

Afghanistan: Negotiating in the Face of Terrorism

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I. Introduction:

For more than 15 years, the focus of my teaching, scholarship and consulting has been negotiation and dispute resolution, first at Stanford University and now here at Harvard.

In important measure, it is because of the seminal work of my colleague and predecessor Roger Fisher and my colleagues here at the Program on Negotiation that there is today much greater awareness of the usefulness of negotiation in resolving conflicts of all sorts.

Indeed, like Roger I, too, am a **negotiation imperialist** – prepared to see almost any set of human relationships in terms of negotiation. I, too, have a strong preference for the use of dialogue and understanding– not simply coercion-- as the basis for resolving conflicts. Much of my research has involved the study of barriers to the negotiated resolution of conflicts and how to overcome those barriers.

Our topic tonight relates to Afghanistan, and is entitled Negotiating in the Face of Terrorism. The events of the last two months have raised in my mind a broader question: when **not** to negotiate.

I do not wish to argue – as some do – that one never should negotiate with terrorists. For reasons I would be glad to elaborate on in the Q&A, that claim is overly broad.

But I do wish to argue that President Bush was right one month ago when he refused to negotiate with respect to the terms of the ultimatum he had issued to the Taliban. Moreover, when the Taliban (perhaps predictably, but probably unwisely) refused to comply, I believe that the use of force in Afghanistan was fully warranted--legally, morally and prudentially.

In the past 24 hours, the Northern Alliance has taken possession of Kabul – the capital of Afghanistan, which had been abandoned by the Taliban – hardly firing a shot. More significantly, consistent with the stated aim of the United States, the Northern Alliance called for UN sponsored negotiations with Afghan factions – including the Pashtuns, but not the Taliban - in an effort to form a representative, broad-based government. For those of us concerned with negotiations, the days ahead will be no doubt very exciting.

Some may believe that these events compellingly demonstrate the wisdom of President Bush's choice to make a number of non-negotiable demands and to use force when these demands were not met. But this conclusion incorporates the benefit of hindsight and involves an ex post analysis. I would like to focus on the decision ex ante.

II. The Context

Let us roll the clock back a few weeks. In his ultimatum of September 20, President Bush demanded that the Taliban turn over Bin Laden and his people and shut down the terrorist training camps. The Taliban consistently refused to turn over Bin Laden, but invited discussion and negotiation. Through the press, the Taliban denied that Bin Laden and Al Qaida were in any way involved in the attacks of September 11, and disputed claims of western intelligence agencies linking the perpetrators to Bin Laden.

The Taliban asked the US to provide proof and to allow the Taliban to judge its adequacy. The regime stated it might be willing to try Bin Laden before the Supreme Court of Afghanistan or somewhere else before an Islamic court. On September 19th, in addressing a council of clerics, Taliban leader Mohammed Omar reiterated this offer and stated that "if the American government has some problems with the Islamic Emirate of Afghanistan, they should be solved through negotiations." On the 24th, the council of clerics sent word to Bin Laden inviting him voluntarily to leave Afghanistan. While at first reported "missing," on the 27th the message was said to have been delivered to Bin Laden. The next day, the Taliban (through its leader Omar) told a Pakistani council of clerics that the Taliban was willing to fight to the death to protect Bin Laden from U.S. military forces. On October 20th, the ruling Taliban militia reiterated this refusal, stating that "Our position toward Osama bin Laden is based on sharia (Islamic law) which forbids handing over a Muslim to infidels."

Should the United States, directly or indirectly, have entered into negotiations with the Taliban concerning the evidentiary basis for our belief that Bin Laden and Al Qaida were implicated in the September 11th attack? Or about where Bin Laden should be tried? Or about how many terrorist camps should be shut down? I think not.

III. The Benefits and Costs

Entering into negotiations is a decision that carries with it both actual and potential costs and benefits that should be carefully weighed in any given context against alternatives. Without disputing the validity of Roger Fisher's examples, in this context the facts suggest President Bush made the right calculation. He refused to negotiate with the Taliban to persuade them and instead chose to exercise our right of self-defense under the UN Charter to respond militarily.

Let me begin by outlining our vital national interests. The paramount interest would be to protect American lives both within the US and abroad and to prevent and

deter future terrorist attacks. We also have broader interests and responsibilities in the international system in combating terrorism and in promoting democracy, tolerance and human rights.

These interests plainly imply that our more immediate goals in Afghanistan are:

- 1) To incapacitate Bin Laden and destroy Al Qaida
- 2) To ensure that Afghanistan no longer harbors and supports international Islamic terrorist groups.

I believe we also have an interest in removing this Taliban regime from power, and working towards the establishment of a broadly based government that is more tolerant of ethnic diversity and more observant of human rights.

On the benefit side, one must ask: How likely was it that a negotiated deal could be made that serves these vital interests? On the facts that were known a month ago, I think it was extremely unlikely.

- It was unclear whether the Taliban had the capacity, let alone the will, to shut down the terrorist training camps and turn over Bin Laden.
- Our previous negotiations with the Taliban over these identical issues had been singularly unproductive. After the 1998 embassies bombings in Kenya and Tanzania, the US government had been both negotiating with and putting pressure on the Taliban with respect to Bin Laden and the terrorist camps. All to no avail. President Clinton and the UN had imposed economic sanctions, and the US and all but three nations in the world (Saudi Arabia, the United Arab Emirates and Pakistan) had withheld diplomatic recognition.

In sum, the prospective benefits were very slight.

What about the costs of entering into negotiation?

Before September 11th, Bin Laden had declared war on the United States. On Feb. 28th, 1998, an Arab newspaper in London published a Fatwa signed and sent to them by Bin Laden. It called for a jihad – against the Jews and The Crusaders – and makes for a chilling reading. The Fatwa holds that “to kill Americans and their allies, both civil and military, is an individual duty of every Muslim who is able, in any country, where this is possible, until the Aqsa Mosque [in Jerusalem] and the Harm Mosque [in Mecca] are freed from their grip and until their armies, shattered and wing broken, depart from the lands of Islam, incapable of threatening any Muslim.”

About six months later, on August 7th, 1998 the US Embassies in Kenya and Tanzania were bombed by terrorists, killing 12 Americans, 260 Kenyans and Tanzanians, and wounding thousands. In November of that year, a NY Federal Court returned indictments against Bin Laden and other members of Al-Qaida for these bombings.

On October 12th of last year, a suicide boat attacked the US Navy destroyer Cole in the Aden harbor. Seventeen sailors were killed. There was the subsequent arrest of four suspects with links to Bin Laden.

Finally, on September 11th of this year, there was the coordinated attack on US territory which claimed the lives of nearly 5000 persons, and destroyed and damaged symbols of our political and economic strength.

At the same time, there could be little doubt that the Taliban harbored thousands of Islamic terrorists from around the world and allowed its territory to serve as a training ground for armed secret agents capable of terrorist acts in US and elsewhere.

In this context, the September 11th attack should be seen as an act of war against the United States – a *casus belli*. The issues posed were therefore not simply those of domestic law enforcement. And the Taliban were not unaware innocent bystanders who had not been given advance warning. In fact, a State Department official testified before Congress in the summer of 2000 that the US had let the Taliban “know in no uncertain terms that we will hold [the Taliban] responsible for any terrorist acts undertaken by Bin Laden.”

In these circumstances to decide to negotiate with the Taliban would have imposed substantial costs

- In terms of deterring future terrorists and those who might harbor them
- In terms of maintaining credibility and self-respect
- In terms of legitimizing a regime that we had not previously recognized
- In terms of our ability to build and sustain a broad coalition and maintain domestic political support
- And in terms of allowing heinous acts to be the occasion for dialogue with a party that we believe is at least partially responsible.

I don't wish to say that any one of these costs would always be dispositive or that if the prospects of benefits were great enough negotiations would not be warranted.

IV. Conclusion

Negotiations often occur in the shadow of more coercive alternatives. Many legal negotiations, for reasons I have concerned myself for 20 years, occur in the shadow of the law – i.e., parties settle legal disputes knowing that if negotiations fail one or both may have recourse to a legal remedy that a court might enforce.

International negotiations are in some ways analogous. Disputants have self-help alternatives, including a resort to arms. Sometimes parties fight and negotiate at the same time, and, when they do negotiate, often do so knowing that the use of military means is an option. War, according to Clausewitz, is a continuation of diplomacy by other means.

My strong preference is to resolve legal disputes without resort to court – and international conflicts without the use of force. But to assume that negotiation always – in every context -- is the appropriate strategy is to claim too much. It is my hope that in the years to come, we at the Program on Negotiation remain negotiation imperialists – educating and training for it. But, as part of our research agenda, I think we must also study its limits.