The Ethics of Negotiation in Armed Conflict

April 14-16, 2016

The Ethics of Negotiation in Armed Conflict

When states conduct negotiations in the shadow of armed conflict, the exercise of diplomacy raises certain unique challenges. Conducting relations with “rogue states,” namely sovereign states who disregard human rights or other international norms, for example, raises the concern that we are helping to legitimize governments and practices we otherwise strongly condemn. Nonetheless, as some have argued, there may be an obligation to negotiate with such a state when it comes to grave security issues like weapons of mass destruction. How do the alternatives to negotiation impact the moral considerations involved in dealing with such states?

Like “rogue states,” non-state armed groups come in different forms, from political insurgencies to criminal organizations to millenarian groups. Often these actors are designated collectively as “terrorists,” a term for which there is no academic consensus—and which, it has been argued, hinders prospects for negotiation and fosters entrenched violence. Does negotiating with non-state actors, through official state channels or otherwise, undermine the international order by conferring a legitimacy and authority traditionally granted only to states? Or does legitimacy in some cases attain to non-Westphalian groups? How should states balance the risks of attributing legitimacy to unsavory actors against the possibility of escalated violence stemming from a refusal to negotiate?

When confronted with non-state hostage takers, many governments insist that they will not negotiate, but in practice exceptions abound. Recently, the Obama administration has indicated that it will no longer bar the families of hostages from paying ransom to kidnappers, despite the fact that the U.S. government will not pay ransom or engage in negotiations. What are the implications of this for deterring kidnapping? How will this shift in policy impact official governmental relations with hostage-takers? Does a willingness to deal with hostage-takers encourage their behavior, thereby endangering more citizens? On the other side, however, is it ethical to refuse to negotiate with kidnappers in the name of deterrence? Or do private citizens, family members, or associated organizations have a right to negotiate for the kidnapped? Would the costs to society of materially supporting hostage-takers outweigh these rights?

Finally, democracies face expectations of transparency and open public debate. In a democracy, what role should the public play in deciding whether to negotiate? Is secrecy necessary for diplomacy to be effective in certain cases—as with Kissinger’s trips to China? How might the role of secrecy change with respect to not only other states but also non-state armed groups?
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Conference Schedule

THURSDAY, APRIL 14

Location: Fitts Auditorium, University of Pennsylvania Law School, 3501 Sansom Street, Philadelphia, PA 19104

4:30 pm - 6:30 pm  
Inaugural Keynote Panel: Negotiating Hostage Situations

Moderator: Professor Claire Finkelstein

Panelists: Ambassador Daniel C. Kurtzer, Ambassador John Limbert, Dr. Adam Dolnik

Following on recent stories and policy developments concerning hostage situations, this expert panel will discuss the ethical and legal dimensions of negotiating with hostage-takers in the context of transnational conflict. Is it ethically permissible to negotiate with hostage-takers, especially when there is reason to expect that such negotiations will encourage further hostage-taking? Is it ethical to refuse to negotiate with hostage-takers in the name of a policy of deterrence? Are the types of hostage-taking tactics, such as barricading, kidnapping, and hijacking, relevant to the question of whether to negotiate? Is the strategic or political motivation of the hostage-takers relevant? Does the act of negotiating with such groups lend legitimacy to their movements and organizations? Are there obligations owed to a nation’s citizens when they are taken hostage? Are there obligations owed to a government’s representatives captured while serving? Do private citizens, family members, or associated organizations have the right to negotiate for those taken hostage? What role does rational choice theory play in hostage negotiations?

Free and Open to the Public

6:30 pm - 7:30 pm  
Cocktail Reception

FRIDAY, APRIL 15

Location: National Constitution Center, 525 Arch St, Philadelphia, PA 19106

8:30 am - 9:15 am  
Registration and Breakfast

9:15 am - 9:30 am  
Welcome Remarks: Professor Claire Finkelstein

9:30 am - 10:45 am  
Session 1: Bargaining with the Devil: When is it Unethical to Negotiate?

Moderator: Professor Claire Finkelstein

Looking to historical examples to frame the conversation, this panel will explore some of the essential questions concerning when it is morally acceptable to negotiate. Should the US and Allied forces have negotiated with Hitler? Should the US or other parties negotiate with ISIS? At what point is negotiation no longer an option? What actions might disqualify a potential negotiation partner? Where is the line drawn between negotiation and force, if it is drawn at all, and is it drawn on moral or pragmatic grounds?

10:45 am - 11:15 am  
Break

11:15 am - 12:30 pm  
Session 2: Negotiating with Non-State Actors

Moderator: Mr. Jamil N. Jaffer

This panel will address the challenge that non-state actors, such as ISIS, pose to the Westphalian view of sovereignty reflected in the international legal order and modern international affairs. Do states have moral or legal obligations to negotiate with these actors?
groups in the same way they might with traditional states? Does it matter whether a non-state actor is engaged in an insurgency for political control over a state or is engaged in terrorist tactics to advance a broader ideological platform? Does it matter whom the group targets, e.g., military personnel or civilians? If non-state actors are organized in fractious ways, should their military defeat or surrender take priority over a negotiated settlement? How might these considerations shape the decision to negotiate?

12:30 pm - 1:30 pm  
**Lunch**

**Keynote Address:** Professor Steven Brams — The Win-Win Solution: Guaranteeing Fair Shares to Everybody

1:30 pm - 2:45 pm  
**Session 3: Negotiating Across Religious, Cultural, and Moral Differences**

**Moderator:** Professor Kevin H. Govern

This panel considers the challenges raised by religious, cultural, and moral differences between negotiating parties. How do different cultures understand and value the choice between negotiating, providing training and advisory assistance, and using force? What special challenges emerge when a state that adheres to just war principles, the Law of War, and human rights as provided in the International Covenant on Civil and Political Rights confronts a state or non-state actor that does not? More broadly, what are we to make of the fact that no state or non-state actor consistently conforms to a fixed set of principles about libertarian human rights or how or if to fight? How can parties to a negotiation work within a shared framework given the significant cultural, religious, moral and legal differences that exist between and within states and that shape conflicting concepts of legitimacy?

2:45 pm - 3:00 pm  
**Break**

3:00 pm - 5:00 pm  
**Keynote Speaker:** Ambassador Dennis Ross

**Location:** National Constitution Center, 525 Arch St, Philadelphia, PA 19106

Free and Open to the Public - More Information Here

6:00 pm - 7:00 pm  
**Cocktail Reception - Invited Participants Only**

**Location:** The Racquet Club of Philadelphia, 215 S 18th St, Philadelphia, PA 19102

7:00 pm - 9:00 pm  
**Dinner - Invited Participants Only**

**Location:** The Racquet Club of Philadelphia, 215 S 18th St, Philadelphia, PA 19102

**Keynote Address:** Professor Stuart Diamond

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**SATURDAY, APRIL 16**

**Location:** National Constitution Center, 525 Arch St, Philadelphia, PA 19106

8:30 am - 9:15 am  
**Breakfast**

9:15 am - 10:30 am  
**Session 4: The Utility and Morality of Secret Negotiations: Democracy, Transparency, and Public Opinion**

**Moderator:** Professor Brendan O'Leary

Following the work of Robert Putnam, this panel explores how transparently and democratically conducted negotiations occur on two levels, the domestic and the international. How does this dynamic disrupt the negotiation process, given how strong minority viewpoints can steer conversations and how otherwise unrelated issues can become attached to a negotiation? Is it problematic, particularly in a democracy, to conduct negotiations in secret or behind closed doors? Should democracies reject...
secret negotiations on principle? Or are there moral and ethical considerations that would lead a state to conduct negotiations in secret, knowing that its democratic process could stand in the way of peace or the greater good? Could Kissinger’s secret trips to China, for instance, have transformed US-China relations the way they did if they had been conducted under public scrutiny? Did such secret diplomacy nonetheless undercut democratic values?

10:30 pm - 11:00 am Break

11:00 am - 12:45 pm Session 5: Preventive Diplomacy
Moderator: TBA
This panel considers whether states have an obligation to negotiate before resorting to the use of force. What if they have strong reason to believe in the imminence of an attack by another state or a non-state actor? Do third-party interventions or mediations infringe too greatly on the political independence of states, particularly in a civil conflict where a population’s right to self-determination may be at stake?

12:45 pm - 2:15 pm Lunch

2:15 pm - 3:30 pm Session 6: Negotiating Around Armageddon: Are Nuclear Negotiations Special?
Moderator: TBA
This panel explores whether negotiations in the nuclear context—from the Cuban Missile Crisis in the 1960’s to the recent deal with Iran—take on special considerations all their own. Should the potential for mass destruction change the way we think about negotiations in this context? In the event of a nuclear standoff, does the potential for global annihilation require us to find a deal at any cost?
Ethics of Negotiation: Participants • Penn Law

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Participants

Professor Eileen Babbitt
Tufts University, The Fletcher School

Mr. Rudolph C. (Rudy) Barnes
Attorney at Law

Professor Steven Brams
Columbia University

Professor Seth Caney
Washington and Lee University, Department of Political Science

Professor Marie Isabelle Chevrier
Rutgers University - Camden

Mr. William Craven
Federal Systems, CEO

Professor Malcolm Dando
University of Bradford, UK

Professor Stuart Diamond
University of Pennsylvania, Wharton School of Business

Professor Adam Dolnik
Hostage Negotiation Expert

Professor Douglas Frenkel
University of Pennsylvania Law School

Professor Karen Feste
University of Denver, Joseph Korbel School of International Studies

Ms. Arlene Fickler
Attorney at Law

Professor Claire Finkelstein
CERL, University of Pennsylvania Law School

Professor Kevin H. Govern
Ave Maria School of Law

Mr. Paul G. Haaga, Jr.
Former Acting President and CEO of NPR

Mr. Jamil N. Jaffer
George Mason University School of Law

Mr. David S. Jonas
Fluet, Huber + Hoang PLLC and Georgetown Law

Ambassador Daniel C. Kurtzer
Princeton University, Woodrow Wilson School of Public and International Affairs

Ambassador John Limbert
US Naval Academy

Professor Sharon Lloyd
University of Southern California, Dornsife College of Arts and Sciences

Professor Duncan MacIntosh
Dalhousie University, Department of Philosophy

Professor Avishai Margalit
Professor Emeritus, Hebrew University, Department of Philosophy

Professor Jonathan Moreno
University of Pennsylvania, Perelman School of Medicine

Professor Christopher W. Morris
University of Maryland, Department of Philosophy

Professor Laurence Neil Nathan
University of Praetoria, Department of Political Sciences

Mr. Richard Nephew
Columbia University, SIPA Center on Global Energy Policy

Professor Brendan O'Leary
University of Pennsylvania

Ambassador Dennis Ross
The Washington Institute for Near East Policy

Professor Paul Sharp
University of Minnesota Duluth, Department of Political Science

Professor Fernando Tesón
Florida State University College of Law

Professor Bruno Verbeek
Leiden University

Dr. Anthony Wanis-St.John
American University, School of International Service
Professor Paul R. Williams
American University, Washington College of Law

Mr. Jules Zacher
Attorney at Law, Council for a Livable World
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Background Readings


Hoffmann, n.d. The Political Ethics of International Relations.


Limbert, J., n.d. 44 Days — The End Game | Association for Diplomatic Studies and Training.


Price, E., 2013. Literature on Kidnapping for Ransom and for Political Concessions. Perspectives on Terrorism 7.


Third, A., 2014. Gender and the political: deconstructing the female terrorist.


Toros, H., Tselfidis, I., 2014. Terrorism, peace and conflict studies: investigating the crossroad.


