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**UNITED STATES-TALIBAN PEACE TALKS: WAS
INTEREST-BASED NEGOTIATION THEORY AND
PRACTICE APPLIED?**

LAWS538 Negotiation and Mediation
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15 October 2021

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I. Introduction

A. Origins of Interest-Based Negotiation

This paper draws on the work of Roger Fisher and William Ury, the leading Harvard University researchers and practitioners of principled or interest-based negotiation. Publication of *International Mediation: A Working Guide* (1978) and the founding of the Harvard Negotiation Project (1979) coincided with the signing of the Treaty of Peace between Egypt and Israel in 1979. Though subsequently known for their scholarship in various contexts, it is conflict management (ie, peace negotiation, hostage negotiation, and diplomatic negotiation) that underpinned much of Fisher and Ury's early work in interest-based negotiation. The context of this paper is international negotiation, specifically the United States-Taliban direct talks in Doha from 2018 to 2020. This paper will use the Arab Israeli peace process to illustrate the section on interests, and the United States-Taliban direct talks in Doha will be used to illustrate the sections on people, options and criteria, respectively. The structure of the paper uses the broad framework of interest-based negotiation, or the 'Fisher and Ury model.' This paper discusses the extent to which principled or interest-based negotiation was used in the Doha peace negotiations. The paper's thesis is: 'while elements of the Fisher and Ury model were applied in Doha, key elements of the process were not followed.'

B. Conflict

Conflict between state and non-state actors is regrettable but relatively common. A variety of causes result in conflict (eg, resources, ideology, religion, belief systems, and unresolved historical differences over geopolitical boundaries). Parties to conflict will often pursue their political objectives through the application or use of power (eg, diplomatic, information, military, or economic). With the help of intermediaries, attempts will be made to negotiate an end to conflict while the parties may be technically in a state of armed conflict.¹ In Afghanistan, negotiations occurred at various points from 2001 onward through a variety of intermediaries. Mediators included states (via officials, either working behind the scenes or through established diplomatic channels), non-governmental organisations (NGOs), independent neutral organisations such as the International Committee of the Red Cross (ICRC), civil society groups, and the United Nations. As an independent neutral organisation, the ICRC remained in constant contact with the Taliban, both before and after the 9/11 attacks. Diplomacy in the service of humanitarian objectives, underpinned by neutrality, is prescribed in the Geneva Conventions of 1949. This allowed ICRC representatives in Afghanistan to engage widely across the spectrum of political and military actors, using its reputation as a trusted intermediary to maintain open lines of communication between the parties.

C. Legal Basis of the War in Afghanistan

Four decades of war have shaped Afghanistan's politics and its people.² In the aftermath of the 9/11 attacks, the United States invoked Article V of the North Atlantic Treaty Organisation (NATO) Treaty and invaded Afghanistan on 7 October 2001. The military intervention in Afghanistan was not specifically mandated by the United Nations (UN) but

¹ ICRC, *International Humanitarian Law (IHL) and the Challenges of Contemporary Armed Conflict*. <<https://casebook.icrc.org>> (see The Law section for IHL bibliography.)

² Zalmay Khalilzad *The Envoy: From Kabul to the White House, My Journey Through a Turbulent World* (St. Martin's Press, 2016, at 23).

was widely perceived to be a legitimate form of self-defence under the UN Charter.³ Immediately after the invasion, which defeated the remnants of Al Qaeda in eastern Afghanistan, the United States-led coalition steadily expanded to include over 40 nations, including New Zealand. The coalition's focus was on stabilisation, reconstruction and capacity building to lay the foundations for peace.⁴ The International Security Assistance Force (ISAF) was established under NATO command on 20 December 2001, later becoming the Resolute Support Mission (RSM) from 1 January 2015.⁵ The United States also maintained a national counter-terrorism mission in Afghanistan under separate national authorities.⁶ The senior NATO commander in Afghanistan was dual-rolled as the senior United States commander, reporting jointly to Supreme Headquarters Allied Powers Europe (SHAPE) in Brussels (under the NATO chain of command) and United States Central Command (CENTCOM) in Florida under the United States chain of command. This is important because the number of secondary stakeholders extended well beyond the principal parties.

D. Afghanistan Peace Process, 2018-2020

The Taliban entered direct talks with the United States in Doha, Qatar in late 2018. Past failed efforts, beginning in 2011, by previous United States administrations centred on negotiations with the Afghan government, and specifically excluded the Taliban.⁷ At the outset, the key question for the Trump administration was whether or not to negotiate with the Taliban at all. The Taliban was a political ideology and not a nation state, it was a designated terrorist organisation under a number of United Nations Security Council (UNSC) Resolutions, and it was not the legitimate government of Afghanistan under international law.⁸ For the Trump administration, commencing talks with the Taliban reflected the view that political settlement was the only viable option – the Taliban, as a military force, could not be defeated on the battlefield. It was too well entrenched in the rural areas, and too well supported by secondary stakeholders, some of whom were potential spoilers in any negotiated agreement. It also had popular support, particularly within the Pashtun community.

The talks were led respectively by Ambassador Zalmay Khalilzad (former United States Ambassador to Afghanistan, Iraq and the United Nations) and Taliban leader Mullah Abdul Ghani Baradar.⁹ China, India, Pakistan and Russia as well as NATO were involved in the peace process, and were present in Doha. A two-stage process was agreed: United States-Taliban direct talks followed by national peace talks.¹⁰ The former concluded on 29 February 2020 with the signing of a peace treaty.¹¹ Aware of the likely limitations of a bilateral agreement, Khalilzad sought buy-in from the Afghan government and other

³ Article 2(4) of the UN Charter prohibits the 'threat or use of force against the territorial integrity or political independence of any state'.

⁴ <<https://www.nato.gov>> (see Topics, NATO and Afghanistan.)

⁵ United Nations Security Council Resolution 1386 of 20 December 2001 refers. At its peak in 2012 the NATO mission comprised approximately 130,000 troops. (See NATO E-Library at 3.)

⁶ Operation Enduring Freedom (2001-14) and Operation Freedom's Sentinel (2015-present).

⁷ Hafeez Ullah, Riaz Ahmad and Muhammad Mussa Khan "Afghanistan: US-Taliban Peace Talks: CPEC Perspective" *Conflict Studies Quarterly*, Iss. 32, July 2020, pp. 53-74.

⁸ Sean Maloney "Can We Negotiate With the Taliban?" (2010) *Small Wars and Insurgencies*, Vol. 21, Iss. 2, at 404.

⁹ The Taliban (or 'students' in Pashto) is the term used to describe the group which emerged in the early 1990s in Pakistan.

¹⁰ Commencing in September 2020.

¹¹ <<https://www.state.gov>>. Agreement for Bringing Peace to Afghanistan between the Islamic Emirate of Afghanistan which is not recognised by the United States as a state and is known as the Taliban and the United States of America, dated 29 February 2020.

countries in the region.¹² Made up of four parts, the key elements of the peace treaty were: i) guarantees and enforcement mechanisms for a reduction in violence, ii) guarantees, enforcement mechanisms and a timeline for a withdrawal of foreign troops, iii) guarantees that Afghan soil will not be used against the security of the United States and its allies and the Taliban agreeing to commence intra-Afghan dialogue, and iv) a permanent and comprehensive ceasefire will be on the agenda for the intra-Afghan negotiations. The United States agreed to withdraw all its troops from Afghanistan by 1 May 2021, in a conditions-based drawdown.¹³ The Taliban agreed to cease attacks on all foreign troops, renounce terrorism and proceed with national peace talks.¹⁴

E. United States Domestic Politics

The political backdrop to this paper is the Trump administration (2017-2021) and what has been described as the new conservative internationalism. The desire by Trump and the conservatives to reclaim for the Republican Party its position as the party of strong United States defence policy, resulted in a desire by Trump to appear to be the dealmaker, to do what others had tried and failed, and to appeal to right-leaning American voters under the America First foreign policy. This policy favoured nationalism and non-interventionism, supporting the view that Afghanistan was no longer a vital national interest and that troops should be withdrawn. America First provided the policy justification to enter direct talks with the Taliban. The Trump administration's view was that the State Department and Department of Defense had become overly focused on Afghanistan. By early 2018, the starting point of this paper, United States domestic politics had 'priced in' the withdrawal from Afghanistan; it was a matter of when not if, and how the withdrawal could be achieved with minimal impact to its reputation. Domestically, the broader issue of Afghanistan was becoming less and less relevant to voters.

F. Coalition Politics

While the greater part of the resources committed were by the United States, the 40+ nation coalition was broad-based and generally unified. The 29 NATO Allies were, to varying degrees of commitment, steadfast in their desire to support the emerging Afghan government in the interests of Alliance cohesion and the benefits which resulted from Alliance membership. Complicating matters considerably was the fact that three principal NATO Allies – the United Kingdom, Germany and Italy – sought to remain in Afghanistan, for their own national interests. Their argument was that the price of leaving was high compared to the price of remaining, and all three had significant security, economic and political interests in Afghanistan. For example, the United Kingdom had significant prestige associated with the region, Germany had significant historical ties to the region (particularly in northern Afghanistan), and Italy had well developed economic interests in Herat Province, which borders with Iran in western Afghanistan. All three nations knew, however, that they could not replace the capabilities that the United States had provided since 2001, and no nation had the social licence or domestic political support to remain without United States backing. In short, the United States would determine how and when the war would end.

¹² Reaching Agreement When Trust is Low. Program on Negotiation, Harvard Law School, 30 April 2020.

¹³ <<https://www.state.gov>>. Reference to United States troops is important because the United States was providing force protection, logistic support, medical support and a range of other capabilities.

¹⁴ See footnote 9, point 4, pp. I.

II. Interest-based Negotiation

A. The Four Elements of the Model

Interest-based negotiation is synonymous with principled negotiation, the Harvard Negotiation Project, and researchers Roger Fisher and William Ury. Fisher and Ury's book 'Getting to Yes: Negotiating An Agreement Without Giving In' is the formative text on interest-based negotiation.¹⁵ The four elements of interest-based negotiation are:

People – Separate the people from the problem.

Interests – Focus on interests rather than positions.

Options – Generate a variety of possibilities before deciding what to do.

Criteria – Insist that the result be based on some objective standard.¹⁶

The four elements – people, interests, options and criteria – will be discussed in turn, using examples from the Doha peace negotiations to illustrate Fisher and Ury's model being applied in practice.

B. People – Separate the People from the Problem

Separating the people from the problem is key to the Fisher and Ury model. In cross-cultural peace negotiations this is particularly important because not only are the parties conveying their own world view and lived experience, they are conveying the world view of their nation or political ideology. Already existing disharmony between the parties and underlying mistrust are amplified by emotion, and this can result in a temporary or even permanent end to the negotiations. In international negotiation, the leads will often be highly experienced, single-minded, politically astute and ego-centric people. The agreement, if one can be negotiated, is directly linked to the personal reputation and standing as politicians, diplomats or negotiators of the leads. Excessive hubris could lead to pragmatism over substance, which could in turn undermine both the theory and practice of principled negotiation.

Fisher and Ury argue that *people* come before addressing the substantive problem at hand, and establishing a rapport is key to working together in a constructive, collaborative way. Parties working together defines the interest-based approach, as opposed to competitive positional or 'win-lose' negotiation which has an adversarial connotation. The principle that the outcome is more important than the people creating the outcome is key to Fisher and Ury's model. The two key actors who represented the interests of their principals and stakeholders and led their respective negotiating teams in Doha are described in the next section.

1. Ambassador Zalmay Khalilzad

Born in Afghanistan, Khalilzad moved to the United States in the early 1970s after studying in Beirut at the American University. In the President George W. Bush administration, Khalilzad was appointed Ambassador to the United Nations. In 2003 Khalilzad was appointed Ambassador to Afghanistan. As Special Representative for Afghanistan Reconciliation (SRAR), Khalilzad was a supporter of entering direct talks with the Taliban. He identified

¹⁵ Roger Fisher, William Ury and Bruce Patton *Getting to YES: Negotiating an Agreement Without Giving In*. (3rd ed, Random House Business Books, London, 2012).

¹⁶ Grant Morris "To What Extent is the New Zealand Treaty of Waitangi Settlement Process "Interest-Based" Negotiation?" (2014) 82 VUWLRP, Vol. 4, No. 17, at 3.

Mullah Abdul Ghani Baradar as his key interlocutor. Khalilzad built rapport by communicating with his counterpart in Pasto. Khalilzad knew that creating rapport would be the key to addressing and ultimately resolving the substantive issues, but he was also aware that direct talks were only one part of the two-stage process.¹⁷ He identified that there was reputational risk for the United States in entering direct talks with the Taliban, but believed that political settlement was the only viable course of action.

2. *Mullah Abdul Ghani Baradar*

Co-founder of the Taliban movement in Afghanistan, Baradar was arrested and imprisoned by Pakistan in 2010. Khalilzad pressured Pakistan to release Baradar as the critical first step in the Doha negotiations, recognising that Baradar could help in the Afghan peace process. Pakistan released Baradar in October 2018 at the request of the United States. He was subsequently appointed a deputy leader of the Taliban and head of the political office in Doha.¹⁸

According to Fisher and Ury, negotiators are people first. Emotions, deeply held values, different backgrounds and viewpoints, biases, partisan perceptions, and different frames of reference all reinforce the need to establish human-to-human relationships first. Fisher and Ury encourage negotiators and mediators to ask the question, “Am I paying enough attention to the people problem?”¹⁹ At Doha, Khalilzad realised that Baradar was the counterpart that he needed to work with. Knowing that he was in prison, Khalilzad used diplomatic pressure on Pakistan to seek Baradar’s release. Once in Doha in 2018, the two key actors could frame out how the negotiations could proceed, and attempt to get beyond their publicly stated positions to address their underlying interests.

C. Interests – Focus on Interests, Not Positions

In interest-based negotiation, interests are the opposite of positions. Competitive positional negotiation is fundamentally different to interest-based negotiation in that competitive positional negotiation has a win-lose or hard-soft inference. Interest-based negotiation seeks to settle the substantive issues on the merits, after parties have jointly developed options for redress. Although the parties will have positions on a range of issues, Fisher and Ury contend that taking a collaborative, principled, integrative approach will, in the long run, produce better outcomes for the parties.

Fisher and Ury use the Egyptian-Israeli Treaty of Peace negotiated at Camp David in 1978 to highlight the importance of getting beyond positions to interests as the basis of an enduring agreement.²⁰ In this historical example, at the start of the negotiations the parties’ positions were seemingly incompatible. Israel sought a re-drawn border where their territorial gains as a result of the 1973 Arab-Israeli War would be recognised under international law. Egypt sought sovereignty over the Sinai Peninsula. There was no geopolitical formula that could divide the Sinai Peninsula in a way that would be acceptable to Egypt. To Egyptian President Anwar Sadat, the issue of sovereignty was inviolable.

¹⁷ Appointed as Special Representative for Afghanistan Reconciliation.

¹⁸ Al Jazeera, News Agencies. “Afghan Taliban Founder Mullah Baradar ‘released’ by Pakistan.” Al Jazeera, October 25, 2018.

¹⁹ Fisher et al, above n 14, at 21.

²⁰ Fisher et al, above n 14, at 43. Egypt’s interest was sovereignty over the Sinai Peninsula. Israel’s interest was security.

Israel, on the other hand, sought security. Strategically, the key to security is depth, the idea that time and space create the psychological and physical security sought by nations.

At Camp David, the negotiators devised a zone of separation which would provide for the security that Israel desired and the sovereignty that Egypt sought. The Treaty of Peace signed in 1979 guaranteed the Sinai Peninsula would remain Egyptian sovereign territory. It established the Multinational Force and Observers (MFO) to enforce the mechanisms of the Treaty of Peace.²¹ Annex I to the Treaty of Peace, entitled 'Protocol Concerning Israeli Withdrawal and Security Arrangements' established zones of separation and post-withdrawal levels of military personnel and equipment allowed within each zone. Annex VI proposed that the parties would request the United Nations to provide a force and observers to implement the provisions. In 1981 the MFO was confirmed as the alternative force to that requested in Annex VI. Headquartered in Rome, the MFO is funded in equal parts by Egypt, Israel and the United States. The Force Commander is a senior military officer from an independent troop contributing nation (currently New Zealand), who reports to the Director General of the MFO who is a senior United States diplomat. Other enforcement mechanisms include trilateral talks at Force Commander, Director General and inter-governmental levels.

1. *From Positions to Interests – Taliban Analysis*

A well-publicised *position* of the Taliban negotiators in Doha was for all foreign troops to withdraw from Afghanistan immediately upon the signing of any peace agreement.

Why? Because the presence of foreign troops in Afghanistan brings with it unwanted media and international community scrutiny, particularly around rights issues and the place of women in Afghan society. Furthermore, foreign troops provide practical support to the Ghani-led government, security support to the international community and civil society, and legitimacy. The Taliban is diminished by the presence of foreign troops because their presence is a visible signpost to young Afghans about what a future more progressive society might look like for them.

Possible Taliban interests? Autonomy to establish the Islamic Emirate in Afghanistan, acceptance by the international community, legitimacy as a result of being a party to the peace talks, recognition as a nation state, validity of their worldview, and access to the resources of government.

The Taliban's *interest* might be described as a progressive reduction in foreign troop levels to demonstrate to their followers (moderates and hard-liners) that progress towards the Islamic Emirate in Afghanistan is being made.²² Focusing on the Taliban's *position* risks stalemate because of the practical considerations of redeploying large numbers of troops and equipment quickly, the potential loss of face for the United States and the coalition, and the risk (ultimately realised) of an escalation in violence as a direct consequence of a hasty or poorly planned withdrawal.

2. *From Positions to Interests – United States Analysis*

A well known United States' position was to 'end America's longest war', as a Trump and later Biden administration presidential campaign promise.

²¹ Dated 26 March 1979.

²² "Analysis: Trump's Deal With the Taliban Explained" (2021) The Washington Post. <<https://www.washingtonpost.com/politics/2021/08/20/>>.

Why? Because Afghanistan was no longer a vital national interest of the United States. Its continued presence was undermining its standing in global affairs and distracting the administration from other potentially more serious existential threats, as well as domestic political considerations. Even though casualties were very low and resources committed relatively modest, the United States presence in Afghanistan was a distraction politically. Afghanistan and the NATO Alliance were interwoven strategically, and both ran counter to neo-conservatism, non-interventionism and the new American internationalism.

Possible United States interests? Gratitude for leading the post-9/11 coalition that neutralised the threat of Islamist extremism originating out of Afghanistan, status as a global leader in world affairs, reputation as the leading military power in the NATO Alliance, being seen to be strong on the America First foreign policy, desire to re-focus military strength on vital national interests (eg, China, Russia, Iran, North Korea), and being seen to be tough on the NATO Alliance.

3. *Getting to the Core of Interests*

According to Fisher and Ury, competitive positional negotiation leaves little room to move. For instance, the Taliban's long-held position that 'the beginning of the peace talks will not be the end of the fighting'²³ indicates just how intractable positions can be. Positions can force parties to adopt ever more extreme positions, sometimes resorting to power, control, influence or authority to reinforce their positions. In international negotiation, it can also lead to the co-opting of secondary stakeholders (eg, China, Pakistan, Iran and Russia) to further reinforce positions by channelling the power and influence of secondary stakeholders to achieve mutually beneficial outcomes. The risk, however, is that secondary stakeholders may become spoilers, and regardless will act in their own interest.

The United States' overriding interest was twofold: i) maintaining its standing and prestige in world affairs, and ii) delivering on its domestic political agenda.²⁴ This included support for intra-Afghan negotiations between the Government of the Islamic Republic of Afghanistan and the Taliban, noting the downside risk of being entangled in talks with an indeterminate outcome and timeframe.²⁵ Getting to interests in international peace negotiations is not easy. Returning to the issue of people, it requires trust in the process and trust in the people. Authentic, experienced leaders to guide the process and goodwill on all sides is a precondition of success. The rapport between parties is key, and time spent in building rapport is time well spent. One modality used by Fisher and Ury is the 'one-text' method. In this method the parties amend a single draft until such time as they agree the final text or discard it entirely. The one-text method forces the parties to work together on the agreement, and this method was used in Doha.

The most powerful interests are basis human needs (eg, autonomy, appreciation, affiliation, role (ie, a sense of purpose), and status. The authors argue that, "It's your job to make the other side understand exactly how important and legitimate your interests are."²⁶ Articulating your interests and listening attentively to the other party's interests allows the

²³ Anthony Cordesman "Negotiating with the Taliban: Six Critical Conditions that Must be met to Avoid Another "Peace to End All Peace" (2012), Center for Strategic and International Studies, at 2.

²⁴ Khalilzad, above n 2, Chapter 26, A More Dangerous World.

²⁵ See footnote 9 above.

²⁶ Fisher et al, above n 14, at 52-57.

parties to address the more substantive issues. Cognitive dissonance theory holds that people will act to eliminate inconsistency. The combination of speaking to the problem and providing validation and respect to the other party's interests will likely support the other party to address the underlying problem or substantive issue and reciprocate the respect that is shown to them.

D. Options – Invent Options for Mutual Gain

Fisher and Ury's model requires that parties should jointly generate the largest number of possible options for redress. When scrutiny and media interest is high and there are a large number of secondary stakeholders, this can be difficult. In international negotiation when trust between parties is low it is advisable to keep negotiations confidential, to avoid escalating tensions or creating space for spoilers. If the parties can't work collaboratively, the alternative is for mediators to achieve this bilaterally, with the parties coming together in joint session to endorse the options. In international negotiations the principals may not have the authority to settle. For example, although Khalilzad was a senior and experienced State Department official, he was in a sense Trump's negotiator working through Secretary of State Pompeo at the political level. While Khalilzad had significant delegated authority and resources, each iteration of the text of the agreement had to be agreed by the State Department and the White House. It also had to be communicated to NATO Secretary General Jens Stoltenberg and briefed to the North Atlantic Council (NAC), the highest decision-making body of the NATO Alliance.

Confidential talks may be a reality of modern conflict negotiation but the substance of the talks and the resulting agreement must also stand the ultimate test of public scrutiny. Some stakeholders will seek transparency and openness and others confidentiality. When trust is low the process of bringing the parties together tends to be very formal. In Doha, for example, there were nine rounds of talks and each round was framed by pre- and post-meeting consultations with primary and secondary stakeholders. This prescribed process meant that bringing the parties together to brainstorm options was hindered by a range of considerations outlined as follows.

Culture. In international peace negotiations the parties tend to come together to decide and agree, not to develop options. Options were developed but these tended to be formulated before each round and in a sense pre-agreed with the stakeholders and their principals, or at least agreed in principle between Khalilzad and Baradar as possibilities worth exploring further in Doha.

Lack of diversity. On the Taliban side the negotiating team were male, theocratic, products of the 1996-2001 period in power, against female education and employment, against most art and music, supporters of Islamist extremism, and socially conservative. On the United States side the negotiating team were predominately male, experienced, conventional, wary of the politics of the Trump administration (ie, the potential for Washington to undermine the negotiations as a spoiler from within), and cautious about opening up the process to other stakeholders.

Pre-set outcomes. On the United States side the drawdown and exit was predetermined, however there was flexibility as to the timeline. On the Taliban side the outcome of an Islamic Emirate built on theocratic principles and a strict interpretation of Sharia Law and social conservatism was highly likely, though not certain at the time.

Two-stage process. The nine rounds of talks were stage one of a two-stage process. Stage one was about the withdrawal of foreign troops. Stage two (intra-Afghan dialogue) was about a ceasefire and comprehensive peace deal. As a result, the options that could have been generated (and arguably were generated, though not in the presence of both parties in joint session) were constrained by the two-stage process.

1. Broaden the Range of Possible Options

The range of possible options could include acknowledgement of harm, financial resources (eg, via international financial institutions), access to political leaders, a joint commitment to ongoing dialogue, co-designed assurance mechanisms, a deed of settlement, diplomatic credentialing and recognition, and publicity. The development of options together contributes to ensuring that interests as opposed to positions are the focus of the negotiations. According to Fisher and Ury, this should be a creative process, drawing on the experience of previous international negotiations but not replicating those negotiations.²⁷ Options have to have an intrinsic value to be meaningful. They may be symbolic (eg, an apology) or they may be tangible (eg, a co-designed curriculum as a resource for school teachers), but all options must have symbolic or intrinsic value to both parties.

2. Departure from the Fisher and Ury Model

The main departure from the Fisher and Ury model is that the parties in Doha did not develop options together in joint session. This is not to say that options weren't developed, or that both parties either individually or collectively did not seek to work together, but in Doha there was no evidence of the creative, collaborative effort which is characteristic of the Fisher and Ury model. The caveat to this was that the one-text method was used, and this is a feature of the Fisher and Ury model.

E. Criteria – Insist on Using Objective Criteria

Using objective criteria to evaluate options is a cornerstone of Fisher and Ury's model. In international negotiation this could include constitutional constructs (eg, power sharing agreements) or enforcement mechanisms (eg, third-party monitors to ensure compliance). Agreement could be based on precedent (eg, the Dayton Accords establishing peace in Bosnia and Herzegovina or the Good Friday (or Belfast) Agreement which ended political conflict in Northern Ireland). Data on levels of violence compiled by the United Nations Assistance Mission in Afghanistan (UNAMA) was used to verify whether or not agreements made by the Taliban to reduce violence were being adhered to. Data on levels of violence was also compiled by independent neutral organisations such as the ICRC. Confidence building measures were important to both parties. In addition to reductions in violence, prisoner swaps were also used to demonstrate good faith. The principal being applied here was that a relatively straightforward and minor agreement as a part of an overall agreement may build enough trust between the parties to address the more substantive issues.²⁸

²⁷ For example, the General Framework Agreement for Peace in Bosnia and Herzegovina. <osce.org>.

²⁸ Reaching Agreement When Trust is Low. Program on Negotiation, Harvard Law School, 30 April 2020.

III. Key Elements of the Fisher and Ury Model

Fisher and Ury's idea of the Best Alternative to a Negotiated Agreement (BATNA) is integral to the model. In Doha, both parties could walk away and the conflict would continue. The people of Afghanistan would bear the brunt, delaying a time when the country might experience peace and stability, and eventually prosperity. The Taliban, and other Islamist extremist groups in Afghanistan, would continue to be pressured militarily, though not to the extent that the threat of extremism would end. The coalition could continue to support the Afghan National Defence and Security Forces indefinitely, and donors (principally the United States and the European Union) could continue to provide funding indefinitely. The Afghan population (particularly women and girls) would continue to suffer the consequences of four decades of war, and their marginalisation in Afghan society would continue. The voices of restraint in civil society would be muted, and extremist ideology would prevail.

Ultimately, the United States and its partners could continue the war indefinitely, notwithstanding domestic political pressure to withdraw. The Taliban, in common with the Afghan people, has the ability to withstand privation and set-backs, both political and military. Shrewd use of social media, co-opting international opinion leaders, and appealing directly to key influencers in the region and globally have all blunted United States' efforts to counter the Taliban's theocratic ideology and worldview, advance the cause of liberal democracy, and create the conditions for a lasting peace in Afghanistan.

A. United States BATNA. Two possible options:

(a) **Reduce force levels to the irreducible minimum.** Deliver on a domestic political promise, emphasising that a complete withdrawal would undermine United States interests. Leverage the desire by some NATO Allies to remain in Afghanistan by co-opting those countries to do more so that the United States could do less. Continue to provide force protection, logistic support and other forms of security support. Use the media to amplify the humanitarian justification for maintaining a small residual presence long-term, as well as the security justification.

(b) **Withdraw in accordance with the terms of the treaty.** (Part 1, pp. II of the agreement sets out the timeline and reduction in forces leading to a complete withdrawal by 1 May 2021).²⁹ This BATNA plays to the narrative of non-interventionism and is likely better aligned with domestic political considerations (ie, Al Qaeda has been defeated as a military threat, the United States-led NATO mission has created a [supposedly] robust security capability, and the future must be determined 'by Afghans for Afghans.'

B. Taliban BATNA. Two possible options:

(a) **Co-opt international support.** Continue to target NATO and non-NATO forces, recognising that such a strategy could have long-term consequences. Continue to undermine the Ghani-led government, both militarily and politically. Continue to pressure Islamabad to provide matériel support and sanctuary. Co-opt regional stakeholders to establish a dialogue with the objective of gaining greater acceptance of the Taliban as a political movement.

²⁹ Subsequently revised to 31 August 2021 by the Biden administration.

(b) **Pressure power brokers.** Open up an alternative negotiation track, thereby fuelling competition between the United States and others (eg, China, Russia, India and Iran).

According to Fisher and Ury, the concept of the BATNA is most effective when dealing with a seemingly more powerful negotiator.³⁰ At face value, the parties to the direct talks in Doha were manifestly unequal. The United States, a powerful and influential country and ‘Permanent Five’ member of the United Nations Security Council versus a political ideology which was not a nation state and was a terrorist organisation. The United States had been fighting in Afghanistan for 20 years, at significant cost and risk to its reputation. It had spent more than \$2 trillion on the war and staked its reputation on a successful political settlement.³¹ How, when and in what form that settlement might transpire was a key element of the negotiations that took place in Doha. For the Taliban, there was some merit in the claim that it represented the will of the Afghan people. The argument that the United States and the international community was propping up the self-interested and corrupt Ghani-led government in Kabul was also a powerful argument. This argument had gained currency in political and diplomatic circles to the extent that the only viable course of action was political settlement with the Taliban.

C. Negotiation Strategy

Fisher and Ury’s premise is that the weaker side will be better off negotiating on the merits, ‘...The more easily a party can walk away from a negotiation, the greater the capacity to affect the outcome...’ (Fisher and Ury, pp. 108.) The United States, once it embarked on a process to achieve a political settlement, could not walk away from the process. In essence, the negotiations at Doha were about the withdrawal. If the United States withdrew, rivals would take up the mantle of negotiating a political settlement, potentially counter to its own interests. The international community would criticise the United States for lacking the political will, resolve or vision to conclude what it had started on 7 October 2001. If the Taliban withdrew the downside risk was significantly lower for them. Therefore, the Taliban’s capacity to affect the outcome was significantly higher than for the United States.

D. Spoilers and Divergent Interests

Afghanistan’s geography belies its insignificance. Its internal political challenges, shaped by war, are not unique. Recent examples include South Sudan, Kosovo and Bosnia-Herzegovina, all of which experienced war as a consequence of internal and external forces. All benefited from external intervention, either to negotiate a peace deal or to create the space for parties to come together and discuss their differences. In all three examples a post-agreement stabilisation force was deployed. Afghanistan sits between Iran in the west and Pakistan in the east. It sits to the south of the traditional Russian sphere of influence (now Turkmenistan, Uzbekistan and Tajikistan) and borders China via the Wakhan corridor to the north-east. Former great powers of the 18th and 19th Centuries (eg, United Kingdom) have significant prestige linked to the region, and the region itself is characterised by many major and long-standing geopolitical challenges (eg, Kashmir). The following section examines the interests of five countries and the United Nations Security Council.

(a) **China.** Significant economic interests (eg, coal, iron ore and rare earth minerals). Seeks to foster regional stability. Seeks an early and comprehensive relationship with the Taliban. Concern over Islamist extremism moving into China via the Wakhan

³⁰ Fisher et al, above n 14, at 108.

³¹ The Economist, Abandoning Afghanistan, pp. 9, July 10-16 2021.

corridor, potentially emboldening the Uyghur population. Seeks to counter India's influence in Afghanistan. Seeks to weaken Western influence more generally. Significant economic and political influence. Seeks to undermine the United States peace process, though publicly in support of it. Reluctant to establish an alternative negotiation track, recognising the downside risks of doing so.

(b) **Russia.** Influential (eg, hosted Intra-Afghan dialogue in Moscow), sought opportunities to undermine United States' efforts to negotiate a political settlement. Sees Afghanistan as within its sphere of influence. Supports northern Afghanistan powerbrokers directly. Seeks to counter Islamist extremism moving north into Central Asia. Seeks to play a role in the peace process, though has intrinsic spoiler tendencies. Revels in United States' difficulties to extract itself from Afghanistan (as the USSR did in 1989). Seeks to challenge NATO in Afghanistan because it is much harder to do that in Europe where Alliance cohesion is stronger. Compares United States' challenges with its own experiences from 1979-1989, which ultimately led to the collapse of the USSR in 1991.

(c) **Pakistan.** Significant areas of cooperation with the United States (eg, border control, counter-terrorism, refugee repatriation and humanitarian assistance for displaced persons). Significant trust deficit with Afghanistan, both historically and present day). Supports Taliban facilitation and safe havens but is aware of international backlash for doing so. Taliban extremist ideology and theocracy runs counter to Pakistan's more moderate attitudes, but recognises that many Afghans support the Taliban.

(d) **Iran.** Long-standing ties with Afghanistan. Seeks to counter extremist expansion into Iran. Seeks to exploit United States-Iran tensions (eg, the Joint Comprehensive Plan of Action) and sees Afghanistan as the means to enact spoiler tendencies. Supports and facilitates the Taliban via the western facilitation route. Arms the Taliban (including with sophisticated guided weapons), and uses its border to facilitate the distribution of heroin into Europe.

(e) **India.** United States-Russia interlocutor. Provides development assistance and humanitarian assistance to Afghanistan. Seeks to be a foil to Pakistan's influence, and seeks to amplify Pakistan's own sense of insecurity. Seeks to ensure emergent Afghan regime (ie, Taliban) is not hostile to India's interests. Kashmir is key to India's strategic calculus. Influential with Ghani-led government but aware of the risks of close alignment with a government whose existence is underpinned by the international community.

(f) **United Nations Security Council.** The United Nations Security Council has adopted numerous resolutions on Afghanistan, promoting peace and security and supporting efforts to accelerate reconciliation between parties. Secondary stakeholders look to the UN to play a more prominent role, though the Permanent Five members' interests will likely preclude progress. The United States requested the recognition and endorsement of the United Nations Security Council for the Doha agreement, and this was achieved unanimously (Section 3, pp. III refers).

E. The Process of Interest-Based Negotiation

Fisher and Ury's interest-based negotiation model is an all-purpose approach to dispute resolution. While the context may differ the principles and processes should hold true whatever the circumstances. The authors counsel against allowing the process to become

too rigid, or allowing pragmatism to remove the need for parties to generate creative and innovative solutions together. The Doha peace process took 18 months and nine rounds of negotiations to reach an agreement. As previously discussed, there is no evidence of the parties working together in joint session to develop options but, equally, there is no evidence to the contrary either. It may be more accurate to characterise the negotiations as one round over 18 months with nine intermediate points, affording the parties the opportunity to signal progress to their stakeholders and to the international community.

A range of external factors which included significant and sustained military pressure on the Taliban over many years, created the conditions for direct talks in Doha to take place. Both parties were engaged in armed conflict and trust was non-existent.³² While the Taliban sustained significant losses and setbacks, the military pressure exerted by the United States-led coalition was only sufficient to bring the Taliban to the negotiating table. The military pressure was not sufficient for the Taliban to renounce violence. The support provided by Pakistan ensured its existence. For the United States, a political settlement was the only viable option because it wasn't 'winning', and likely couldn't 'win' in a binary sense.³³ The circumstances in 2018-2020 were temporary, and the situation 12 months previous or 12 months in future may have been very different. Politically, both parties understood that 2018-2020 was the time to talk, and failure to reach agreement carried a high price.³⁴ Paradoxically, it was the Afghan people who paid that price. According to Fisher and Ury, replicating the process automatically based on previous experience would undermine the inherent strengths of the interest-based approach and ultimately end in stalemate. Both the Trump and Biden administrations sought to end the war in Afghanistan, knowing that as a consequence: i) an emboldened Taliban could lead to an escalation in violence, ii) violence could lead to a humanitarian crisis, and iii) the Ghani-led government could collapse as a result of endemic corruption, loss of social licence, loss of psychological will, or lack of funding.

F. Culture, its Role in Interest-Based Negotiation

The role of culture or cultural competence in international peace negotiations is key to Fisher and Ury's model. While the principles may apply between cultures, the cross-cultural barrier is profound and not easily bridged. For example, the words 'interests', 'options' and 'criteria' when translated into Dari or Pashto, the predominate languages of Afghanistan, result in very different meanings to the English language, which in turn can cause misinterpretation. Successful international negotiators and mediators have to exhibit high levels of cultural competence and either language proficiency or access to skilled translators and linguists. This is particularly so using Fisher and Ury's one-text method where the parties are encouraged to amend a single text until agreement is reached. In Doha the one-text method was used but there were three translations (Pashto, Dari, and English languages), 'each text being equally authentic' (pp. IV refers). According to Fisher and Ury, paying attention to differences of belief and customs but avoiding stereotyping is key.³⁵

On the United States side, Khalilzad was an Afghan, he was fluent in the Pashto and Dari languages, he was immersed in the country's history and culture, he had pre-existing

³² Negotiation Analysis: The US, Taliban, and the Bergdahl Exchange. Program on Negotiation, Harvard Law School, 3 August 2021.

³³ Matt Waldman "Tough Talking: The Case for Negotiations with the Taliban" (2010) RUSI, Vol. 155, Iss. 6, at 61.

³⁴ Recent events (August 2021) call into question the efficacy of the agreement reached in Doha on 29 February 2020.

³⁵ Fisher et al, above n 12, at 169.

relationships with key members of the Ghani-led government, he established a rapport with the Taliban political leadership in Doha, and he was a trusted international interlocutor and negotiator.³⁶ On the Taliban side, Baradar was both a political and a religious leader. As a co-founder of the Taliban his standing within the movement was high. From 2001 he rose to become the leader of the Taliban's Quetta Shura, in Pakistan. Imprisoned in Pakistan, possibly because of his attempts to negotiate a peace deal with the Karzai-led government in 2011, Baradar was released in 2018 at the request of the United States. Khalilzad and Baradar are representative of the principle that a successful negotiation can not be achieved without careful consideration of culture, both as a potential benefit and as a source of risk if not managed wisely.

G. Knowledge of the Principles vs. Application of the Process

There is a tension between a high level understanding of a model and its underlying principles and the application of that model in practice. In international peace negotiations it is the principles that are important. It is possible to discern a noticeable movement away from positions to interests over the course of the 18 months and nine rounds of negotiations. Evidence of this includes not resorting to the media to amplify positions once negotiations commenced. Each case on its merits is an important guiding principle, and in international peace negotiations applying relevant lessons from past negotiations is also helpful. For example, both the Camp David Accords (1979) and Dayton Agreement (1995) presented no less a challenge than that of Afghanistan for the negotiators and both contained useful mechanisms that may have been used to good effect. Many of the methods and some of the options for redress could have applied, provided that each case was considered on its merits.

IV. Conclusion

The Doha agreement was supported by China, Russia and Pakistan and unanimously supported by the United Nations Security Council. The North Atlantic Council supported the agreement and ultimately all NATO nations and non-NATO partners endorsed the agreement. International relations and international negotiation are interrelated concepts, nowhere more so than in peace negotiations. This essay has established that some key elements of Fisher and Ury's model were used in Doha. However, the interests of the people of Afghanistan were secondary to personal and tribal interests, warlord and powerbroker interests, and the interests of spoilers and major powers. Ultimately, the agreement was undermined because it should have been stage one of a two-stage process, and the second stage of the process was equally important as the first. While the parties lacked trust, nine rounds of negotiation over 18 months demonstrated the ability to work together. Great power rivalry (secondary stakeholders) meant that critical underlying issues couldn't be addressed in the nine rounds of negotiations, which is a departure from the Fisher and Ury model. The most important of these was the role of Pakistan as the Taliban's principal source of political support. While many elements of the interest-based approach were used to good effect, demonstrating the flexibility and inherent strengths of the Fisher and Ury model when applied to international peace negotiations, some key aspects of the model were not followed. The most important of these was evidence of the parties jointly arriving at options together, as the basis for an enduring agreement. Based on interest-based negotiation principles, the following recommendations are offered which may have strengthened the Doha peace agreement.

³⁶ The agreement had to be ratified by the North Atlantic Council, which is the highest level political body in NATO.

A. Recommendations

(a) **Diversity is a benefit.** Use the inherent strengths of a diverse group to bring the parties together in joint session.

(b) **‘Nothing about me, without me’.** The Ghani-led government was sidelined which encouraged mistrust and heightened suspicion of the process and of the parties to the negotiation. It may also have provided leverage for secondary stakeholders who were intent on disrupting the peace process for their own interests.

(c) **One process, two stages.** The Doha agreement set the scene for the second stage of negotiations, the ‘intra-Afghan dialogue’, but this should have followed on immediately after the signing of the agreement on 28 February 2020 rather than starting afresh in September 2020.

(d) **Safeguard interests.** The Doha agreement would have been strengthened had the parties agreed on ‘how’ the withdrawal would be conducted, and the mechanisms in place to safeguard the interests of Afghans who had worked with the coalition as well as international community.

(e) **Counter the spoilers.** Bind regional actors to the enforcement modalities. If regional actors are part of the long-term solution it is much harder for them to undermine the agreement during implementation.

(f) **Provide incentives.** Link eventual withdrawal to enforcement mechanisms and hold out the prospect of incentives (eg, withdrawing sanctions, facilitating UN membership, and securing donor funding via the international financial institutions).

(g) **Buttress the agreement.** Using the Camp David Accords and the Dayton Accords as examples, an independent stabilisation force could have been included in the Doha agreement as a confidence building measure to safeguard human rights and provide security.

(h) **Understand the psychology.** The Doha agreement set a date for when the Afghan government and the Afghan people could expect all assistance to end. A sense of the inevitable resulted, which accelerated as the date of the withdrawal drew near. Holding out the hope of support, with conditions, to ensure stability and an orderly transition would have strengthened the agreement.

Word count

The text of this paper (excluding table of contents, footnotes, and bibliography) comprises approximately 7400 words.

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