



**Level II Negotiations:  
Helping the *Other Side* Meet  
Its "Behind the Table"  
Challenges**

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## Level II Negotiations: Helping the *Other* Side Meet Its “Behind the Table” Challenges

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*Abstract: A long analytic tradition explores the challenge of productively synchronizing “internal” with “external” negotiations, especially focusing on how each side can best manage internal opposition to agreements negotiated “at the table.” Implicit in much of this work is the view that each side’s leadership is best positioned to manage its own internal conflicts, often 1) by pressing for deal terms that will meet internal objections, and 2) by effectively “selling” the agreement to key constituencies. Far less familiar territory involves how each side can help the other side with the other’s “behind-the-table” barriers to successful agreement. Following Robert Putnam’s (1988) two-level games schema, I characterize such “behind the table,” or “Level II,” barriers more broadly, offer several innovative examples of how each side can help the other overcome them, and develop more general advice on doing so most effectively. As a fuller illustration of a Level II negotiator helping the other side with its formidable behind-the-table challenges, I pay special attention to the end-of-Cold-War negotiations over German reunification in which former U.S. Secretary of State, James Baker, played a key role.*

Early in his career, former NYPD detective and hostage negotiator Dominick Misino faced a potentially explosive situation. On a sweltering summer night in Spanish Harlem, 300 to 400 people stood outside a crowded tenement in which a young man with a loaded shotgun had barricaded himself. During the tense negotiations with Misino, the young man, a parole violator but not a murderer, told Misino that he wanted to surrender but couldn’t because he would look weak. According to Misino (2002),

I told him that . . . if he let me cuff him, I would make it look as if I had to use force. He put down his gun and behaved like a perfect gentleman until we got to the street, where he started screaming like crazy and raising hell, as we had agreed. . . . the crowd was chanting “José! José!” in wild approval, and we threw him into the back of the car, jumped on the gas, and sped off. Two blocks later, José sat up, broke into a huge grin, and said to me, “Hey man, thank you.” He recognized that I had given him a way out that didn’t involve killing people and being killed in turn.<sup>ii</sup>

At one level, this is a simple lesson by a savvy negotiator helping his counterpart save face with an important constituency in a potentially lethal situation. In settings from labor relations to high diplomacy, however, many negotiations display more complex versions of this same underlying structure: you (in this example: Misino) negotiate “externally” with your counterpart (here: José) who must somehow deal effectively with his or her “internal” constituencies (here: the crowd)—in order for you to be successful (here: to avoid a shootout, bloodshed, and wider risks to the police, crowd, and neighborhood).

A long analytic tradition explores the challenge of productively synchronizing “internal” with “external” negotiations, especially focusing on how each side can best manage internal opposition to agreements negotiated “at the table.” (See, e.g., Walton and McKersie (1966) or Chapter 17 of Lax and Sebenius (1986)). Often implicit in much of this work is the view that each side’s leadership is best positioned to manage its *own* internal conflicts. Traditionally, a negotiator does this by 1) pressing for deal terms that will meet internal objections, and 2) effectively “selling”

the agreement to key constituencies. Far less familiar territory, to be explored in this article, involves all the ways that one side can help the *other* side with the other's "behind-the-table" barriers (and *vice versa*).

At a minimum, helping the other side calls for "putting yourself in their shoes" to understand *their* interests. Standard negotiating advice normally suggests using this mutual understanding to help devise a creative agreement that meets their interests while satisfying yours. Going beyond what are commonly viewed as the interests of the at-the-table negotiators, I argue that you should explicitly understand their "interests" to include how *they* could deal effectively with their internal, "behind-the-table" challenges (and *vice versa*).<sup>iii</sup> This requires deeply probing the context in which they are enmeshed: the web of favorable and opposing constituencies as well as their relationships, perceptions, sensitivities, and interests. A number of ways are available to develop this understanding.

For example, U.S. Ambassador Stuart Eizenstat negotiated with Germany in the mid-1990s over Holocaust-era assets and slave labor used by the Nazis and German firms. Key issues in this tense, emotional process included compensation amounts to surviving victims as well as "legal peace" or an end to further claims against German companies after any agreement. Eizenstat and his German counterpart, Count Otto Lambsdorff, had known each other for many years and cultivated a relationship that meant, in Eizenstat's words, that "we were able to share confidences with each other. We were able to share with each other what our constituencies were pressing us to do." Eizenstat elaborated:

And so I had a very good idea from Lambsdorff of the fact that his companies were being recalcitrant on legal peace, [and why they were] not coming up with enough money. He gave me advice as to how to deal with that, in the same way I gave him advice as to how to deal with my domestic constituents. He suggested that I get President Clinton to send [Chancellor] Schroeder a letter. It was not my suggestion. And that [letter] helped unlock a lot of money that otherwise wouldn't have been forthcoming. So the fact that we had known each other literally for 25 years, had kept in contact with each other, and had complete and utter trust in each other helped us understand each other's constituencies and where the red lines were and where there was room for give.<sup>iv</sup>

In this article, I characterize "behind the table," or what I'll call "Level II," barriers more broadly. I'll offer several innovative examples of how each side can help the other overcome these obstacles, and develop advice on doing so most effectively. As a fuller illustration of a Level II negotiator helping the other side with formidable behind-the-table challenges, I pay special attention to the multifaceted approach of former U.S. Secretary of State, James Baker who, working closely with President George H.W. Bush, played a key role in the end-of-Cold-War negotiations with the then-Soviet Union over German reunification within NATO.

#### *The Challenge of "Level II" or "Behind the Table" Barriers to Agreement*

The term "Level II" comes from Robert Putnam (1988), who developed the concept of "two-level games" in the context of diplomacy and domestic politics.<sup>v</sup> In Putnam's conception, the "Level I" game focuses on traditional diplomatic agreements, while the "Level II" game focuses on the formal or informal domestic ratification of such agreements. While Putnam developed some of the rich interactions between these two intersecting games, the simplest version of his approach is sequential: international Level I agreements are reached first, externally or "across-the-table," followed by each side's domestic, Level II ratification process, internally or "behind-the-table." (A

stripped down version of this analytic structure, of course, involves two agents negotiating on behalf of their separate principals, each of whom must approve the deal struck by the agents. See, e.g., Pratt and Zeckhauser (1985), Chapter 15 of Lax and Sebenius (1986), or Mnookin, Peppet, and Tulumello (2000).)

Following this usage, but venturing beyond its diplomatic origins, I use the terms Level I and Level II to refer to the international/external and domestic/internal negotiations, respectively. (See Figure 1 for a standard representation in which Side A negotiates with Side B “at the table” to reach a Level I agreement that is then subject to Level II ratification on each “side” of the table.)

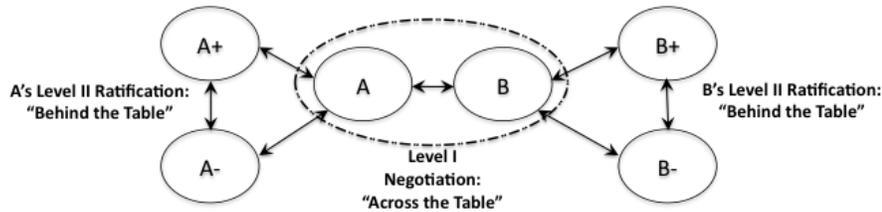


Fig. 1: "Standard" 2-Level Game Between Sides A and B

Note: "+" denotes internal supporter; "-" denotes internal opponent

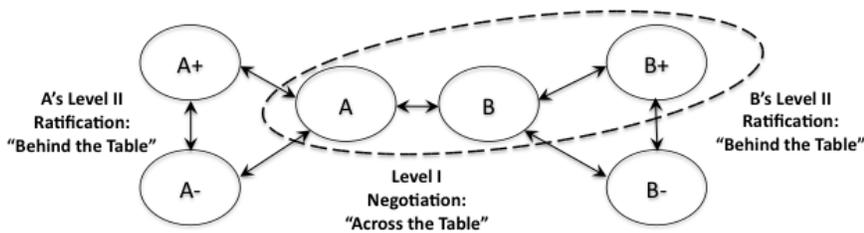
My special focus here is on the Level II domestic constituencies or other “internal” factions—whether in the public or private spheres--that can support or block Level I deals. In Figure 1, Level II internal/domestic opponents of the A-B deal are represented by A- and B-, while supporters are indicated by A+ and B+. I am intrigued by how Level I negotiators on one side can help (or hurt) those on the other side with their Level II challenges, and *vice versa*.

Many classes of barriers, from psychological to cross-cultural to structural, can block the path to desirable agreements. (See e.g., Arrow, Wilson, Ross, Tversky, and Mnookin (1995) or Chapter Two of Lax and Sebenius (2006).) While Level I negotiators may see significant joint gains through agreement, various factions on each side of the table may act to block such deals. Such Level II factions may represent broader views, but frequently act on behalf of small but influential minority interests.

For example, the U.S. President may reach a provisional, Level I deal with the Speaker of the House over the federal budget or debt ceiling increase. While a majority of constituents on each side of the table (Level II) may favor the deal, powerful factions on one or both sides may serve as blocking coalitions. Such factions may be potent as a function of greater intensity and cohesion or of their institutional position. As such, the broader good may be frustrated. To take another example cited by Robert Mnookin and Ehud Eiran (2005) from Israeli-Palestinian negotiations, the Level II “behind the table” challenges may be even greater than the Level I “across-the-table” ones. Settlers and their political advocates on the Israeli side as well as militant factions and diaspora Palestinians may for separate reasons make generally desirable deals impossible to reach—or even to propose publicly--when leaders estimate that they would not be able to gain sufficient public support for, and overcome opposition to, the necessary compromises. In another realm, generally beneficial trade negotiations are notorious for being blocked by intense opposition of relatively small factions, even when offered compensation. Such “behind the table” blockages are hardly limited to the public and diplomatic arenas: a rogue union faction may derail a worthwhile labor contract or an entrenched management may effectively block a merger that promises otherwise high benefits to shareholders and other constituencies.

*Level II Actions to Overcome Level II Barriers*

Suppose that the negotiating principals want to strike a Level I agreement but expect to face significant Level II opposition from domestic constituencies and/or other internal factions. Can such likely opposition—the skeptical parties along with their interests, concerns, and perceptions-- be mapped in advance for each side? Beyond forging a Level I deal, could the principals also focus on developing (Level II) agreements or understandings on specific measures that each side could take (or avoid) or to help the OTHER side(s) with its domestic and other constituency challenges? For example, Figure 2 illustrates one form—there are many variants as we will see below--of Level II negotiations in which Side A negotiates with Side B to help B strengthen B’s internal supporters (B+) in B’s internal negotiation to overcome B’s internal opponents (B-). In the case illustrated by Figure 2, A and B could be said to form a tacit coalition to overcome the potential of B- as a blocking coalition in B’s internal negotiation. (Of course, Level II negotiations could run from B to A as well as in both directions simultaneously. And other intriguing dynamics are possible: for example, A+ and B+ could forces to help A and B overcome A- and B-.)



**Fig. 2: One Form of "Level II" Negotiation in which A Helps B with B's Internal Negotiation: dotted ellipse**

**Note: "+" denotes internal supporter; "-" denotes internal opponent**

Traditionally, negotiators deal with Level II barriers by two means. First, Level I deal terms can be crafted to meet the interests or overcome objections of enough internal players to permit a sufficient winning coalition (that is, enough of the right parties to enable a deal to be reached and, ideally, implemented and sustained). For example, trade deal provisions may be designed to compensate “losers” who might otherwise block the broader agreement. Or, at least optically, the deal may be structured to make one or both negotiators “look good to their bosses” who need to approve the agreement. Second, once a Level I deal is agreed, negotiators can be tasked with “selling” the deal to constituents. This can amount to a sustained persuasion campaign or, perhaps, arranging side-payments on unrelated issues (which, analytically, can be regarded as linked versions of the first method.)

A closely related approach involves agreement on a negotiation process that sends a valuable signal to Level II players. A prominent labor negotiator once described to me a simple, if cynical, measure of this kind aimed at swaying union constituents. In this instance, given economic realities, both union and management negotiators clearly understood the feasible deal terms from the outset. Yet, too quick and easy an agreement would have raised union members’ suspicions that their interests had not been vigorously advocated. As such, the two negotiators tacitly agreed to make a show of locking themselves into a room from mid-afternoon until the wee hours of the morning. Those outside the room would often hear angry shouts and tables being pounded. Inside, the reality was congenial: with nice meals ordered in, plenty of alcohol, friendly reminiscences, and knowing chuckles as the two sides would periodically manufacture loud theatrical sounds to dramatize the negotiating “battle” being “fought”--for the benefit of outside constituencies. Finally

emerging, haggard, in predawn hours, the two sides' "hard won" agreement had a far greater chance of acceptance among union members—given a process that mollified their suspicions of a sellout, without altering the terms of the negotiated contract itself.

When moving to higher stakes, however, this Level II task and challenge can be daunting. As Putnam observed, "Level I negotiators are often badly misinformed about Level II politics, particularly on the opposing side." And he cites the conclusions of a series of international bargaining cases analyzed by Glenn Snyder and Paul Diesing: "decision makers . . . only occasionally attempted such assessments, and when they tried they did pretty miserably . . ." <sup>vi</sup>

In an example of inadvertent negative handling of Level II issues, consider the Geneva Accord, a prominent, unofficial effort to craft an Israeli-Palestinian peace deal. After an important negotiating session, a key Israeli participant sought to indicate progress to key Israeli constituents. He was quoted to the effect that the "Palestinians had given up the right of return." This claim, echoed negatively among Palestinian publics, generated nearly instant denials and damaged prospects for wider support of this important initiative. <sup>vii</sup> More broadly, leaders on each side may make statements in Arabic or Hebrew about peace talks or agreements that are intended for "domestic consumption." Inevitably, however, such statements rapidly find their way to the other side, generating suspicion and undermining what may be genuine progress at the table. In a media and internet-intensive age, hoped-for "acoustic separation"—separately conveying contradictory messages to different publics—often proves futile.

Despite this discouraging record, savvy negotiators can skillfully address Level II barriers in creative ways. William Ury (1991) observes that "your counterpart's constituents may attack the proposed agreement as unsatisfactory. So think about how your counterpart can present it to them in the most positive light, perhaps even as a victory." <sup>viii</sup> Ury offers the following example from the Cuban missile crisis (in addition to Kennedy's tacit agreement to remove obsolete U.S. missiles from Turkey):

. . . Kennedy and his advisers . . . searched for a way to make it easier for Soviet Premier Nikita Khrushchev to withdraw Soviet missiles from Cuba. Kennedy decided to offer Khrushchev his personal pledge that the United States would not invade Cuba. Since Kennedy had no intention of invading anyway, the promise was easy to make. But it allowed Khrushchev to announce to his constituents in the Communist world that he had successfully safeguarded the Cuban revolution from American attack. He was able to justify his decision to withdraw the missiles on the grounds that they had served their purpose. <sup>ix</sup>

Ury later goes on to counsel Side A to think about helping to equip Side B to write B's "acceptance speech"—in a manner that meets A's interests—directed to B's constituencies. As a tool to help craft the other side's acceptance speech, Ury (2007) suggests making a chart listing several key considerations (that I've elaborated):

- Precisely who B's constituencies are along with their likely interests and perceptions of the negotiation;
- Key themes and framing of the "acceptance speech" that will make it persuasive;
- Most likely criticisms and questions such as "What exactly did you give up and why?" "You never should have made that concession, which gives away our vital

interests!" "That makes us look weak and sets a terrible precedent!" "You should push back hard rather than giving in!"

- Best anticipatory and subsequent responses to the most important such criticisms.<sup>x</sup>

In fact, if A has probed and understood B's interests, perspectives, and constituencies in enough depth to help craft a credible acceptance speech for B, the range of actually feasible deals should be much clearer to A. And obviously, the easier a time B foresees having with his or her constituencies, the more likely B is to do a deal with A. This approach should, paraphrasing the words of Italian diplomat Daniel Vare, permit "B to have A's way."

At first glance, Ury's advice might be understood as simple face saving, framing, and tacit issue linkage, but Level II actions can go much farther to *directly* affect the other side's Level II process. For example, during the preparations for the 1978 Bonn economic summit, there was significant internal U.S. opposition to oil price decontrol, a policy strongly favored by America's key economic partners as part of a package involving German and Japanese stimulus, policies themselves opposed by powerful German and Japanese factions. In a conventional interpretation, ultimate international agreement on these decontrol and stimulus measures—which were actually implemented in each country—simply resulted from mutually beneficial tradeoffs in a package deal. (Putnam, 1988, Putnam and Bayne, 1987) A closer look, however, reveals actions by each side to help others with their Level II domestic challenges. For example, to overcome potent U.S. domestic opposition to oil price decontrol, Putnam reports that "American negotiators occasionally invited their foreign counterparts to put more pressure on the Americans [at home] to reduce oil imports." Ultimately, such interventions aimed at influencing (Level II) U.S. opponents proved successful.<sup>xi</sup>

Similarly, to internal advocates of economic stimulus in Germany and Japan, external pressure for such actions—in some cases orchestrated by these advocates and willingly supplied by foreign counterparts—overcame opposition and tipped the internal balance. As Putnam describes it, "Within Germany, a political process catalyzed by foreign pressures was surreptitiously orchestrated by expansionists inside the Schmidt government. . . . Publicly, Helmut Schmidt posed as reluctant to the end. Only his closest advisors suspected the truth: that the chancellor "let himself be pushed" into a policy that he privately favored. . . ."xii And in Japan, "without the external pressure, it is even more unlikely that the expansionists could have overridden the powerful MOF [Ministry of Finance]. "Seventy percent foreign pressure, 30 percent internal politics," was the disgruntled judgment of one MOF insider. "Fifty-fifty," guessed an official from MITI [Ministry of Trade and Industry]."<sup>xiii</sup>

These examples begin to flesh out the means by which a Level I negotiator can help with the other side's Level II challenges. Yet as we will see via the extended example in the next section, these methods hardly exhaust the remarkable repertoire of such devices.

#### *Level II Understandings and Agreements in Negotiations Over German Reunification*

A more elaborate episode involved the delicate U.S. diplomacy with the then-Soviet Union over German reunification within NATO after the fall of the Berlin Wall.<sup>xiv</sup> Soviet President Mikhail Gorbachev faced powerful internal opponents of his policies of perestroika in general as well as his increasing willingness to go along with American advocacy of German unification—especially within NATO. The KGB, the Politburo, conservative politicians, as well much of the military felt Gorbachev was conceding far too much to the West. With almost 400,000 Soviet troops in East

Germany and potent Four Power legal rights earned at the conclusion of World War II, the Soviets had potent means to block German reunification within NATO.

Wanting perestroika to succeed and Germany to be reunified within NATO, then-President George H.W. Bush and his Secretary of State, James Baker, proved themselves to be extremely skilled Level II negotiators in at least four ways: 1) consciously *avoiding* actions that would cause domestic problems for their reformist Soviet counterparts, 2) helping the Soviets craft a convincing domestic *explanation* of the direction that negotiations over Germany were taking, 3) *choosing not to escalate* around inflammatory negotiating statements made by the Soviets for domestic consumption, and 4) *directly working with their Soviet at-the-table counterparts* to help the Soviet reformers overcome their powerful domestic opponents. Their actions in this important, even singular, case carry broader implications.

First, as the Berlin Wall fell, Bush and Baker realized that the American response could exacerbate already huge domestic problems for Gorbachev and his Foreign Minister Eduard Shevardnadze. Robert Zoellick, counselor to Baker and himself a key American negotiator during the reunification talks, cited the value to the process of “Gorbachev’s [correct] belief that [President] Bush would not exult . . . or convey any sense of triumphalism.” Baker observed that

[President Bush] got a lot of grief at the time the Wall fell for not gloating and pounding the chest and being more emotional about the fact that finally, after 40 years, the West, led by the United States, had won the Cold War. And I remember we’d sit in these meetings and he’d say . . . I don’t want to hear anybody gloating about this, because we’ve got a lot of business to do still with Gorbachev and [Soviet Foreign Minister Eduard] Shevardnadze. [Bush adopted] that position in the face of a lot of domestic criticism. I never will forget a huge press conference . . . and we had a ton of press there, and they were beating up on him, asking ‘why can’t you be a little more emotional?’ He finally looked up at them and he said, look, we’ve got some business still to do. *We’re not going to dance on the ruins of the Wall.* [emphasis supplied]<sup>xv</sup>

Baker (1995) later reports an encounter between Bush and Gorbachev at which Bush noted the stinging public criticism in the U.S. that Bush had taken for seeming to lack “the vision thing” in the context of German reunification. Bush stated “I hope you’ve noticed that as change has accelerated in Eastern Europe recently, we haven’t responded with flamboyance or arrogance so as to make your situation difficult. They say, ‘Bush is too timid, too cautious.’ . . . I’ve tried to conduct myself in a way so as not to complicate your difficulties.’ . . . Gorbachev said that he’d noticed that and appreciated it.”<sup>xvi</sup>

Second, as Robert Zoellick emphasized “We even helped our Soviet counterparts to develop a public explanation of how the outcome took account of Soviet interests and sensitivities.”<sup>xvii</sup> Baker elaborates how this was done, in part with reference to deliberate Western actions on security, political, and economic issues: “We had already planned to take all these steps individually, but by wrapping them in a package and calling them the “nine assurances,” we greatly enhanced their political effect and assured the Kremlin that it would see their full impact. The package was designed so that . . . the Soviets would not be handed an abject defeat. Above all, it was an effort on our part to stand in Gorbachev’s shoes and help frame the issue so that he would have a domestic explanation.”<sup>xviii</sup>

Third, understanding the other side’s political situation may lead to progress via restraint at the bargaining table in the face of apparent provocation and backsliding. As the internal tug-of-war

between the Soviet reformers, Gorbachev and Shevardnadze, and their conservative opponents heated up, at-the table progress was the victim. For example, the crucial (positive) turning point in the reunification negotiations occurred at a White House meeting during which Gorbachev agreed to respect German sovereignty after reunification and to permit Germany to choose its alliance. As a practical matter, this meant NATO. Weeks later, however, in Berlin talks, Shevardnadze made a lengthy, confrontational statement in which he harshly repudiated these core concessions. Baker suspected that there had been a reversal in Moscow against the reformers. Choosing to respond firmly, but not to escalate and force the issue, which could have led to a damaging standoff, he sent his top staffer, Dennis Ross, Director of State's Policy Planning Staff, to find out what happened. Ross privately confronted his counterpart, Sergei Tarasenko, with whom he had established a close "back channel" relationship. "This is a total reversal," Ross said. "You guys just screwed us. What the hell is going on?"<sup>xix</sup>

Ross learned that Shevardnadze had been forced to present a Politburo-prepared document, which could not be reversed (was "frozen") at least until the end of the upcoming Party Congress. It soon became apparent to Baker "that [Shevardnadze] was posturing for the benefit of his military, and that what he was saying really wasn't what he believed."<sup>xx</sup> At this point, however, in Baker's eyes, Shevardnadze was "as beleaguered as I'd ever seen him," "the domestic situation was clearly overwhelming him," and he "couldn't predict" whether Gorbachev would be able to maintain his status as Party General Secretary.<sup>xxi</sup>

Fourth, given this perilous situation, Bush and Baker took extraordinary negotiating measures. They worked directly with Shevardnadze to equip him and Gorbachev with ammunition to meet their upcoming Party Congress challengers. In part for this purpose, President Bush and Secretary Baker negotiated internal U.S. government agreement on strong, specific measures—arms control and nuclear strategic doctrine--that would increasingly transform NATO more toward a political than a military alliance. As Baker stated, "I told Shevardnadze that we were proposing the adoption of a declaration at the London NATO Summit that would highlight the alliance's adaptation to a new, radically different world."<sup>xxii</sup> Baker described the unorthodox process and objective of this action:

"[The Declaration] was just twenty-two paragraphs long—exactly the kind of succinct political statement that would play well in Moscow. But first we had to gain agreement from the other fifteen members of NATO. Breaking with tradition, we decided to hold the text closely, and have the President send it to fellow heads of state just days before the summit, and to allow it to be negotiated only by foreign ministers and leaders at the summit itself. NATO, like any institution, has its own bureaucracy, and we couldn't afford to allow bureaucrats to water down what was a critical political document. Moreover, we didn't want any leaks. We wanted the maximum political impact in Moscow when the declaration would finally be released, and that meant following this unusual, and somewhat high-risk strategy."<sup>xxiii</sup>

Not only did Baker lead the negotiations for NATO members to adopt this document in London, he coordinated the process closely with his Soviet counterparts: "To help Shevardnadze, I sent him a draft of the declaration, hoping to put the reformers a step ahead of the reactionaries as the Party Congress heated up."<sup>xxiv</sup> Robert Zoellick later elaborated: This was "extremely helpful, Shevardnadze went on to say, because it would enable him to pre-empt opponents like Marshall Akhromeyev. . . And that is precisely what he did. We had progressed to the point where the American and Soviet foreign ministers could plan secretly how to use tentative NATO language to persuade the Soviet Union to accept a unified Germany within NATO."<sup>xxv</sup>

Confirming the effects of these Level II actions after the Party Congress, Shevardnadze told Baker, “Without the [London NATO] declaration, it would have been a very difficult thing for us to take our decisions on Germany. ... If you compare what we’re saying to you and to Kohl now with our Berlin document [the basis of Shevardnadze’s apparent hardline reversal], it’s like day and night. Really, it’s like heaven and earth.”<sup>xxvi</sup>

Of course, the American negotiating strategy was not limited to helping Soviet reformers with their behind-the-table challenges, though that is the focus on the present article. As Dennis Ross emphasizes, a complementary series of American actions was intended to “leave no doubt that it would be futile and counterproductive [for the Soviets] to try to prevent reunification.”<sup>xxvii</sup> And it would be the height of misinterpretation to imagine that Bush and Baker were motivated by altruism or primary concern for the other side. Rather, these Level II actions and understandings were aimed at accomplishing a central goal of American foreign policy at the Level I table. As Baker stressed at a particularly contentious moment in negotiating NATO acceptance of its extraordinary declaration:

“Gentlemen”, I was forced to say at one point, “we should keep our eye on the ball. The reason we are here, the reason we are working on this declaration, is to get Germany unified. We do not need to water down this document. It would be a mistake. We have one shot at this. These are different times. This is not business as usual.”<sup>xxviii</sup>

*Conclusion: Helping the Other Side with Its Level II Barriers*

To help the other side with its behind-the-table challenges requires first and foremost that one understand the other side and the barriers it faces. As James Baker stressed in his remarks upon receiving Harvard’s 2012 Great Negotiator Award, “If there was a single key to whatever success I’ve enjoyed in business and diplomacy, it has been my ability to crawl into the other guy’s shoes. When you understand your opponent, you have a better chance of reaching a successful conclusion with him or her. That means paying attention to how he or she views issues and appreciating the constraints they face.” Beyond German reunification, Baker elaborated: “this approach helped us build the Gulf War coalition that ejected Saddam Hussein from Kuwait in 1991. Effective U.S. leadership depended on our ability to persuade others to join with us. That required us to appreciate what objectives, arguments, and trade-offs were important to our would-be partners.”<sup>xxix</sup>

In part, this meant direct understanding via high-level personal diplomacy, backed by expert staff work drawing on regional experts. Yet carefully cultivating close back channel relationships—such as the one between Dennis Ross and Sergei Tarasenko (Shevardnadze’s chief assistant and confidant)—proved vital. Similar back channel relationships were consciously developed between Americans and Germans: Robert Blackwill at the National Security Council with Horst Teltschik, Kohl’s national security advisor, and Robert Zoellick with Frank Elbe, right-hand man to Hans-Dietrich Genscher, Germany’s foreign minister.<sup>xxx</sup>

The admonition to understand the other side is, of course, standard negotiation advice. Yet the most common objective of mutual understanding lies in figuring out a creative deal design that meets each side’s interests. The actions of Baker and his team with respect to German reunification, however, highlight another rationale for developing such an understanding: helping the other side overcome its constituency barriers. As Ross put it “I would coordinate with Tarasenko before the meetings to avoid surprises or to find out where there were problems that would have to be managed. . . . [these] made it possible to understand a Soviet move and how U.S. or German responses might affect the maneuverings in Moscow . . . it also permitted us to design the words and actions that each of us could use to help the other.”<sup>xxxi</sup> To successfully craft actions for this purpose, one side cannot limit its knowledge of the other to the interests of at-the-table negotiators. Rather, one side must deeply understand the context in which its counterpart is enmeshed: the web of favorable and opposing constituencies as well as their relationships, perceptions, sensitivities, and interests. Recall the value for this purpose of direct, trusting relationships such as that nurtured by U.S. Stuart Eizenstat with his German counterpart, Otto Lambsdorff, in negotiations over Holocaust-era assets and slave labor.

Armed with this understanding, it becomes possible for one side to help the other side with its Level II challenges. Beyond tailoring the content of the Level I deal for this purpose (e.g., with “compensation provisions”), one side can help the other, and *vice versa*, via a number of devices: by the form of the negotiating process (to send a useful signal to constituencies); by avoiding (or making) statements that inflame (or mollify) the other side’s internal opponents; by constructive actions at the bargaining table informed by knowledge of the other side’s internal conflicts; by providing content and a useful frame for the other side to craft a domestic explanation or even an internal “acceptance speech;” by coordinating external pressure on the other side’s internal factions; and even directly negotiating with one’s Level I counterparts to design measures that thwart its Level II opponents.

This list hardly exhausts the possibilities. Yet it begins to flesh out the underappreciated dynamic of “Level II negotiations”: how each side can help the other with its internal conflicts. The full range of such measures as well as a systematic analysis of the conditions under which they can be effective await further research. After all, Level II challenges can range from simple to complex: from an agent getting an “OK” from his boss, to a union or the Senate ratifying a deal, to interest groups and NGOs tacitly going along with an agreement, and to disorganized and faction-ridden publics collectively deciding to support or oppose a high-level deal via Twitter, Facebook, and other social media. Developing effective and legitimate means for dealing with such varied Level II barriers poses an ongoing challenge to negotiators and researchers alike.

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<sup>ii</sup> Misino, p. 54. Bill Ury directed me to this example.

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iii Strictly speaking, of course, the concept of “interests” should include *anything* that the either side cares about that could be at stake in a negotiation—non-financial as well as financial, subjective as well as objective, intangible as well as tangible, etc. This means that relationships with constituencies and other “internal” concerns can formally be understood as included in “interests.” Yet the importance of this class of interest argues for breaking it out explicitly, as I have done in this article. See, e.g., Lax and Sebenius (1986) or Fisher, Ury, and Patton (1991).

iv Eizenstat (2003).

v Putnam’s (1988) work built on a long tradition of “internal-external” negotiation analysis, starting with Walton and McKersie (1965) in the field of labor relations, as well as Raiffa (1982) and Lax and Sebenius (1986), that extensively analyzed games with multilevel structures. Mnookin and Eiran (2005) have more recently developed this theme in the context of Israeli settlements.

vi Putnam, 452.

vii I learned about this incident from Shai Feldman.

viii Ury (1991) 122

ix *Ibid.*, 123

x Ury (2007), 222-3.

xi Putnam, 429.

xii *Ibid.*, 428-429.

xiii *Ibid.*, 429.

xiv This pivotal episode has generated a vast literature. Among the best accounts are Zelikow and Rice (1995) and Elbe and Kiessler (1996). The following discussion relies heavily on these sources plus, especially, Baker (1995, 2012), Ross (2007), and Zoellick (2000).

xv Baker (2012).

xvi Baker (1995), 170.

xvii Zoellick, 19.

xviii Baker (1995), 251.

xix Baker, 256.

xx Baker (2012).

xxi Baker, 257.

xxii *Ibid.*

xxiii *Ibid.*, 258.

xxiv *Ibid.*, 259.

xxv See Robert Zoellick (2000), 19, 25.

xxvi Baker (1995), 259.

xxvii Ross, 41.

xxviii Baker (1995), 259-260.

xxix Baker (2012).

xxx Ross, 45-5.

<sup>26</sup> Ross, 44.

<sup>xxx</sup> *Ibid.*, 45.

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