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978-1-107-02687-2 - Principled Negotiation and Mediation in the International Arena:

Talking with Evil

Paul J. Zwier

Excerpt

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# 1

## LANGUAGE AND STRATEGY

It is the spring of 1983. President Ronald Reagan is addressing the National Association of Evangelicals in Orlando, Florida. His intent is to rally the religious right to support his military and nuclear arms buildup. Reagan tells the crowd that he sees this buildup as necessary to force the Soviet Union to negotiate a real reduction in nuclear arms. In this speech, he will call the Soviet Union an “evil empire.”

Many have now forgotten that President Reagan was careful in that speech to state that he would continue to talk with the Soviets and would do all in his power to convince them that he wanted a just peace. He would remind his audience then that throughout the 1940s and much of the 1950s, during a time when the United States had a monopoly on nuclear weapons, the United States did not dictate a self-interested power-based colonialism to the rest the world. Those who favor taking a hard line point out that President Reagan did not back away from the United States’ moral right to use nuclear weapons against the Japanese, and declared the moral superiority of the United States’ use of power because it was based on principles of freedom and democracy.

President Reagan justified the arms race with the Soviets, and a Star Wars Defense System, by referring to Judeo-Christian understandings of good and evil.<sup>1</sup> For authority, he used the story of a California citizen who roused a crowd to their feet when he argued he would rather have

<sup>1</sup> In the speech, President Reagan demonstrated his credentials for doing “good” by his advocacy of prayer in schools, his stance against abortion, and legislation that gave legal rights to the disabled. He declared Communism to be godless, a faith in Man, rather than a faith in God. Remarks at the Annual Convention of the National Association of

his daughters die young than to have them grow old under the rule of Communism. Reagan defined the moral of the story: it was better to die than live under a regime whereby citizens were sure to lose their faith. He said, “There is sin and evil in the world, and we’re enjoined by Scripture and the Lord Jesus to oppose it with all our might.”<sup>2</sup> Inspired by the righteousness of its cause, the United States refused to settle for status quo nuclear arms limitations with the Soviets, and the U.S. Congress passed legislation that authorized the building of the Star Wars Defense System. In less than seven years from the day the speech was given, on November 9, 1989, the Berlin Wall came down.

To many in the foreign policy establishment (at least on the Republican side), there is a direct causal relationship between fighting evil with all one’s might in the name of freedom and democracy, and the end to the Cold War.<sup>3</sup> In their view, there are some cultures that you just need to fight. In its most extreme, this view toward our enemies favors killing them – indeed, killing them all.<sup>4</sup> To be effective requires no weakness. It also means that you don’t appease evil by talking to your enemy.

This is especially true for official representatives of the United States, especially the president, the secretary of state, ambassadors, or special envoys. This viewpoint holds that representatives of the United States may not ever appear to be appeasing bad actors or rewarding their bad behavior. The consequence of such appeasement is to encourage others to do the same. The United States loses its moral

Evangelicals in Orlando, Florida, March 8, 1983, <http://www.reagan.utexas.edu/archives/speeches/1983/30883b.htm>.  
<sup>2</sup> Id.  
<sup>3</sup> Bolton, J. R. (2007). *Surrender Is Not an Option: Defending America At the United Nations and Abroad*, Threshold Editions, A Division of Simon & Schuster, Inc., New York, NY, Chapter 2.  
<sup>4</sup> In a debate before the South Carolina primary in the spring of 2012, Newt Gingrich allegedly used Andrew Jackson as his authority and described Jackson’s attitude toward certain terrorist groups. Jackson’s approach would have been, “kill them.” Gingrich said that Andrew Jackson knew what to do with our enemies: “Kill them.” Unfortunately, Gingrich was quoting *Stonewall* Jackson at the Battle of Fredericksburg – where Jackson was in rebellion, and was talking about killing Americans. A staff member asked Jackson, “What should we do about those people” (the federal soldiers occupying Fredericksburg – U.S. soldiers defending the Constitution), and Jackson answered, “Kill them. Kill them all.”

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high ground, and (in some circumstances) its legal status to act. If it talks to evil, it necessarily will slide into relativism, trading self-interest or peace for legitimizing or accommodating the bad actor.

This chapter analyzes the questions of whether – and, if so, how – the United States should engage “evil” actors on an international stage. It first asks what might be meant by calling someone “evil.” It attempts to distinguish between self-interested actors, irrational actors, and finally what might be meant when a nation-state ascribes “evil” motives to individuals or states. Next, the chapter looks at the history of the doctrine in U.S. foreign policy of not talking to actors the United States deems evil and how foreign policy makers came to this view. Then, this chapter turns its attention to the national legal stage and looks at how legal negotiators and mediators deal with these same issues in the context of criminal law and civil litigation. It describes the concepts of adversarial negotiation strategies and problem-solving strategies and shows how the evolution of problem-solving strategies in negotiations has affected the way some mediators now help resolve the most intractable disputes. The chapter then explores how these same problem-solving strategies have made their way into the thinking and strategy of U.S. foreign policy makers. It discusses whether and how the appointment of special envoys and the strategic use of nongovernmental organizations (NGOs) (Track 1.5 negotiations)<sup>5</sup> can bring the benefits shown to work domestically to the resolution of international

<sup>5</sup> Wolleh, O. *Track 1.5 Approaches to Conflict Management: Assessing Good Practice and Areas for Improvement*, [http://www.berghof-peacesupport.org/publications/MED\\_Documentation\\_Hueningen\\_Retreat.pdf](http://www.berghof-peacesupport.org/publications/MED_Documentation_Hueningen_Retreat.pdf).

See also, United States Institute for Peace, *Glossary of Peacemaking Terms*, <http://glossary.usip.org/resource/tracks-diplomacy>.

Over the years, scholars have delineated several levels of diplomacy. Tracks 1 and 2 are the most frequently used terms. A composite term is “multi-track diplomacy.”

**Track 1 diplomacy:** Formal discussions typically involving high-level political and military leaders and focus on cease-fires, peace talks, and treaties and other agreements. Third-party interveners are almost always official – a government or international organization, for example.

**Track 2 diplomacy:** Unofficial dialogue and problem-solving activities aimed at building relationships and encouraging new thinking that can inform the formal process. Track 2 activities typically involve influential academic, religious, and NGO leaders and other civil society actors who can interact more freely than high-ranking officials. The range of unofficial interveners is similarly broad – religious institutions, academics, former government officials, NGOs, and think tanks, among others. Some analysts use the

disputes. The chapter argues that mediators who are principled and pragmatic can provide strategies to work around the difficulties presented whenever an official state actor tries to negotiate with “evil” actors. Next, it explores what principles might guide an NGO mediator on an international stage. In particular, the chapter explores what role a mediator might play in helping the parties evaluate their settlements to better ensure that they will lead to lasting peace. In this regard, it explores the relationship between peace, democracy, and the development of the rule of law. It also explores how the existence of international criminal law and the International Criminal Court (ICC) complicates the matter, and how the strategies and lessons of legal mediators shed light on and give hope to the principled resolution of the most intractable disputes.

We must pause here and ask what precisely is meant by the word “evil.” While we don’t have the time here to give a full discussion of the topic of evil, for our purposes, distinctions made by Terry Eagleton in his book *On Evil* are very helpful. Eagleton identifies the problem of declaring anyone “evil,” which is the philosophical question presented by the issue of free will and determinism. How much of anyone’s actions are truly the result of their choosing? How much are their actions the products of their environment or what has been done *to* them? Eagleton distinguishes between mere “wickedness” and evil by the “rationality” that is associated with the actors’ reasons to kill. A

term **Track 1.5** to denote informal dialogue and problem-solving formats with high-ranking politicians and decision makers. These activities involve Track 1 participants but employ Track 2 approaches in an attempt to bridge the gap between official government efforts and civil society. Track 1.5 can also refer to situations in which official representatives give authority to non-state actors to negotiate or act as intermediaries on their behalf.

**Track 3 diplomacy:** People-to-people diplomacy undertaken by individuals and private groups to encourage interaction and understanding between hostile communities, and involving awareness raising and empowerment within these communities. Normally focused at the grassroots level, this type of diplomacy often involves organizing meetings and conferences, generating media exposure, and political and legal advocacy for marginalized people and communities.

**Multi-track diplomacy:** A term for operating on several tracks simultaneously, including official and unofficial conflict resolution efforts, citizen and scientific exchanges, international business negotiations, international cultural and athletic activities, and other cooperative efforts. These efforts could be led by governments, professional organizations, businesses, churches, media, private citizens, training and educational institutes, activists, or funders.

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terrorist is “wicked” as opposed to “evil” because, in some ways, he is rationally motivated by a desire to save his race or his culture, or to obey God, by annihilating those that oppose him (including innocents – namely, his enemy’s women and children). Terrorists (like Reagan did) prefer death to succumbing to the dictates of another’s culture or religion. Although they are badly mistaken in their thinking about what “God” requires, they are not evil. They may actually be highly principled and heroic.

Evil, then, is reserved for a special breed of actor. Here, the motive to kill is either for its pleasure, or as a statement of the actor’s godlike power – that the individual can do whatever he or she chooses to do simply because he or she chooses to do it: the individual has the power to do it.<sup>6</sup> The motive may appear arbitrary and senseless. If rational at all, the motive is psychological, evoking a euphoric feeling. A person is evil if he or she kills to suppress his or her own fears of powerlessness, to provide a statement of his or her own godlikeness, or simply because he or she can.

There is obviously a very thin line between wickedness and evil, rationality and irrationality. After all, once the individual has acted in an evil way and then seeks to avoid punishment, the evil actor acts rationally by trying to survive. On the other hand, terrorists who kill innocent civilians, women, and children may not simply be wicked, but truly evil, if the terrorists know that their tactics are actually counter-productive to their cause. At some point, they may engage in these acts simply because they can. Or, they may stop being freedom fighters and instead become cold-blooded killers who kill for profit. Dictators who no longer see themselves as bridges between the instability of war and eventual democracy are in the same category. The question to ask is: at what point do they know that what motivates them is only about personal power, and is no longer rationally related to some higher cause?

Applying the term “evil” to an international actor, then, may mean that in the judgment of the United States, the international actor is not acting rationally. They are acting only out of a psychological need for self-power and a godlike status. As applied to Kim Il-sung (or his

<sup>6</sup> Eagleton, T. (2010). *On Evil*; Dostoyevsky, F. (1917). *Crime and Punishment*, Part 6, Chapter 8.

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son, or his grandson), for example, the United States may mean that it cannot talk or negotiate because to do so is futile and only gives the leader legitimacy. (Of course, as we will discuss in Chapter 4, with a change in power there is a new opportunity to talk to see if reason will produce compromise and cooperation. Or, as applied to Joseph Kony, leader of the Lord's Resistance Army [LRA], we might similarly decide that talk is futile, and the only approach is to "remove him from the battlefield." Or with Bashar al-Assad, President of Syria, the United States might refuse to talk, and start to arm insurgent groups as a means to regime change.)

To some, then, the distinction might be that, although evil knows exactly what it is doing, people who are merely wicked are acting without full information. Their motives are rationally flawed because wicked, as opposed to evil actors, do not know that killing innocents will not lead to a higher chance of survival for their group. (In negotiation language, the merely wicked actors need to have their understanding of their best alternative to a negotiated agreement [BATNA]<sup>7</sup> adjusted to show the futility of their not laying down their arms and making peace. They need convincing that if they don't stop, they will be wiped out themselves.) Talking with the misinformed fighter may either give them more information to assess the irrationality of their situation or could encourage the wicked to take even more "irrational" measures to change their opponent's BATNA. In other words, it will always be hard to distinguish the evil actor from the desperate actor. Those who seem willing to fight on in the face overwhelming force may be simply trying to draw national attention to their plight. Or their aim is to make their opponent think that trying to resist them is futile. The process of talking, however, might reveal to the wicked information about the strengths and weaknesses of their enemies. Talking, then, is not categorically a bad strategy, but it might be a bad strategy for

<sup>7</sup> BATNA, according to David Venter, is a term first coined by Fisher, Ury, and Patton, of the Harvard Negotiation project. It is different from a negotiator's bottom line, as it means to describe options available to the negotiator if he or she doesn't settle. BATNA usually informs settlement by asking what options will be available to the parties if they do not settle. How will they fare if they continue to fight? In the context of litigation, how will they fare in court? See, BATNA explained, by David Venter, <http://www.negotiationtraining.com.au/articles/next-best-option/>.

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situations in which the risks of changing the mind of the wicked are so low, and the risks of revealing vulnerabilities so high, that talking is not worth the trade-offs.

Talking with the truly evil, however, is never worth the risk. Evil only pretends rationality to do more harm to its enemy. Like the Devil, evil cannot be let into the room. Evil can never be trusted, neither in what it says about the present situation, nor about what it says it will do in the future. Reserved for the demonstrably evil person, the United States must never be lured into any conversations or be naïve in thinking that real change will be possible. As a result, whereas talking with the merely “wicked” might, at times, be worth the risk, talking with evil will never work.

At the heart of Eagleton’s critique is the idea that blurring the distinction between wickedness and evil denies the evil in all of us. He shows peacemakers that there is a continuum of behavior that needs to be understood when analyzing the efficacy of talking to individual “bad actors.” Does the label apply to a nation, to its leaders, or to its representatives at the negotiation table? As applied to actors on an international stage, the use of the label “evil” is further complicated when the leadership of a group is made up of disparate actors. How does the evil found to exist in one member of the leadership group affect the attitude and strategy of the United States toward that group as a whole?

Determining whether or not evil is at work requires us to look at individual actors and what motivates each of them. What is discovered may justify talking to some and not talking to others. It might justify strategies that allow for talking behind the scenes to lower level actors. It might also allow for strategies that use non-state mediators to talk and gain insight into the different motivations of the groups, without violating principles or presenting the risks usually associated with the problem of talking with evil.

To describe what motivates groups and nations and or races as evil ignores the mixture of rationality and irrationality that is at play in human interactions. But we are getting ahead of ourselves. We first need to take a brief look at history to see how the use of the term “evil” has risen in the U.S. vocabulary. A look at U.S. foreign policy since World War II demonstrates the pitfalls when diplomacy ignores these distinctions. It shows the difficulties that arise when the United

States tried to navigate between self-interest and Cold War politics with Russia and principled democratic policies when pursuing peace in the Middle East, Africa, and Asia.

**HOW DID WE COME TO CALL NATIONS EVIL? THE POLITICS OF BEING DIFFERENT**

Near the end of World War II came the discovery of the Holocaust. It became easy to see that Hitler was evil and that the Nazis were an evil regime. Earlier in our history, the Japanese were a little tougher to label as evil. After all, they surrendered. The Emperor committed suicide. As opposed to strategies after World War I, when war itself was viewed as a problem seldom worth the cost, after World War II, the leadership of the losers came to be thought of as evil. They were tried as war criminals. The United States came to see the justification for its entrance into war as, at least in part, preventing leaders who were evil from harming their own citizens.<sup>8</sup>

The United States’ rise as a superpower since World War II is an obvious starting point for discussing a U.S. foreign policy that seemed to shy away from morality and embraced a more *realpolitik*, self-interest theory of national engagement. Anyone who has followed U.S. foreign policy since the Korean War and into the Vietnam era and beyond has seen the U.S. diplomats react and overreact as each president differentiates his policies from the one that came before. In the 1970s, according to political science theorists across the country, enlightened self-interest was the new force that drove foreign policy, replacing postwar rationales for fighting Communism and establishing freedom and democracy in an effort to win the Cold War.<sup>9</sup>

<sup>8</sup> Justifying war and conquest on the grounds that your opponents are evil has been around since people first went to war. Wars described in the Old Testament were often justified based on the evil of the opponent. One needs only to think of the Crusades for an example of such reasoning in the Middle Ages. For the United States, there is the example of President Lincoln, who justified the Civil War in terms of ridding the country of the evils of slavery.

<sup>9</sup> Kissinger is the main proponent of this more Machiavellian approach. See, Alan Dobson and Steve Marsh, *U.S. Foreign Policy Since 1945* (2000), which discusses the key questions, decisions and their effects on U.S. foreign policy. I also rely on essays



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The United States' motives were mixed. Presumably, what distinguished U.S. foreign policy in the Middle East after World War I and World War II from the policies of Great Britain and France was that its motives were more pure, and less nakedly self-interested.<sup>10</sup> The Cold War and the fear of Communism led the United States to adopt a strategy that was based more and more on its interest in containing Communism. Nixon went to China, in part, to contain the Communists. Nixon's trip to China was shown as an example of the advantages of a national interest approach to foreign policy: develop an open door approach to China, and then leave it to China to work out democracy and its version of a free market. Human rights took a back seat in this approach, leaving it to individual countries to work out their values on their own terms.

A student of Metternich and Otto von Bismarck (students themselves of Machiavelli), Nixon's secretary of state, Henry Kissinger, described the need to determine U.S. policy with *realpolitik* motives, rather than the idealism left over from the days of Woodrow Wilson. Despite the Vietnam protests in the 1970s, many political scientists on college campuses were filled with admiration for Kissinger's tenacity and unapologetic defense of pursuing self-interest, particularly with regard to oil as an essential entitlement of security. Labeled by some in the academic community as unprincipled, and even Machiavellian, Kissinger was a proponent of a new, brazen national interest-based foreign policy. He helped Nixon recast the Vietnam withdrawal to achieve peace with honor by turning over the war to the South Vietnamese. The United States now needed to govern its relationships with other countries less from an interest in promoting democracy or independence movements in post-World War II countries (goods in themselves) and more in terms of power to beat the Soviets, regardless of the value and tactics their partners might use.

In the Middle East, according to self-interest-driven political science, the United States' interest in, exploration of, and need for a

appearing on the website of e-International Relations, <http://www.e-ir.info/2011/06/10/the-un-during-the-cold-war-a-tool-of-superpower-influence-stymied-by-superpower-conflict/>

<sup>10</sup> Oren, M. B. *Power Faith and Fantasy, America in the Middle East: 1776 to the Present*, W. W. Norton & Company (2007).

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reliable supply of oil should have taken precedence over the need to help develop independent democracies. The United States no longer needed to worry about human rights or whether a particular country was oppressive to its own people. The Shah of Iran could be backed simply because the Shah was sympathetic to the United States; the same with Saudi Arabia, South Africa, and South American countries, including Colombia and Chile.

Of course, determining what was in the national interest, especially in terms of U.S. protection of its security in the Cold War, was a tricky business. The United States was still learning from its intrusions into the affairs of other countries. First, Korea and then Vietnam presented the United States with a choice between economic interests (the costs of war) and protecting its security by combating Communism around the world. And so an “enlightened” national interest motivated U.S. foreign policy to intervene in world affairs on a much more pragmatic basis. For example, making trades with dictatorships to promote U.S. economic interests, especially if it caused harm to the Soviet Union, was now accepted policy. But getting caught in a quagmire of conflict with no end in sight could be expensive, if not dangerous, because it might draw too many resources away from fighting the Soviets in other places. The guiding principle was: only intervene when the world opinion is clearly in your favor; only intervene militarily when your national interests are clearly defined and backed by the U.S. public, and where you have a clear exit strategy.

Questions plagued this new thinking. Why did it seem that the United States made matters worse every time it intervened in Central and South America?<sup>11</sup> Why was it that the nationals in those countries came to see the United States as part of the problem rather than part of the solution? Was it because in acting out of self-interest to increase its power, the United States was itself engaging in evil? Was it acting to simply increase its power and wealth, or really acting to prevent Soviet world domination? Whether blockading Cuba, or intervening in Colombia, Guatemala, or Honduras, just the fact of U.S. involvement seemed to cause popular in-country support to shift to the rebel or

<sup>11</sup> Pastor, R. (2001). *Exiting the Whirlpool: U.S. Foreign Policy toward Latin America and the Caribbean*.