

“Level II” Negotiation Strategies: Advance Your Interests by Helping to Solve Their Internal Problems

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Many negotiators have constituencies that must formally or informally approve an agreement. Traditionally, it is the responsibility of each negotiator to manage the internal conflicts and constituencies on his or her own side. Far less familiar are the many valuable ways that one side can meet its own interests by helping the other side with its “internal,” “behind the table,” or “Level II” constituency challenges. Moving from theory to practice and from simple to complex, the present paper builds on a moderately theoretical treatment of this challenge previously proposed. It illustrates several classes of practical measures that negotiators can use to advance their own interests by focusing on the other side’s Level II negotiations. Beyond tailoring the terms of the deal for this purpose (e.g., with “compensation provisions”), one side can help the other, and vice versa, via a number of devices, alone or in concert. These include: a) shaping the form of the agreement (e.g. tacit vs. explicit, process vs. substance); b) tailoring the form of the negotiating process itself (to send a useful signal to constituencies); c) avoiding (or making) statements that inflame (or mollify) the other side’s internal opponents; d) helping the other side attractively frame the deal for Level II acceptability; e) providing the ingredients for the other side to make an acceptance or even “victory speech” about why saying “yes” to the deal you want is smart and in the other side’s interests; f) constructive actions at the bargaining table informed by knowledge of the other side’s internal conflicts (e.g., not escalating when the other side mainly speaks for domestic purposes); g) having the first side

work with the other side to tacitly coordinate outside pressure on the other side's Level II constituents to accept the deal that the first side prefers; and h) in extraordinary cases, by directly negotiating with one's counterparts to design measures that thwart its Level II opponents.

You are more likely to say “yes” to my proposal if it meets your interests. Frequently, your interests entail satisfying – or at least not alienating – less prominent constituencies, which might include a boss, spouse, client, union membership, community group, NGO, political party, or the U.S. Senate that must ratify the treaty you negotiate on behalf of the President. A potent barrier to success in negotiation is often the prospect of constituency rejection of the deal. Given this threat, if I am your counterpart in negotiation, one way to advance my interests can be for me to help you solve your internal constituency problems – in a manner consistent with my interests.

Of course, the reverse holds true as well: you may be able to help me with my constituencies at low cost to your interests. It turns out that sophisticated negotiators have been amazingly inventive in coming up with practical and highly valuable approaches to this often-unexplored challenge. This paper develops and illustrates several such approaches.

The challenge is hardly new. A number of analysts have explored how negotiators can productively synchronize “external,” “at the table,” or “Level I” negotiations with “internal,” “behind the table,” or “Level II” negotiations.¹ The useful terms, “Level I” and “Level II,” come from Robert Putnam, who developed the concept of “two-level games” in the context of diplomacy and domestic politics.² In the simplest version of Putnam’s conception, the Level I game focuses on traditional “at the table” diplomatic agreements, while the Level II game focuses on the formal or informal domestic ratification of such agreements “behind the table.” Following this usage, but venturing well beyond its diplomatic origins, this paper uses Level I to refer to international/external/at the table negotiations. Level II refers to domestic/internal/behind the table negotiations. Of course, even where Level II parties do not have formal ratification power, they can often facilitate the implementation of agreements that they like and effectively block those that they do not.

In an example cited by Robert Mnookin and Ehud Eiran from Israeli-Palestinian negotiations, the Level II "behind the table" challenges may be even greater than the Level I "across the table" ones. The settlement population and their political advocates on the Israeli side as well as militant factions and diaspora Palestinians may, for separate reasons, make generally desirable deals impossible to reach or even publicly propose, when leaders estimate that they would not be able to gain sufficient public support to make – and to overcome the opposition to – the necessary compromises.³

Often implicit in much of this two-level negotiation work is the view that, if a (Level I) deal is reached across the table, each side's leadership is best positioned to manage its *own* internal (Level II) conflicts. Traditionally, a negotiator does this by 1) pressing for deal terms that will attract sufficient internal support and meet internal objections, and 2) effectively "selling" the agreement to key constituencies. Far less familiar are the many ways that one side can meet its own interests by helping the other side with the other's "behind the table" or Level II challenges (and vice versa). A moderately theoretical treatment of this challenge has been previously proposed.⁴ Moving from theory to practice, from simple to complex, and from straightforward to creative, the present paper draws heavily and builds on that work. It illustrates several classes of practical measures that negotiators can use to advance their own interests by focusing on the other side's Level II negotiations. It concludes with a brief case study that describes the elegant Level II strategies of former U.S. Secretary of State James Baker and George H. W. Bush in dealing with the then-Soviet Union over German reunification within NATO.

Shape the terms of the deal to respond to their constituency concerns.

In its most familiar form, the deal itself can directly address constituency concerns. Terms can be crafted to meet the interests or overcome objections of enough internal players to permit a deal to be reached and, ideally, implemented and sustained. For example, free trade agreement provisions may be designed to compensate the domestic "losers" (harmed by trade liberalization) who might otherwise block the broader agreement. Or, at least on paper, the deal may be structured to make one or both negotiators "look good" to their bosses or constituents.

In an inventive example early in his career, former NYPD detective and hostage negotiator Dominick Misino faced a potentially explosive situation.

On a sweltering summer night in Spanish Harlem, 300 to 400 people stood outside a crowded tenement in which a young man with a loaded shotgun had barricaded himself. During the tense negotiations with Misino, the young man, a parole violator but not a murderer, told Misino that he wanted to surrender but couldn't because he would look weak. According to Misino,

I told him that . . . if he let me cuff him, I would make it look as if I had to use force. He put down his gun and behaved like a perfect gentleman until we got to the street, where he started screaming like crazy and raising hell, as we had agreed.... The crowd was chanting "José! José!" in wild approval, and we threw him into the back of the car, jumped on the gas, and sped off. Two blocks later, José sat up, broke into a huge grin, and said to me, "Hey man, thank you." He recognized that I had given him a way out that didn't involve killing people and being killed in turn.⁵

At one level, this is a simple lesson by a savvy negotiator helping his counterpart save face with an important constituency in a potentially lethal situation. In settings from labor relations to high diplomacy, however, many negotiations display more complex versions of this same underlying structure: you (in this example: Misino) negotiate "externally" with your counterpart (here: José) who must somehow deal effectively with his or her "internal" constituencies (here: the crowd, José's community) in order for you to be successful (here: to avoid a shootout, bloodshed, and wider risks to the police, crowd, and neighborhood).

Important constituencies on one side often place high value on a principle whose full practical implementation would be unacceptable to the other side. In such cases, the principle may be enshrined in agreement, but its practical effect drastically reduced. For example, in Israeli-Palestinian negotiations, some "right of return" of Palestinian refugees may be agreed, but limited in practice to a token number of refugees who may actually settle within Israel proper with the majority to settle in the borders of a new Palestinian state.

Shape the form of the deal – from explicit to tacit or from substance to process – to avoid constituency problems. Level II costs may sometimes be reduced by changing the form of the deal. For example, making an

agreement tacit rather than explicit may avoid constituency problems. Former U.S. Secretary of State George Shultz remarked about common diplomatic situations in which one of the parties effectively says, "I can live with that as long as I don't have to agree to it, but if you make me agree with it, I won't be able to live with it."⁶

Similarly, the presidents of two neighboring countries with a longstanding, emotional border dispute may privately concur that resolution would be valuable and may well agree on acceptable terms of a border deal. Yet to overtly negotiate and be seen to "concede" anything, for either or both sides, may be too costly in terms of the internal opposition it would arouse. However, submitting the dispute to an international arbitration process, appropriately constituted, may be an acceptable "willingness to go along with international law," with an arbitrator's award outside the will of the two presidents. By this device, the two presidents may reduce constituency costs. Strictly speaking, this approach also changes the content of the deal, from direct resolution of the issue to agreement on a process for resolving it, but its object is reducing Level II costs.

Change the negotiation process itself to enhance Level II acceptability. A closely related approach involves agreement on a negotiation process that sends a valuable signal to Level II players. A prominent labor negotiator once described a simple, if cynical, measure of this kind aimed at swaying union constituents. In this instance, given economic realities, both union and management negotiators clearly understood the feasible deal terms from the outset. However, too quick and easy an agreement would have raised union members' suspicions that their interests had not been vigorously advocated.

As such, the two negotiators tacitly agreed to make a show of locking themselves into a room from mid-afternoon until the wee hours of the morning. Those outside the room would often hear angry shouts and tables being pounded. Inside, the reality was congenial: with nice meals ordered in, plenty of alcohol, friendly reminiscences, and knowing chuckles as the two sides would periodically manufacture loud theatrical sounds to dramatize the negotiating "battle" being "fought" – all for the benefit of outside constituencies. Finally emerging, haggard, in predawn hours, the two sides' "hard won" agreement had a far greater chance of acceptance

among union members, given a process that mollified their suspicions of a sellout, without altering the terms of the negotiated contract itself.

Agree to avoid making statements that cause problems among the other's constituents. In an example of inadvertent negative handling of Level II issues, consider the Geneva Accord, a prominent, unofficial effort to craft an Israeli-Palestinian peace deal. After an important negotiating session, a key Israeli participant sought to indicate progress to key Israeli constituents. He was quoted to the effect that the “Palestinians had given up the right of return.” This claim echoed negatively among Palestinian publics, generated nearly instant denials, and damaged prospects for wider support of this initiative.⁷

More broadly, leaders on each side may make statements in Arabic or Hebrew about peace talks or agreements that are intended for “domestic consumption.” Inevitably, however, such statements rapidly find their way to the other side, generating suspicion and undermining what may be genuine progress at the table. In a media and internet-intensive age, hoped-for “acoustic separation” – separately conveying contradictory messages to different publics – often proves futile.

As such, Level I negotiators may explicitly work together not only on the terms of the deal itself but on what each side will or will not say about it to Level II parties. For example, President Reagan made human rights a top priority in his negotiations with the Soviets. In a glaring illustration of this issue, some sixty Pentecostals were holed up in the U.S. embassy in Moscow seeking sanctuary. In dealing with the Soviet Ambassador Anatoly Dobrynin on this issue, Reagan said, “Let them emigrate. You won’t hear any crowing from me.” With this assurance, U.S. Secretary of State George Shultz and Dobrynin negotiated, eventually agreeing on the release of the Pentecostals to Israel. As Shultz reported, “Despite the great political temptation to do so, [Reagan] never boasted about the success of this deal, so the Soviets learned that he could be trusted.”⁸

In predictably rancorous negotiations with the Soviets over withdrawal from Afghanistan following the invasion of 1979, George Shultz reported that Foreign Minister Eduard Shevardnadze pulled him aside privately. Shevardnadze told Shultz, “We are going to go through familiar arguments out there but I want you to know that we have decided to leave Afghanistan. There will be no immediate announcement, but we’ve made the decision;

it's behind us. We want to get out by the end of 1988. How the United States acts will make a difference because the quicker we're out, the less blood will be shed." Though it was controversial within the U.S. administration, Shultz reported that the U.S. government was "able to maneuver in such a way that the Soviets left Afghanistan sooner than anyone had expected and much bloodshed was avoided as a result."⁹

Help the other side attractively frame the deal for Level II acceptability; provide the ingredients for the other side to make an acceptance or even "victory speech" about why saying "yes" to the deal you want is smart and in the other side's interests. William Ury observes that "your counterpart's constituents may attack the proposed agreement as unsatisfactory. So think about how your counterpart can present it to them in the most positive light, perhaps even as a victory."¹⁰ Ury offers the following example from the Cuban missile crisis, above and beyond Kennedy's tacit agreement to remove arguably obsolete U.S. missiles from Turkey:

Kennedy and his advisers...searched for a way to make it easier for Soviet Premier Nikita Khrushchev to withdraw Soviet missiles from Cuba. Kennedy decided to offer Khrushchev his personal pledge that the United States would not invade Cuba. Since Kennedy had no intention of invading anyway, the promise was easy to make. But it allowed Khrushchev to announce to his constituents in the Communist world that he had successfully safeguarded the Cuban revolution from American attack. He was able to justify his decision to withdraw the missiles on the grounds that they had served their purpose.¹¹

Ury later counsels Side A to think about helping to equip Side B to write B's "acceptance speech," in a manner that meets A's interests, directed toward B's constituencies. As a tool to help craft the other side's acceptance speech, Ury also suggests making a chart listing several key factors, embellished from the original:

- a. Precisely who B's constituencies are along with their likely interests and perceptions of the negotiation.
- b. Key themes and framing of the "acceptance speech" or even "victory speech" that will make it persuasive.

- c. Most likely criticisms and questions such as, “what exactly did you give up and why”; “you never should have made that concession, which gives away our vital interests”; “that makes us look weak and sets a terrible precedent”; and “you should push back hard rather than giving in!”
- d. Best anticipatory and subsequent responses to the most important such criticisms.¹²

In fact, if A has probed and understood B’s interests, perspectives, and constituencies in enough depth to help craft a credible acceptance speech for B, the range of actually feasible deals should be much clearer to A. And obviously, the easier a time B foresees having with his or her constituencies, the more likely B is to make a deal with A. This approach should, paraphrasing the words of Italian diplomat Daniel Vare, permit “B to have A’s way.”

Going beyond mere framing and suggested spin; have the first side actually work with the other side to tacitly coordinate outside pressure on the other side’s Level II constituents to accept the deal that the first side prefers. It is possible to go well beyond the statements each side can make, or refrain from making, about how a deal can be framed for domestic consumption, or how one side can help the other write its victory speech. Indeed, Side A can sometimes arrange with Side B to bring outside pressure to bear on Side A’s own Level II constituents to change their views in line with Side B’s preferences.

For example, U.S. Ambassador Stuart Eizenstat negotiated with Germany in the mid-1990s over Holocaust-era assets and slave labor used by the Nazis and German firms. Key issues in this tense, emotional process included compensation amounts to surviving victims as well as “legal peace,” or an end to further claims against German companies after any agreement. Eizenstat and his German counterpart, Count Otto Lambsdorff, had known each other for many years and cultivated a relationship that meant, in Eizenstat’s words, that “we were able to share confidences with each other. We were able to share with each other what our constituencies were pressing us to do.” Eizenstat elaborated how Lambsdorff helped to orchestrate Presidential pressure on the German Chancellor to be more forthcoming in negotiation:

And so I had a very good idea from Lambsdorff of the fact that his companies were being recalcitrant on legal peace, [and

why they were] not coming up with enough money. He gave me advice as to how to deal with that, in the same way I gave him advice as to how to deal with my domestic constituents. He suggested that I get President Clinton to send [Chancellor] Schroeder a letter. It was not my suggestion. And that [letter] helped unlock a lot of money that otherwise wouldn't have been forthcoming. So the fact that we had known each other literally for 25 years, had kept in contact with each other, and had complete and utter trust in each other helped us understand each other's constituencies and where the red lines were and where there was room for give.¹³

In a more elaborate example, during the preparations for the 1978 Bonn economic summit, there was significant internal U.S. opposition to oil price decontrol, a policy strongly favored by America's key economic partners as part of a package involving German and Japanese stimulus, policies themselves opposed by powerful German and Japanese factions. In a conventional interpretation, ultimate international agreement on these decontrol and stimulus measures, which were actually implemented in each country, simply resulted from mutually beneficial tradeoffs in a package deal.¹⁴ A closer look, however, reveals actions by each side to help others with their Level II domestic challenges. For example, to overcome potent U.S. domestic opposition to oil price decontrol, Putnam reports that "American negotiators occasionally invited their foreign counterparts to put more pressure on the Americans [at home] to reduce oil imports." Ultimately, such interventions aimed at influencing (Level II) U.S. opponents proved successful.¹⁵

Similarly, to internal advocates of economic stimulus in Germany and Japan, external pressure for such actions – in some cases orchestrated by these advocates and willingly supplied by foreign counterparts – overcame opposition and tipped the internal balance. As Putnam describes it, "Within Germany, a political process catalyzed by foreign pressures was surreptitiously orchestrated by expansionists inside the Schmidt government... Publicly, Helmut Schmidt posed as reluctant to the end. Only his closest advisors suspected the truth: that the chancellor 'let himself be pushed' into a policy that he privately favored." And in Japan, "Without the external pressure, it is even more unlikely that the expansionists could have overridden the

powerful MOF [Ministry of Finance].” “Seventy percent foreign pressure, 30 percent internal politics,” was the disgruntled judgment of one MOF insider. “Fifty-fifty,” guessed an official from MITI [Ministry of Trade and Industry].¹⁶

These examples begin to flesh out the means by which a Level I negotiator can help with the other side’s Level II challenges. Yet as we will see via the extended example in the next section, these methods hardly exhaust the remarkable repertoire of such devices that can be used singly or in appropriate combination.

Case study: Using multiple Level II strategies in negotiations over German reunification within NATO.¹⁷ A more elaborate episode involved the delicate U.S. diplomacy with the then-Soviet Union over German reunification within NATO after the fall of the Berlin Wall.¹⁸ Soviet President Mikhail Gorbachev faced powerful internal opponents to his policies of perestroika in general as well as his increasing willingness to go along with American advocacy of German unification, especially within NATO. The KGB, the Politburo, and conservative politicians, as well much of the military felt Gorbachev was conceding far too much to the West. With almost 400,000 Soviet troops in East Germany and potent Four Power legal rights earned at the conclusion of World War II, the Soviets had several potent methods at their disposal to block German reunification within NATO.

Wanting perestroika to succeed and Germany to be reunified within NATO, then-President George H. W. Bush and his Secretary of State, James Baker, proved themselves to be extremely skilled Level II negotiators in at least four ways: 1) consciously avoiding actions that would cause domestic problems for their reformist Soviet counterparts, 2) helping the Soviets craft a convincing domestic explanation of the direction that negotiations over Germany were taking, 3) choosing not to escalate around inflammatory negotiating statements made by the Soviets for domestic consumption, and 4) directly working with their Soviet at the table counterparts to help the Soviet reformers overcome their powerful domestic opponents. Their actions in this important, even singular, case carry broader implications.

First, as the Berlin Wall fell, Bush and Baker realized that the American response could exacerbate already huge domestic problems for Gorbachev and Foreign Minister Shevardnadze. Echoing Reagan’s agreement not to

"crow" about his human rights deal, Robert Zoellick, counselor to Baker and himself a key American negotiator during the reunification talks, cited the value to the process of "Gorbachev's [correct] belief that [President] Bush would not exult . . . or convey any sense of triumphalism." Baker observed that

[President Bush] got a lot of grief at the time the Wall fell for not gloating and pounding the chest and being more emotional about the fact that finally, after 40 years, the West, led by the United States, had won the Cold War. And I remember we'd sit in these meetings and he'd say . . . I don't want to hear anybody gloating about this, because we've got a lot of business to do still with Gorbachev and [Soviet Foreign Minister Eduard] Shevardnadze. [Bush adopted] that position in the face of a lot of domestic criticism. I never will forget a huge press conference . . . and we had a ton of press there, and they were beating up on him, asking "why can't you be a little more emotional?" He finally looked up at them and he said, look, we've got some business still to do. *We're not going to dance on the ruins of the Wall* [emphasis added].¹⁹

Baker later reports an encounter between Bush and Gorbachev at which Bush noted the stinging public criticism in the U.S. that Bush had taken for seeming to lack "the vision thing" in the context of German reunification. Bush stated, "I hope you've noticed that as change has accelerated in Eastern Europe recently, we haven't responded with flamboyance or arrogance so as to make your situation difficult. They say, 'Bush is too timid, too cautious' ...I've tried to conduct myself in a way so as not to complicate your difficulties'Gorbachev said that he'd noticed that and appreciated it."²⁰

Second, as Robert Zoellick emphasized, "We even helped our Soviet counterparts to develop a public explanation of how the outcome took account of Soviet interests and sensitivities."²¹ Baker elaborates how this was done, in part with reference to deliberate Western actions on security, political, and economic issues: "We had already planned to take all these steps individually, but by wrapping them in a package and calling them the 'nine assurances,' we greatly enhanced their political effect and assured

the Kremlin that it would see their full impact. The package was designed so that . . . the Soviets would not be handed an abject defeat. Above all, it was an effort on our part to stand in Gorbachev's shoes and help frame the issue so that he would have a domestic explanation."²²

Third, understanding the other side's political situation may lead to progress via restraint at the bargaining table in the face of apparent provocation and backsliding. As the internal tug-of-war between the Soviet reformers Gorbachev and Shevardnadze and their conservative opponents heated up, at the table progress was the victim. For example, the crucial (positive) turning point in the reunification negotiations occurred at a White House meeting during which Gorbachev agreed to respect German sovereignty after reunification and to permit Germany to choose its alliance. As a practical matter, this meant NATO. Weeks later, however, in Berlin talks, Shevardnadze made a lengthy, confrontational statement in which he harshly repudiated these core concessions. Baker suspected that there had been a reversal in Moscow against the reformers. Choosing to respond firmly, but not to escalate and force the issue, which could have led to a damaging standoff, he sent his top staffer, Dennis Ross, Director of the State Department's Policy Planning Staff, to find out what happened. Ross privately confronted his counterpart, Sergei Tarasenko, with whom he had established a close back channel relationship. "This is a total reversal," Ross said, "you guys just screwed us. What the hell is going on?"²³

Ross learned that Shevardnadze had been forced to present a Politburo-prepared document, which could not be reversed (was "frozen") at least until the end of the upcoming Party Congress. It soon became apparent to Baker "that [Shevardnadze] was posturing for the benefit of his military, and that what he was saying really wasn't what he believed."²⁴ At this point, however, in Baker's eyes, Shevardnadze was "as beleaguered as I'd ever seen him," "the domestic situation was clearly overwhelming him," and he "couldn't predict" whether Gorbachev would be able to maintain his status as Party General Secretary.²⁵

Fourth, in light of this perilous situation, Bush and Baker took extraordinary negotiating measures. They worked directly with Shevardnadze to equip him and Gorbachev with ammunition to meet their upcoming Party Congress challengers. In part for this purpose, President Bush and Secretary Baker

negotiated internal U.S. government agreement on strong, specific measures – arms control and nuclear strategic doctrine – that would increasingly transform NATO more toward a political than a military alliance. As Baker stated, "I told Shevardnadze that we were proposing the adoption of a declaration at the London NATO Summit that would highlight the alliance's adaptation to a new, radically different world."²⁶ Baker described the unorthodox process and objective of this action:

[The Declaration] was just twenty-two paragraphs long – exactly the kind of succinct political statement that would play well in Moscow. But first we had to gain agreement from the other fifteen members of NATO. Breaking with tradition, we decided to hold the text closely, and have the President send it to fellow heads of state just days before the summit, and to allow it to be negotiated only by foreign ministers and leaders at the summit itself. NATO, like any institution, has its own bureaucracy, and we couldn't afford to allow bureaucrats to water down what was a critical political document. Moreover, we didn't want any leaks. We wanted the maximum political impact in Moscow when the declaration would finally be released, and that meant following this unusual, and somewhat high-risk strategy.²⁷

Not only did Baker lead the negotiations for NATO members to adopt this document in London; he coordinated the process closely with his Soviet counterparts: "To help Shevardnadze, I sent him a draft of the declaration, hoping to put the reformers a step ahead of the reactionaries as the Party Congress heated up."²⁸ Robert Zoellick later elaborated: This was "extremely helpful, Shevardnadze went on to say, because it would enable him to preempt opponents like Marshall Akhromeyev... And that is precisely what he did. We had progressed to the point where the American and Soviet foreign ministers could plan secretly how to use tentative NATO language to persuade the Soviet Union to accept a unified Germany within NATO."²⁹ Confirming the effects of these Level II actions after the Party Congress, Shevardnadze told Baker, "without the [London NATO] declaration, it would have been a very difficult thing for us to take our decisions on Germany.... If you compare what we're saying to you and to Kohl now with our Berlin

document [the basis of Shevardnadze's apparent hardline reversal], it's like day and night. Really, it's like heaven and earth."³⁰

Of course, the American negotiating strategy was not limited to helping Soviet reformers with their behind the table challenges, though that is the focus of the present paper. As Dennis Ross emphasizes, a complementary series of American actions was intended to "leave no doubt that it would be futile and counterproductive [for the Soviets] to try to prevent reunification."³¹ And it would be the height of misinterpretation to imagine that Bush and Baker were motivated by altruism or primary concern for the other side. Rather, these Level II actions and understandings were aimed at accomplishing a central goal of American foreign policy at the Level I table. As Baker stressed at a particularly contentious moment in negotiating NATO acceptance of its extraordinary declaration:

"Gentlemen," I was forced to say at one point, "we should keep our eye on the ball. The reason we are here, the reason we are working on this declaration, is to get Germany unified. We do not need to water down this document. It would be a mistake. We have one shot at this. These are different times. This is not business as usual."³²

Synthesis: Helping the Other Side with Its Level II Barriers

To help the other side with its behind the table challenges requires first and foremost that one understand the other side and the barriers it faces. As James Baker stressed in his remarks upon receiving Harvard's 2012 Great Negotiator Award, "If there was a single key to whatever success I've enjoyed in business and diplomacy, it has been my ability to crawl into the other guy's shoes. When you understand your opponent, you have a better chance of reaching a successful conclusion with him or her. That means paying attention to how he or she views issues and appreciating the constraints they face." Beyond German reunification, Baker elaborated: "This approach helped us build the Gulf War coalition that ejected Saddam Hussein from Kuwait in 1991. Effective U.S. leadership depended on our ability to persuade others

to join with us. That required us to appreciate what objectives, arguments, and trade-offs were important to our would-be partners."³³

In part, this meant direct understanding via high level personal diplomacy, backed by expert staff work drawing on regional experts. Yet carefully cultivating close back channel relationships, such as the one between Dennis Ross and Shevardnadze's chief assistant and confidant Sergei Tarasenko, also proved vital. Similar back channel relationships were consciously developed between Americans and Germans: Robert Blackwill at the National Security Council with Horst Teltschik, Kohl's national security advisor, and Robert Zoellick with Frank Elbe, right hand man to Hans-Dietrich Genscher, Germany's Foreign Minister.³⁴

The admonition to understand the other side is, of course, standard negotiation advice. Yet the most common objective of mutual understanding lies in figuring out a creative deal design that meets each side's interests. The actions of Baker and his team with respect to German reunification, however, highlight another rationale for developing such an understanding: helping the other side overcome its constituency barriers. As Ross put it, "I would coordinate with Tarasenko before the meetings to avoid surprises or to find out where there were problems that would have to be managed.... [These] made it possible to understand a Soviet move and how U.S. or German responses might affect the maneuverings in Moscow... It also permitted us to design the words and actions that each of us could use to help the other."³⁵

To successfully craft actions for this purpose, one side cannot limit its knowledge of the other to the interests of at-the-table negotiators. Rather, one side must deeply understand the context in which its counterpart is enmeshed: the web of favorable and opposing constituencies as well as their relationships, perceptions, sensitivities, and interests. Recall the value for this purpose of direct, trusting relationships such as that nurtured by Stuart Eizenstat with his German counterpart, Otto Lambsdorff, in negotiations over Holocaust-era assets and slave labor.

Armed with this understanding, it becomes possible for one side to help the other side with its Level II challenges. Beyond tailoring the terms of the Level I deal for this purpose (e.g., with "compensation provisions"), one side can help the other, and vice versa, via a number of devices, alone or in combination:

- a. by the form of the agreement (e.g. tacit vs explicit, process vs. substance);
- b. by the form of the negotiating process itself (to send a useful signal to constituencies);
- c. by avoiding (or making) statements that inflame (or mollify) the other side's internal opponents;
- d. by helping the other side attractively frame the deal for Level II acceptability;
- e. by providing the ingredients for the other side to make an acceptance or even "victory speech" about why saying "yes" to the deal you want is smart and in the other side's interests;
- f. by constructive actions at the bargaining table informed by knowledge of the other side's internal conflicts (e.g., not escalating when the other side mainly speaks for domestic purposes);
- g. by the first side's working with the other side to tacitly coordinate outside pressure on the other side's Level II constituents to accept the deal that the first side prefers; and
- h. in extraordinary cases, by directly negotiating with one's Level I counterparts to design measures that thwart its Level II opponents.

A negotiator's primary (Level I) task, of course, is to work out a great deal with his or her counterparts. And each negotiator bears a substantial responsibility to successfully manage his or her internal (Level II) constituency challenges. These familiar subjects have attracted large literatures. Yet another potentially valuable tool in the sophisticated negotiator's toolkit involves each side helping the other with the other's Level II, behind the table constituency conflicts and challenges. While under-researched and under-appreciated, this rich Level II dynamic deserves far more attention from researchers and negotiators than it has thus far received.

Notes

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- 1 See, for example, Richard Walton and Robert McKersie, *A Behavioral Theory of Labor Negotiations* (New York: McGraw-Hill, 1965); David A. Lax and James K.

- Sebenius, *The Manager as Negotiator* (New York: Free Press, 1986), chapter 17; Robert D. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-Level Games," *International Organization* 42, no. 3 (1988): 427-60.
- 2 Putnam's "Diplomacy and Domestic Politics" builds on a long tradition of "internal-external" negotiation analysis, starting with Walton and McKersie in the field of labor relations, as well as Howard Raiffa, *The Art and Science of Negotiation* (Cambridge, MA: Harvard University Press, Belknap Press, 1982); and Lax and Sebenius that extensively analyzed games with multilevel structures. Robert H. Mnookin and Ehud Eiran, in "Discord 'Behind the Table': The Internal Conflict among Israeli Jews Concerning the Future of Settlements in the West Bank and Gaza," *Journal of Dispute Resolution* 1 (2005): 11-44, has more recently developed this theme in the context of Israeli settlements.
- 3 See note 2.
- 4 Sebenius, "Level Two Negotiations."
- 5 Dominick Misino, "Negotiating Without a Net: A Conversation with the NYPD's Dominick Misino," *Harvard Business Review* (October 2002): 49-54. Bill Ury directed me to this example.
- 6 George P. Shultz, *Ideas & Action: Featuring the 10 Commandments of Negotiation* (Erie, PA: Free to Choose Press, 2010).
- 7 I learned about this incident from Shai Feldman.
- 8 Shultz, *Ideas & Action*, p. 95.
- 9 Ibid., p. 75.
- 10 William Ury, *Getting Past No* (New York: Bantam, 1991), p. 122.
- 11 Ibid., p. 123.
- 12 William Ury, *The Power of a Positive No* (New York: Bantam-Dell, 2007).
- 13 Stuart E. Eizenstat, transcript (electronic, without page numbers), Great Negotiator Awards Program, Program on Negotiation, Cambridge, Mass: Fletcher School of Law and Diplomacy at Tufts University and Harvard, 2003.
- 14 Putnam, "Diplomacy and Domestic Politics." See also R. Putnam and N. Bayne, *Hanging Together: Cooperation and Conflict in the Seven-Power Summits* (Cambridge, MA: Harvard University Press, 1987).
- 15 Ibid., p. 429.
- 16 Ibid., pp. 428-29.
- 17 This section draws directly from Sebenius, "Level Two Negotiations."
- 18 This pivotal episode has generated a vast literature. Among the best accounts are Philip Zelickow and Condoleezza Rice, *Germany Unified and Europe Transformed: A Study in Statecraft* (Cambridge, MA: Harvard University Press, 1995); and Frank Elbe and Richard Kiessler, *A Round Table with Sharp Corners: The Diplomatic Path to German Unity* (Baden-Baden: Nomos, 1996). The following discussion

relies heavily on these sources plus, especially, James A. Baker, *The Politics of Diplomacy: Revolution, War and Peace, 1989-1992* (New York: Putnam, 1995); James A. Baker, transcript (electronic, without page numbers), Great Negotiator Awards Program, Program on Negotiation, Cambridge, Mass: Harvard University, 2012; Dennis Ross, *Statecraft* (New York: Farrar, Straus and Giroux, 2007); and Robert B. Zoellick, "Two Plus Four: The Lessons of German Unification," *National Interest* (fall 2000): 17-28.

- 19 Baker, transcript.
- 20 Baker, *The Politics of Diplomacy*, p. 170.
- 21 Zoellick, "Two Plus Four," p. 19.
- 22 Baker, *The Politics of Diplomacy*, p. 251.
- 23 Ibid., p. 256.
- 24 Baker, transcript.
- 25 Baker, *The Politics of Diplomacy*, p. 257.
- 26 Ibid.
- 27 Ibid., p. 258.
- 28 Ibid., p. 259.
- 29 See Zoellick, "Two Plus Four," pp. 19, 25.
- 30 Baker, *The Politics of Diplomacy*, p. 259.
- 31 Ross, *Statecraft*, p. 41.
- 32 Baker *The Politics of Diplomacy*, pp. 259-60.
- 33 Baker, transcript.
- 34 Ross, *Statecraft*, p. 45.
- 35 Ibid.