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Getting Up to Yes: Negotiating Agreements Without Giving In

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Bernard Reich (Egypt), Nicholas C. Pano (Albania), and Jan de Weydenthal (Poland), all of whom possess considerable literary *bona fides* as major Western authorities in their given areas of concentration. Some of the lengthier assessments, like R. Judson Mitchell's coverage of the USSR/CPSU and Stephen Uhalley's examination of the PRC/CPC, are solid efforts which could have been published individually.

The 1981 *Yearbook* is also enhanced by the annual estimate of communist party strengths across the globe. Since the demise of the official Department of State publication, *World Strength of Communist Party Organizations*, during the mid-1970s *détente* period, the *Yearbook* has become the sole source for such data. Over recent years, added coverage on the Council for Mutual Economic Assistance and the Warsaw Treaty Organization has also increased the *Yearbook's* value. Aurel Braun's treatment of these two key instruments of Soviet control over its East European neighbors in this edition provides excellent background for recent events. The biographic section, if brief, also is unique for its treatments of communist leaders. This edition includes biographies of former Polish CP leader Stanislaw Kania and the *heir apparent* to North Korean leadership, Kim Chong-il (who also happens to be Kim Il-sung's eldest son).

Regardless of twists and turns in the international scene, and within the communist movement itself, the 1981 *Yearbook* maintains the reputation of its predecessors as a valuable research aid for specialists and interested general readers alike. For both it helps them to make informed judgments on probable patterns of change and continuity in communist affairs during the rest of the 1980s.

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Fisher, Roger and Ury, William.
Getting to Yes: Negotiating Agreements Without Giving In. Boston, Houghton Mifflin, 1981. 163pp. \$10.95

Any book which is endorsed by Averell Harriman, Cyrus Vance and Ann Landers should immediately arouse interest, if not caution, and *Getting to Yes: Negotiating Agreements Without Giving In*, by Roger Fisher and William Ury is no exception. In 163 pages, the authors present a recipe for reaching agreement useful in negotiations ranging from intrafamily disputes to the Arab-Israeli conflict and arms control.

According to Fisher and Ury, the most basic sources of failure in negotiations are misunderstanding, misperception, and the emotions or personalities of the individual negotiators. Anchored firmly in the social-psychological school of bargaining, they assert that "Ultimately . . . , conflict lies not in objective reality, but in people's heads." To them, the main obstacles to the resolution of the Mideast conflict are "powerful emotions," and the Vietnam war is attributed to Lyndon Johnson's perception that the Vietcong and the governments of North Vietnam, the U.S.S.R. and China were a single and united entity.

On the basis of these diagnoses, a cure is prescribed. To limit emotional obstacles, negotiators should "separate the people from the problem," and attempt to discuss interests, principles and merits, rather than negotiating positions, threats, and personalities. Efforts to develop mutual trust, build a working relationship, and emphasize the common task of devising an agreement acceptable to both sides ought to be the focus of bargaining.

If one's negotiating partners are inflexible, stubborn and refuse to play by Fisher and Ury's rules, they propose another approach; the Best Alternative to a Negotiated Agreement (BATNA).

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Rather than clinging to a negotiating position and risking failure, each side should consider the alternatives to an agreement. If the results of no agreement are worse than an agreement based on a fallback position, a rational negotiator should make concessions.

Unfortunately, as lawyers, they are more concerned with the normative than the behavioral; they describe the world as it should be, and not as it is. This problem is reflected most clearly in their references to international disputes and negotiations. Taking a purely "idealistic" view of international relations, according to which all disputes are the result of misunderstandings and misperception, they have no place for force or power. For example, they claim that in 1970, Egypt suddenly agreed to a cease-fire during the War of Attrition with Israel after an unnamed American lawyer had shown Nasser that the options available to Golda Meir were limited. (One presumes that Nasser was not capable of such an assessment without such assistance.) Fisher and Ury totally ignore the factors which other analysts consider of importance, such as Israeli deep bombing raids, and American "carrots."

Similarly, while there may appear to be external "objective standards" to which all parties to a dispute can subscribe in order to reach agreement, in practice, such standards are hard to find. In international disputes, Fisher and Ury suggest that "moral standards, tradition, and reciprocity" provide such "objective criteria." One need only recall the problems which arose over the issue of "self-determination" after WW I and to look at the difficulties in defining reciprocity in the context of arms control to realize the limitations of this approach.

The absence of a historical perspective also leads the authors to "reinvent the wheel." For example, they propose that a single text should serve as the basis for negotiations, and agreement

will result from the convergence of successive iterations. Despite claims that the Harvard Negotiation Project, headed by Fisher and Ury, invented the "one-text" procedure used in the Camp David negotiations, this process has been used many times before. The 1963 Partial Test Ban Treaty and the 1967 Outer Space Treaty resulted from single texts that had been presented long before agreement, and this technique was employed by Henry Kissinger during his Mideast shuttles. The problem is in getting the parties to find enough common ground to get to a single working text. From there, it's easy.

However, this is not to say that process is irrelevant to negotiation. On the contrary, process would appear to play an important role, but prior to prescribing, it would be useful to analyze the impacts of process, communication and other variables. Such an analysis may reveal that direct negotiations and attempts to create specific texts for agreements, (which are considered essential by lawyers), may be inappropriate for some issues in international relations, and that tacit and indirect processes may be preferable. This is particularly important when the parties to negotiation are complex collective entities, such as states, and not the unitary actors assumed by the authors. This complexity introduces constraints on the negotiating process. For example, no consideration of U.S. policy in SALT would be complete without discussion of the roles of the DOD, JCS, State Department, the Senate, and domestic politics. Unfortunately, there is no room for these factors in the framework adopted in this book.

Fundamentally, this analysis is flawed by a failure to distinguish between simple coordination and negotiation. In cases in which common interests can be realized without cost, the problem is coordination, not negotiation. Coordination is required when both sides can be

satisfied with a "creative" solution. For example, Fisher and Ury cite the example of American aid to help the Israelis replace the bases they are giving up in the Sinai. The precise nature of the agreement must be worked out, but the relative costs and benefits for each side are clear. However, in a negotiating process, the costs and benefits must be determined. Where there are many ways of meeting common interests, and the costs and benefits depend on the precise terms of agreement, each side will try to get the best possible deal. For example, in arms control, stability can be gained through many paths, but any particular combination leads to a different distribution of costs and benefits. If either side accepted more than the minimum constraints on itself necessary to get an agreement, it would be needlessly sacrificing its own national security, (i.e., giving in). In their analysis, however, Fisher and Ury have not told us how to determine the best possible deal, and one is left without an alternative to the traditional pulling and hauling. In other words, they have told us neither how to "get to yes" nor how to "avoid giving in."

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Schindler, Dietrich, and Toman, Jiri. *The Laws of Armed Conflicts: A Collection of Conventions, Resolutions and Other Documents*. Second revised and completed edition. Rockville, Md.: Sijrhoff & Noordhoff, 1981. 933 pp. \$105

In 1943 there was published in occupied Brussels, under the editorship of Marcel Deltenre, a volume entitled *General Collection of the Laws and Customs of War*. It was in four languages (French, Flemish, German, and English) in four parallel columns and constituted a major *tour de force* considering the circumstances of its publication. In addition, it represented the first major attempt to reproduce in

one volume all of the multilateral international agreements on the law of war which had been negotiated up to that time.

In 1973 Dietrich Schindler and Jiri Toman published their *The Laws of Armed Conflicts*. ("War" had become an unmentionable word and the euphemism "armed conflict" had replaced it in the lexicon of many writers on the subject.) Apart from a large number of typographical errors, mostly in the Table of Contents (necessitating the issuance by the publishers of an errata sheet) and a rather strange omission which will be mentioned later in this review, it was an important and extremely useful updating of the 1943 Deltenre volume (by then, long out of print). It included not only all of the multilateral agreements "which are in force; which have nor (or not yet) entered into force; which are no longer in force," but also a number of other relevant documents having their origin in such bodies as the United Nations General Assembly, the International Law Commission, the Institute of International Law, etc.

Now Schindler and Toman have published their "Second revised and completed edition," an invaluable substitute for the original one. Typographical mistakes have been eliminated; and an excellent paper has been used with the result that a larger compendium, with several hundred more pages, is considerably thinner than its predecessor. In addition to including all of the 72 documents which appeared in the first edition, the second edition contains seven new documents: one under the rubric "Methods and Means of Warfare"; five dealing with the protection of victims of war; and one dealing with United Nations forces. For the convenience of the researcher, the Table of Contents, which presents the documents in functional groupings, is followed by a "List of Reproduced Documents in Chronological Order."