organizations. To date, the erstwhile era of 'classic' resident bilateral representation mode of diplomacy co-exists with a robust multilateral companion. For small states with limited capacity, multilateral diplomacy presents the convenience of a collective mode of interaction with an increased number in independent states.

In addition to traditional state actors, modern diplomacy has experienced increased engagement of the so-called 'Track II diplomacy' and 'transnational

¹⁶ Berridge, pp. 1 – 3, & Leguey-Feilleux, pp. 23 - 47 provide detailed historical evolution of diplomacy

diplomacy'¹⁷ by private individuals and a novelty of non-state actors pursuing diverse interests. 'Direct-dial diplomacy' or 'trans-governmental diplomacy' also gained vitality as a feature of inter-state interaction, due to the imperative for government bureaucracies (rather than the Foreign Ministry alone) to keep direct contact with their counterparts across borders.

In such a rapidly interdependent and globalizing world, the international diplomatic agenda has also widened in scope and complexity. 'Internationalization' of many issues originally considered domestic matters, has increased. Unlike the rudimentary ancient style of diplomacy which was famished of better tools and means, modern diplomacy is enormously facilitated by the opportune emergence of modern information technology and communication. For example, 'shuttle diplomacy' is now more efficient as a supplement to resident bilateral and multilateral modes of diplomacy. Those having to travel abroad to represent state or other interests do not only reach their destinations quicker, but they also easily stay in contact with constituencies through telephone and other modern means.

"There is virtually no aspect of life in society that has not, at one time or another, been on the diplomatic agenda."¹⁸ To better regulate competing interests, diplomatic methods needed adaptation. Many legally binding treaties and/or conventions, and other regulatory/administrative mechanisms necessary to

¹⁷ See Leguey-Feilleux's detailed discussion, pp.101 - 128, especially the remarkable 1997 Nobel Peace Prize winning efforts by Jody Williams and the International Campaign to Ban Landmines (ICBL), culminating into the "Ottawa Process" and adoption of the 1997 Convention to ban landmines.

¹⁸ Leguey-Feilleux, p. 1.

effectively 'oil the wheels of international relations' have proliferated. With exception of cordial relations between allies, countless such instruments are the product of arduous and high-stakes negotiation. These negotiations bring together an assortment of players to iron out modalities for the orderly conduct of international relations. In significantly polarized settings, achieving common ground demands a requisite set of skills if negotiators are to succeed in persuading others. Those involved therefore need to be adequately equipped with the tact, strategy and technique for building consensus. As a result, most states and non-state actors have increasingly embraced professional diversity as a trait in diplomatic practice. This is a positive development in leveling the diplomatic play field. But the downside of it is that, having a large group of overly experienced negotiators trying to agree on one thing or another can also complicate and prolong negotiation transactions.

Barston draws upon Fred Charles Ikle's book *How Nations Negotiate*, and brings to the fore "the fivefold classification of international negotiation."¹⁹ It fully depicts the scope of international negotiations by 'subject matter' and supports the assertion that negotiation covers an extensive and complex range of issues. He highlights the scope of coverage of negotiations on issues such as international financial relations, including renegotiation, rescheduling and cancellation of national debts; trade interests and policies and environmental concerns.²⁰ In the context of World Trade Organization (WTO) negotiations, he illustrates that trade

¹⁹ R.P. Barston, p.49.

²⁰ R. P. Barston, *Modern Diplomacy*, 3rd ed., Harlow: Longman, 2006, see Chapters 6 - 8.

related disputes and conflicts also span market access, hygiene concerns, especially animal products, fisheries and food exports. "Resource questions"²¹ is another traditional cluster of disputes identified as engaging negotiators at the WTO. All these and other concerns are increasingly at the forefront of the international agenda and do have a strong influence on how foreign policy of countries is executed.

Among other developments singled out as having significantly impacted diplomatic methods in recent decades is "the great fusion of public and private interests."²² It is particularly observed that:

...the state is assuming or incorporating into its public diplomacy an increasing number of private interests. What is meant here is the acquisition by the state of a stake in both private domestic interests and, particularly, in the external operation of its national and corporate entities. Acquired stakes take the form of internationally negotiated joint ventures, financial support, trade promotion and conclusion particularly of bilateral agreements, to facilitate and protect foreign investment and other economic interests.²³

The above illustrates that the degree of 'concession rate' available to those entrusted the task of finding common ground in negotiations, especially in multilateral conferences involving too many participants with multiple interests, could be significantly constrained. Urgent action on pressing problems gets held to ransom by calculated risks of domestic political fall-out. Concerns over the reaction

²¹ Ibid., pp. 142 -144.

²² Leguey-Feilleux extensively discusses this "transnational phenomenon," see p.13 & Chapter 5.

²³ R.P. Barston, p. 379.

of home-based pressure or interests groups and their foreign networks can also bog down negotiators and leave them with a narrow window to make essential compromises to move negotiations forward.

I should add that in Africa, the region from where I come, some states have acquired demeaning labels, such as 'the resource curse' or 'blood diamonds.' Sadly, Somalia is to date in a perpetual search for statehood and has for a prolonged period of time remained a typical "failed state."²⁴ In several other countries globally, resource-driven interests have unleashed a wave of deadly conflict and war. Resolution of these and other disputes demand painstaking negotiation and mediation. For these and other reasons, it indeed "hardly needs labouring that it is the process of negotiation that grapples directly with the most threatening problems, whether they are economic dislocation, environmental catastrophe, sporadic ethnic violence, or outright war."²⁵

Some had prematurely pronounced diplomacy dead²⁶ at a certain juncture in history. Recently, Carne Ross,²⁷ a former British diplomat, has also published a book venting his frustration and incredulous dark cloud of skepticism over what he sees as the 'undemocratic' nature of diplomacy and its methods. Without being unduly

²⁴ Leguey-Fuilleux, p.73, has also alluded to this uncharacteristic label of some sovereign states.

²⁵ Berridge, pp. 27 & 214.

²⁶ See Leguey-Feilleux, p.1, citing Hans Morgenthau.

²⁷ Carne Ross, *Independent Diplomat: Dispatches from an Unaccountable Elite*. Ithaca, New York: Cornell University Press, 2007, especially Chapter 11.

defensive to a profession to which I belong, I hold the contrary view that there is ground to argue that diplomacy should not be cast aside but instead further be improved. Diplomacy remains relevant and will continue to be a useful tool of peaceful intervention. This is especially achievable through the regular employment of negotiation, rather than by using violent means in the settlement of disputes. Through negotiation, the modern nation-states system and other actors can possibly reconcile their competing interests. It is therefore by no mistake, in my view, that in fact some analysts have equated diplomacy with negotiation.²⁸

4) THE NEGOTIATION PROCESS

The “analytical construct”²⁹ developed by some students of negotiations reveals that negotiation proceeds in three distinct stages: pre-negotiation, formula and details phases. The analysis by Berridge³⁰ uncovers that each negotiation phase has peculiar characteristics, and their relative degree of difficulty also varies. Being a game of persuasion, it is also widely acknowledged that technique and strategy are *sine qua non* in all negotiations.

There is also agreement that negotiations must have clearly stipulated deadlines to sustain momentum. ‘Representing things in the form of other things’ (such as metaphors of movement) is also a recognized tool to ‘staying on track’ in

²⁸ See G.R. Berridge, p.1.

²⁹ G.R. Berridge, p. 27.

³⁰ Ibid., pp. 27- 85.

negotiation.³¹ Presenting outcomes or ‘packaging agreements,’ and the final step of enforcing outcomes through adequate follow up, are amongst other matters considered crucial. Ensuring that parties to a dispute honor agreements by adhering to their commitments has been highlighted. One cannot be more eloquent on this issue than the words of Francesco Guicciardini.³²

Below, I summarize the three-stage negotiation process. I also discuss how media and publicity can affect negotiation, and share my own experience at the UN on the subject of negotiation to further expand on some issues I came across in my research.

a) *Pre-negotiation*

Difficult negotiations in fact start much earlier than the substantive discussion.³³ ‘Pre-negotiation,’ or so-dubbed ‘talks about talks,’ is a moment when the journalistic questions of ‘Why?’ ‘What?’ and ‘How?’ are answered. At this stage, the agenda and other procedural issues, including format, venue, timing and delegations are sorted out. Importantly, the necessity to negotiate must first be equally appreciated by the parties to a conflict. This occurs when the parties acknowledge the existence of a ‘stalemate’ and accept that the *status quo* is unsustainable. It is noted, however, that

³¹ For a full discussion of ‘Metaphors of Movement’ see Berridge, pp. 64 – 67.

³² As cited by Berridge, p. 84, he observed that: “In matters of business take this as a maxim, that it is not enough to give things their beginning, direction, or impulse; we must also follow them up, and never slacken our efforts until they are brought to a conclusion ... he who follows a different plan will often assume things to be ended which in truth are hardly begun.”

³³ For more details, refer to Berridge, pp. 29 - 44, and Leguey-Feilleux, p. 6.

a prevailing situation may be favorable to a party which may therefore not easily be motivated to buy into negotiation.

For high-stakes negotiation, this phase is considered lengthy and relatively difficult. Risk of failure, even before substantive talks begin, is high. Reasons given for the difficulty include the fact that the parties usually want advance assurance that negotiation is advantageous. The parties also attempt to influence the venue and even 'prejudge' the outcome of negotiation. Content and the order in which the items on the agenda are to be taken, as well as the level of representation and facilitation³⁴, are also discussed at this phase. A key challenge is in finding dates suitable for all, in case of other pre-existing commitments by parties to a conflict and a third party facilitator, particularly for high-level representation.

b) Formula Stage

'Pre-negotiation' is followed by the 'formula' stage to set out 'basic understanding' or 'broad principles' of expected outcome. "The chief characteristics of a good formula are...comprehensiveness, balance, and flexibility."³⁵ At this stage, rivals mainly 'size up' each other. What cannot and does not need to be agreed in advance is normally left to a subsequent 'step-by-step' process – an approach considered most ideal in delicate negotiations so as to avoid premature collapse. This phase is relatively least complicated of the three phases. Worth noting,

³⁴ As the Israeli-Palestinian conflict demonstrates, it is acknowledged that the mediation by a close friend of one of the parties to a conflict provides added advantage to the mediator to put pressure on an ally.

³⁵ G.R. Berridge, p. 47.

however, is that the formula stage can provide a clue of the expectations by the parties into the next (details) stage of negotiations. If there is a veiled intent by a party to create 'linkages' between unrelated item to force a 'package deal' rather than discussing issues on merit, this stage may serve a useful early-warning.

c) Details Stage

Due to its relative complexity, at least compared to the formula stage but less often to the pre-negotiation stage, this stage is referred to as the "moment of truth."³⁶ Hesitant on the extent to which this can be generalized, Berridge is nonetheless categorical that "the details stage is a strong candidate for the dubious honour of being called the most difficult stage of all."³⁷ Sensitive 'details' are tackled head-on at this phase. The stage is deemed not just complicated in view of the hard options that have to be faced. In fact, it is precisely this stage that makes negotiation the most important function of diplomacy.

At this stage, negotiators face the daunting task of dealing with delicate matters and they often tread cautiously to avoid making bad concessions. Choices made have to be subsequently justified to all stakeholders; otherwise, the cost can be just too high a brunt to shoulder. The stage is often blemished by disagreements amongst members of the sometimes very huge teams of negotiators of mixed backgrounds,

³⁶ Ibid., p. 52.

³⁷ Ibid, pp. 49 – 52 for details.

and between them and their common foe. Because of the inherent difficulty, it is a time consuming phase.

5) MEDIA AND PUBLICITY

There is a consistent theme that during negotiation, especially high-stakes ones, private media³⁸ or any form of hasty publicity, can poison the atmosphere. Recalling the role he played in the negotiations to address factionalism within the ruling Botswana Democratic Party (BDP), Botswana's Assistant Minister Mokgweetsi Masisi was cited in a local newspaper making the following observation:

The BDP peace negotiations were not your usual let's sit around the table and clear the air kind of meeting...The stakes were so high that before negotiations could resume, all cell phones were confiscated to stop youth leaders who were behind the closed door from communicating with their faction handlers outside the negotiation room. Although the tactics have since provided fodder for both the skeptics and the disgruntled, Masisi is adamant that there had to be what he refers to as 'the rules of engagement.'³⁹

This example shows how, if not managed discreetly, publicity can prejudice negotiations.⁴⁰ Those leading or having a stake in the process, including mediators,

³⁸ Berridge, pp. 67 - 68 & Leguey-Feilluex, pp.7 - 8, have both addressed this matter.

³⁹ Botswana *Sunday Standard*, <http://www.sundaystandard.info/article.php?NewsID=84771&GroupID=4> (accessed August 9, 2010).

⁴⁰ The 1956 Suez Canal crisis; the early 1950's Beijing US/UN airman negotiation; and the 1962 Yemen crisis provide other examples of the common misgivings about the media during delicate diplomatic negotiations (see case studies by Leguey-Feilleux, Chapters 3, 8 & 9 for details).

prefer to make breaking news rather than the media ‘talking up the talks.’ Embarrassment could make those involved ‘lose face’ and leave them helplessly reactive on concessions they might have made. Cheap propaganda victory could also be handed to an adversary, and momentum in negotiation may also be put to risk. It is not surprising that official press/information offices play a publicity role to support negotiations, rather than letting private media sabotage the process. It is noted, however, that private media or publicity can serve a propaganda purpose, especially in deliberately humiliating an opponent.

6) MY EXPERIENCE WITH UN NEGOTIATIONS

The UN truly has “a legendary reputation for fertile imagination,”⁴¹ especially on the subject of negotiation. For 14 years now, I have been part of that process,⁴² representing national interests (a negotiating role) and several times also presiding over meetings, resulting in recommendations to the UN General Assembly (a facilitation or mediation role). Part of my experience was documented in 2002 by the *UN Chronicle*,⁴³ based on an interview with a staff member. Below, I further elaborate on a few elements.

⁴¹ G.R. Berridge, p. 46.

⁴² Refer to my profile submitted to EUCLID upon enrollment (unpublished).

⁴³ See UN Chronicle. “*The Process of informals in the Fifth Committee*”, 2002 March – May Issue, also available at: http://findarticles.com/p/articles/mi_m1309/is_1_39/ai_87706552/?tag=content:coll (accessed August 17, 2010).

a) Face-Saving Small Prints and Annexes

The importance of “saving face”⁴⁴ in negotiation is a widely discussed matter. When agreement is hard to reach, several options do also exist in the UN General Assembly’s negotiations. One perennial habit is to request the Secretary-General to submit a ‘comprehensive report’ for consideration at a future session. Interestingly, it is not rare that concerned parties would outline a leading laundry-list of elements that should form part of the report being requested. This is an evident biased expectation about the content of the report. This strategy also amounts to prejudging the scope of a future discussion. There may be no guarantee of a future change in the positions of protagonists, especially those anchored on principle. Such an approach, however, delays conceding defeat by keeping the matter in dispute ‘alive’ and secures the issue an advance slot on a future agenda.

Another method worthy of mention is the use of footnotes. Strictly speaking, a footnote forms an integral constituent of a document. But tucking contentious language at the bottom of a page in ‘small print’ conceals embarrassing concessions. It provides the illusion that, perhaps with the lapse of time, a few will neither see the ‘small print’ nor remember the circumstances leading to its placement at the bottom of a page. Moreover, the approach creates a temporary false sense of ‘pride and prestige.’ It is nonetheless one of many common approaches applied sometimes at the displeasure of the editors in the UN’s Department of General Assembly Affairs

⁴⁴ See G.R. Berridge, pp. 81 – 82 & also R.P. Barston, p. 141.

who, in trying to do their job, are invariably instructed to leave texts unedited to avoid altering the consensus equilibrium.

b) Representation, Composition and Delegation Size

The impact of representation level, composition and size of delegation in negotiations has been raised. As discussed earlier, these are some of the matters often dealt with at the pre-negotiation stage. An example of the potential 'marginalization' of smaller states is also a well made case, which is part of the criticism of the World Trade Organization (WTO) trade negotiation process by Jawara and Kwa.⁴⁵ It is revealed that at the WTO Doha round in 2001 the European Union (EU) had a delegation of 508, whereas small states such as Maldives and Saint Vincent only flew in one or two. WTO's 'Green Room' (small group) format is critiqued for excluding states unnecessarily and undermining consensus.⁴⁶ Good points on how smaller states are disadvantaged in negotiations because of few and usually not so professional delegates, in comparison with their developed colleagues, have also been well made.⁴⁷ The pros and cons presented are convincing, and the UN General Assembly is no exception.

I, however, know of cases in which disparity in the level of representation is no choice. For example, there is a perception by many developing countries'

⁴⁵ See R.P. Barston, p. 141.

⁴⁶ Ibid., p. 141.

⁴⁷ See Leguey-Feilleux, p. 225.

Ambassadors at the UN that the issues discussed by the Fifth (Administrative and Budgetary) Committee of the General Assembly are 'too technical and complicated.' On the other hand, it is the same forum where decisions on funding the Organization's mandates are made. The Fifth Committee, therefore, attracts the close attention of the Ambassadors from the developed countries, especially from the major financial contributors to the UN (USA, Japan and EU).

I recall particularly that US Ambassadors would typically attend most of the night-long to early morning 'informal' negotiations of the Fifth Committee, amidst lower level delegates. For example, during negotiations in 2000 on the 'Scale of Assessments' to determine the financial contribution of Member States to the UN regular/peacekeeping budgets, American Ambassador Richard Holbrooke was for the predominant part personally present amongst a few other Ambassadors to lobby and do direct 'arms-twisting.' The result was that the US succeeded in pushing through the long-standing desire to lower its regular financial contribution from 25% to the current 22%.

The point here is that in diplomacy, rank is indeed an issue – representation in negotiations can sometimes results in undue pressure to make unwarranted concessions when represented at the lower level.⁴⁸ Protocol compulsion instills fear on lower ranking diplomats preventing them from expressing contrary views against a senior diplomat. If it involves big and influential countries, the

⁴⁸ Leguey-Feilleux, p. 153, also makes reference to the interaction between diplomats of dissimilar ranks.

repercussion can be retaliatory curtailment of support to vital bilateral programs, although this may not hold true for states with nothing to lose.

The painful burden is on delegates of small countries who play the role of a 'sole negotiator' on all items on the agenda, while their colleagues from larger states take turns and alternate is indeed common. The handicap of small delegations running "from one committee to another to catch the issues of interest to their state,"⁴⁹ at the expense of paying attention throughout another parallel discussion, is also familiar. But there is arguably an added advantage, such as a broad overview of the complete scope of the issues on an agenda, rather than the 'compartmentalization' model usually followed by many larger delegations that can afford it, facilitates 'package deals' by providing enhanced ability to instantly create 'linkages' – an important technique for constructing consensus.

My experience in the UN negotiations, therefore, teaches me that despite being burdensome and obviously at odds with the concepts of division of labor, specialization, productivity, efficiency and effectiveness, small but smart delegations can successfully turn the burden to their advantage. Unlike their counterparts from major countries, small delegations rarely have the luxury of calling for unnecessary suspension of a session in order to consult a colleague 'who deals with the other issue' that is being proposed for a deal-making 'trade-off.'

⁴⁹ See Leguey-Feilleux, p. 226 for details.

c) *'Nothing is agreed until everything is agreed'*

'Exchanging points' is discussed as a strategy in negotiation, in reference to Zartman and Berman making reference to "Homan's theorem."⁵⁰ It is true that negotiators always suspect that the opposite side is negotiating in bad faith and that they are the ones making more concessions. Ability "to give the other side more or less what it wants on one issue in return for satisfaction on a separate one"⁵¹ is, therefore, considered important in making progress in negotiation.

In UN intergovernmental negotiations, the phrase 'nothing is agreed until everything is agreed'⁵² is frequently invoked. It is a euphemism for extremis reversion in the event a *quid pro quo* for concessions is not honored by the other party. This reference supports the argument that each party in negotiations expects more than just paltry returns on what it traded-off. Failure to satisfy the expectation could prevent achieving a package deal on account of 'negotiating in bad faith.'

d) *Textual clarity and 'constructive ambiguity'*

Face-saving in negotiations can also manifest itself in the language in which a written agreement is cast. The 1982 negotiation of the Law of the Sea has been presented as a good case of how 'constructively vague language' can be a useful stand-in for the option of a voted decision. Barston particularly observes that:

⁵⁰ G.R. Berridge, pp. 52 - 54.

⁵¹ Ibid., p. 52.

⁵² See also Carne Ross, p. 171.

Minor powers and small states in some respects have enhanced opportunities for protecting their positions in the drafting process of a consensus system. Put differently, consensus may be a convenient political fiction that is maintained during a conference to prevent premature break-up or postpone a decision. States subsequently may choose to interpret the meaning of a text in different ways and, indeed, implement it, if at all, in quite divergent ways.⁵³

Another example cited is the negotiation of a communiqué that “tend to be ‘textual’ in nature, with limited scope for trade-off, since the drafting is normally in the concluding phases of the proceedings.”⁵⁴ Several other examples have also been provided showing how ‘ambiguity’ in language can achieve consensus.⁵⁵ But, as the case of UNCTAD negotiations confirms, ‘ambiguity’ in language carries the risk of non-implementation due to uncertainty on what exactly has been agreed.⁵⁶

In the UN diplomatic lingo, the phenomenon is referred to as ‘constructive ambiguity.’ I also discussed this important consensus-building tool in the 2000 interview with the *UN Chronicle*.⁵⁷ My experience with UN General Assembly negotiations leads me to add that the burden of interpretation is much more of a

⁵³ R.P. Barston, p. 93.

⁵⁴ Barston, p. 60.

⁵⁵ In the negotiations during the 1956 Suez Canal crisis, Leguey-Feilleux, pp. 75 - 78, quotes Brian Urquhart describing how the UN Secretary-General Dag Hammarskjöld also benefitted from ambiguity. Hammarskjöld is cited saying: “In order to gain the necessary time...I accepted a certain lack of clarity.”

⁵⁶ R.P. Barston, p. 94.

⁵⁷ See *UN Chronicle*. “*The Process of informals in the Fifth Committee*”, 2002 March – May Issue, also available at: http://findarticles.com/p/articles/mi_m1309/is_1_39/ai_87706552/?tag=content:coll (accessed August 17, 2010).

problem for the Secretariats of multilateral conferences who have the responsibility to implement the decisions arrived at through unclear language. I referred to this matter in the same 2000 UN *Chronicle* interview indicating that, while ‘constructive ambiguity’ averts immediate disaster in negotiation, the approach simply postpones controversy.

e) Referents or ‘agreed language’

The usefulness of “referents and formulae from other contexts”⁵⁸ as short-cut to consensus-building, has also been discussed. In UN jargon this is commonly known as ‘agreed language,’ an important mechanism to avoid re-opening a past contentious debate of which they can never be an easy agreement. No doubt, a party that feels it conceded just too much in a previous encounter may want to take a chance in the future to tilt the balance of existing consensus in its favor. But no astute negotiator, familiar with the painstaking previous debate would want a repeat of protracted negotiation on the same or related issue and risk losing a hard-won bottom line previous advantage.

f) Deadlines and the illusion of time

Deadlines are considered a traditional device⁵⁹ regularly applied to inject momentum in negotiations. ‘Artificial,’ ‘symbolic’ and ‘practical’ deadlines, and the

⁵⁸ R.P. Barston, p. 57.

⁵⁹ G.R. Berridge, pp. 54 - 64.

circumstances in which each merits application, have been discussed. Some call it 'an ultimatum' and Barston refers to the "effect of time constraints"⁶⁰ in negotiation. Unless there is ultra-motive, particularly when a "status quo" is deemed satisfactory by one party as discussed earlier, ideally no one would argue against realistic time lines in negotiations. In the UN General Assembly's Fifth Committee, however, some of the most protracted discussions continue to defy deadlines. Berridge states that sometime after the twentieth Century 'a crisis of multilateralism' resulted from a loss of faith in multilateralism. In his words:

Third world states have expressed disillusionment with its results, especially in the economic sphere; the United States, finally reacting savagely to years of having to finance programs to which it was opposed, began to withhold funds from the UN system; and a number of intergovernmental organizations began to drop.⁶¹

This observation is familiar. Indeed, perhaps a vote of confidence in multilateralism, in 1986 the UN General Assembly adopted a landmark resolution 41/213 on budgetary matters. While in prior years voting had paralyzed funding of the Organization, the resolution restored normalcy in budgetary negotiations thus averting a financial crisis. The requirement is that decisions on funding are based on 'broadest possible agreement.'

I raise this matter to underline that deadlines can be even difficult to achieve if a piece of procedural legislation implies an 'open-ended' debate. Annually, every Fifth

⁶⁰ R.P. Barston, p. 60.

⁶¹ G.R. Berridge, p. 215.

Committee Chairperson wishes to complete negotiations by the time set by the President of the UN General Assembly, but this goal remains illusory. 'Broadest possible agreement' is a synonym for 'consensus' and essentially means that delegates 'meet until they agree.' Routinely, night and weekend meetings have resulted in unproductive 'marathon meetings' because views of all Member States – big and small – must be heard. Absent the quicker voting option, allotted time runs out and unresolved issues get deferred. This is comparable to the 'end-run' approach in environmental negotiations.⁶²

g) Terminological differences

Deadlock in negotiations can also be due to lack of common understanding on usage or interpretation of terminology. For example, during the 55th Session of the UN General Assembly in 2000, following failed past attempts to secure a 'politically palatable' legal opinion from the UN's Office of Legal Affairs on the definition and the usage of 'notes' and 'takes note' in Assembly resolutions, the Fifth Committee had to pause and have that sorted out first. I personally had the difficult honor to preside over the debate on the subject. In its decision 55/488 of 2000, it was consensually resolved that the above-cited terms connote a 'neutral usage' for cases in which the Assembly neither agrees nor disagrees with the matter under consideration. Since the 55th Session, that decision is used as a 'referent' when these terminologies are used in all UN Assembly resolutions.

⁶² R.P. Barston, p. 162.

h) Both languages and ‘multilingualism’

Interpretation of agreements is a common aftermath of difficult negotiations. Usual practice is having the agreement in the respective official languages of the parties, all bearing equal authenticity. Exceptions exist in some legally binding treaties when parties explicitly decide to have a ‘master copy’ in a third language (usually English) as the authentic text in the event of incompatible interpretations between the other languages.⁶³ In the UN, whilst English and French are the recognized ‘working languages,’ the issue of languages is a sensitive one. ‘Multilingualism’ also remains a burning topic, but for now Arabic, Chinese, English, French, Russian and Spanish are the six official languages. Textual negotiations at the UN are conducted on the basis of English language drafts, but it is nonetheless a requirement that at the formal adoption of decisions the text be translated into the other five languages to avoid unnecessary misunderstanding.

i) Political Sensitivity

‘Neutrality’ or ‘impartiality’ of a third party mediator in a dispute is emphasized in negotiations. I recall in 2000 when I chaired a discussion to resolve a matter that had twice been postponed due to a political impasse, rather than substantive difficulty. The Head⁶⁴ of UN’s Office of Internal Oversight Services (OIOS) had

⁶³ See R.P. Barston, p. 327, & also G.R. Berridge, p. 80.

⁶⁴ Under-Secretary-General Karl Theodor Paschke (Germany) was the head of OIOS from 1994 to 1999.

critically labeled some Group of 77 member countries⁶⁵ as ‘obstructionists’ who are averse to UN reform. An international civil servant cannot do that to a Member State. The G77 collectively demanded a formal apology, which was not done. In response, the Group unilaterally decided not to consider any OIOS report submitted to the Fifth Committee, thus causing a stalemate and significant backlog of crucial reports. The partners (US and the EU) attach importance to oversight issues and timely action on OIOS findings. They wanted adoption of a resolution but were not prepared to accept G77 language critical of the behavior of a national of one of their own (Germany). There was a dilemma, so to say.

The officer retired with no apology and his successor Mr. Dileep Nair (Singapore) inherited the stalemate. Previous attempts by two facilitators (the delegates from Portugal and Egypt) could not reconcile the differences. I inherited the task, including an unfinished draft resolution. The text was riddled with just too many brackets, amendments and counter-amendments, analogous to what is described in reference to the Non Proliferation Treaty (NPT) negotiations as “a labyrinthine set of brackets, resembling more an algebraic equation than a draft.”⁶⁶ I knew the root cause of the stalemate, but gave another chance to the delegates to test their negotiating resolve. It became clear to all that the differences were too deep to be resolved by continuing to work on the basis of the existing draft.

⁶⁵ Such as Algeria, Cuba, Pakistan, Syria and others.

⁶⁶ R.P. Barston, p. 93.

I disengaged further formal consultations and conducted ‘informal’ contacts with individual delegates, with a view to producing a ‘chairman’s text.’ I also privately agreed with Deputy-Secretary⁶⁷ of the Committee that scheduling of a formal session for action on the consensus ‘informal’ text be done after agreement on all other pending issues on the agenda. My moment came early hours of the morning of the final day of the session. I opened the meeting with an appeal that the text I just circulated was ‘my proposed compromise’ that took into account all concerns, and was the result of ‘delicate, broad-based and all-inclusive consultation.’ Interestingly, no objection was registered and the text was unanimously adopted with a round of applause.

This example not only attests to the advantage of credible mediation. It also supports the view that in negotiations, “proposals are more acceptable when they are seen as coming from the mediator rather than from the other side.”⁶⁸ The time (early morning of the final day) at which I secured the deal indicates how time constraints in negotiation can work as a ‘practical deadline.’ I also preferred that the item be discussed last to avoid linkage with other unresolved issues. In high-stakes negotiation, it is important for negotiators to be genuinely committed to a settlement and for the mediators to be seen to be transparent. Bias is an easy charge on mediators, but ability to build trust can help achieve amicable outcomes, including on controversial issues. Much as I was a national of a member country of

⁶⁷ Ms Nora Benary (Armenia) - retired.

⁶⁸ Leguey-Feilleux, p. 226.

the G77, my 'impartiality' assured all concerned that I acted faithfully and in their best collective interest.

7) LESSONS FROM THE ISRAELI-PALESTINIAN

NEGOTIATION

At the time of concluding this paper, talks on the long-standing Israeli-Palestinian conflict had resumed, after at least two years of a lull. Despite mixed reaction on potential for breakthrough, the resumption of the talks underlines that even protracted and high-stakes conflicts are not immune from negotiation. The conflict is not just a long-running one; it is a frequently cited example by analysts of disputes, negotiation and mediation. In view of the currency of this development, it would be remiss not to add a few lines to this paper to further underscore some issues already discussed above.

First, the parties concerned and the 'facilitator' agree that the conflict is intractable but seem to realize that it can only be resolved through negotiation. Second, acceptance of 'direct talks' appears borne out of realization that the current situation is unsustainable and not in the best interest of either side. Third, to avoid risk of failure, the resumption of 'direct talks' mirrors a cautious 'step-by-step approach' preceded by confidence-building efforts through a Special Envoy. Fourth, acceptance by President Obama to 'facilitate' the talks confirms the traditional involvement by successive US Presidencies and the view that, despite well-known complexity, the US is seen as an 'ideal facilitator' capable of pressuring a key ally (Israel) to make compromises. The timing of the talks also confirms the reasoning

that facilitators/mediators, especially those at Head of State level, tend to accept the task in the early part of their tenure in office when they have sufficient time to see the deal through. Fifth, while 'mediators' are an active partner with ability to impose a solution, in this case President Obama bears a lower profile title of 'facilitator.' This is possibly due to a carefully calculated political risk should there be no deal, particularly just a few months into mid-term elections and the later bid for second term.

The imposition of a one year 'deadline' for negotiation also conforms to the tradition that a specific timetable is crucial in keeping momentum, signal a sense of resolve and building public confidence and hope. However, the killing of the four Israeli settlers just ahead of the talks is testimony that those feeling left out and adamantly opposed to negotiation are determined to undermine the peace process. But by staging a joint parade with the parties and key regional partners (Egypt and Jordan), as well as Mr. Tony Blair representing the Quartet, the 'facilitator' sought to demonstrate to a global audience that the talks are widely supported and not as unpopular as some may think. Moreover, the usual suspicion on publicity was also evident when President Obama, the parties and partners seemed well advised that at the opening of the talks they should just make a 'propaganda parade' before television and not take any questions from the anxiously waiting press. At the time of finalizing this paper, secrecy prevailed and very little information was coming out as to what was really going on behind scenes, apart from diplomatic utterances from President Obama's team that discussions were 'constructive.'

8) CONCLUSION

Those familiar with multilateral diplomacy will have no difficulty in agreeing with Leguey-Feilleux that international organizations engender more negotiations than conventional bilateral representation. He also correctly observes that: “Extensive globalization of human endeavors has made international actors interdependent and forced them to work together to a larger and larger extent.”⁶⁹ As discussed in this paper, the human interaction is made even necessary by the complex issues and conflicting interests, resulting in contentious transactions involving just too many actors. If our interdependent global society has to depend largely on multilateral forums to collectively address common problems, as Leguey-Feilleux further intimates,⁷⁰ therefore, negotiation is unavoidable as the professional form of dialogue to amicably resolve disputes.

Some may argue that negotiations do not always yield agreement. But, as the Israeli-Palestine negotiation also teaches us, if dialogue is a better alternative to violence, then there should be not any doubt that negotiation is the most important function of diplomacy. In this paper, I sought to demonstrate that in modern international relations the importance of negotiation is not just in its rate of recurrence alone. Its value as a function of diplomacy is, amongst other factors, demonstrable in the all-encompassing scope of issues affecting us all, and are the

⁶⁹ Leguey-Feilleux, pp. 228 & 274.

⁷⁰ Ibid., p.67.

focus of constant negotiation to reconcile competing interests. As also discussed above, the further importance of negotiation lies in the creative strategies and techniques that negotiators must employ to bridge differences.

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