

BEYOND FOREIGN POLICY: A FRESH LOOK AT CROSS-CULTURAL NEGOTIATIONS AND DISPUTE RESOLUTION BASED ON THE INDIA-UNITED STATES NUCLEAR TEST BAN NEGOTIATIONS

*Sukhsimranjit Singh**

“There should be zeal to learn about a new culture. There should be an honest non-judgmental approach to learning the new culture. Take it this way. A new culture will only adopt you if you are willing to accept that culture without inhibitions.”¹

I. INTRODUCTION

The Comprehensive Nuclear Test Ban Treaty (CTBT) deals with nuclear arms control, and has the purpose of promoting legal certainty in arms control law.² With the 1997 CTBT negotiations and the 2009 global movement efforts have reached a new high as developed and developing countries push for a nuclear free world.³ In the long history of nuclear disarmament negotiations between India and the U.S., the 1997 CTBT negotiations stand out as the

* Lecturer in Law and Associate Director, Center for Dispute Resolution, Director, LL.M. Program in Dispute Resolution; Willamette University-College of Law. LL.M., University of Missouri-Columbia; LL.B. National Academy of Legal Studies and Research, India; B.A. National Academy of Legal Studies and Research, India. The author thanks Eyvind Ostrem for his excellent research assistance.

¹ STELLA TING-TOOMEY & LEEVA C. CHUNG, UNDERSTANDING INTERCULTURAL COMMUNICATION 131 (2005).

² Comprehensive Test Ban Treaty (CTBT), and agreements like CTBT, such as the Nuclear Non-Proliferation Treaty (NPT), Chemical Weapons Convention (CWC) and Biological Weapons Convention (BWC), possess distinctive features vis-à-vis general public international law. They all seek to control weapons of mass destruction at the global level, and can be understood as “legally binding confirmations of the prearranged political and military-technical consensus reached among the militarily most powerful States.” Guido den Dekker & Tom Coppen, *Termination and Suspension of, And Withdrawal from, WMD Arms Control Agreements in Light of the General Law of Treaties*, 17 J. CONFLICT & SECURITY L. 25 (2012).

³ See MICHAEL E. O'HANLON, A SKEPTIC'S CASE FOR NUCLEAR DISARMAMENT 1-2, 145 n.1 (2010) (describing the Global Zero movement initiated by one hundred signatories in Paris in 2009, President Obama's 2009 speech in Prague, and U.S. and Russian reductions under the New START Treaty); see also Paul M. Kiernan, *Disarmament Under The NPT: Article VI in the 21st Century*, 20 MICH. ST. J. INT'L L. 381 (2012).

most prominent, having failed to stop India's attempt at becoming a nuclear power. This paper examines the impact of cultural influence on the CTBT negotiations.

Negotiations on the CTBT formally began with the Geneva-based negotiations on disarmament in 1993. Following an intense period of negotiations from January 1994 to September 1996, the CTBT was deemed ready for signatures. The United States signed the treaty on September 24, 1996 in New York. However, on October 13, 1999, the Senate refused to provide its advice and consent.⁴ As of 2012, the United States has not ratified the CTBT, even though President Barack Obama stated in February 2009 that he intended to pursue Senate ratification of the treaty "immediately and aggressively."⁵

The argument in favor of the U.S. ratifying the CTBT is that much has changed since United States signed the treaty. Moreover, other signatories who have ratified the treaty are already playing by its rules;⁶ the treaty promotes arms control and, it has been effective. There are three major objections to the Treaty: the Treaty is unverifiable, it would not curb nuclear proliferation, and it would undermine America's nuclear deterrent.⁷

This paper has three goals: first, to study the negotiation of CTBT from Indian and U.S. perspectives; second, to analyze the

⁴ The United States Senate rejected the CTBT in a vote on October 13, 1999, and the new Bush Administration then indicated its opposition to ratification. See 145 CONG. REC. 25, 143 (1999) (defeating the CTBT by a vote of 48–51, with one "present" vote). See also Gregory C. Shaffer & Mark A. Pollack, *Hard Versus Soft Law In International Security*, 52 B.C. L. REV. 1147, 1200 (2011).

⁵ Barack Obama, President, United States of America, Remarks at Hradcany Square, Prague, Czech Republic (Apr. 5, 2009), available at http://www.whitehouse.gov/the_press_office/Remarks-By-President-Barack-Obama-In-Prague-As-Delivered. President Bill Clinton introduced the Treaty in 1999. President George W. Bush opposed the Treaty. After President Obama renewed the effort to secure Senate ratification of CTBT, the bipartisan Congressional Commission on the Strategic Posture of the United States, in its May 2009 report, called for a net assessment of the CTBT before the Senate's renewed consideration of the treaty. According to the Arms Control Association, a Washington DC based non-profit, membership-based organization, 183 countries have signed the CTBT and 157 countries have ratified the treaty, as of April 2012. See *The Status of the Comprehensive Test Ban Treaty: Signatories and Ratifiers*, ARMS CONTROL ASS'N, <http://www.armscontrol.org/factsheets/ctbtsig> (last visited June 18, 2012).

⁶ In 1999, a major concern for U.S. Senate was whether other signatories would follow the CTBT after signing it. Rose Gottemoeller, acting Under Secretary of State for Arms Control, told reporters in February 2012 that a lot has changed since 1999. She said, "A lot has changed since 1999, and people have not had a chance to really look at the CTBT and understand what it can accomplish for U.S. national security." Kate Brannen, *Obama Administration Renews Case for Nuclear Test Ban Treaty*, DEFENSE NEWS (Feb. 21, 2012, 4:47 PM).

⁷ Jon Kyl, *Maintaining Peace Through Strength: A Rejection of the Comprehensive Test Ban Treaty*, 37 HARV. J. ON LEGIS. 325, 326 (2000).

influence of culture on the processes and outcomes of nuclear negotiations; and third, to provide an approach that would have produced a better result in the CTBT negotiations, and which could be used with more success in future bilateral and multi-lateral negotiations. The approach and lessons from my analysis can also be applied towards other cross-cultural disputes, especially to those that involve national culture. I conclude that the CTBT negotiation between India and the U.S. (among other nations) was a missed opportunity, which, had it been if concluded successfully, could have averted the 1998 nuclear testing by India and Pakistan.

II. BACKGROUND

From the first atomic explosion above New Mexico in July 1945 to the underground nuclear tests conducted by North Korea in 2006, the nuclear age has been defined by nuclear testing. The first atomic test, code-named Trinity (and called the Trinity Explosion⁸), was carried out in Alamogordo, New Mexico. The Soviet Union conducted its own atomic explosion in 1949, after which the nuclear arms race began in earnest. Between 1950 and 1952, the United States carried out twenty-five nuclear tests, as did the United Kingdom and Soviet Union.⁹

On March 1, 1954, the United States tested a thermonuclear device codenamed BRAVO at Namu Island in the Bikini Atoll, Marshall Islands. One of the largest devices ever tested, BRAVO contaminated areas of the Marshall Islands and a Japanese tuna trawler, the *Fukuryu Maru*, killing at least one person and impacting many others.¹⁰

The first call for international containment of nuclear testing came soon after, more precisely on April 2, 1954, from Prime Min-

⁸ HARRY A. GAILEY, *THE WAR IN THE PACIFIC: FROM PEARL HARBOR TO TOKYO BAY* 479 (Bernard C. Nalty ed., Presidio Press 1995).

⁹ REBECCA JOHNSON, *UNFINISHED BUSINESS: THE NEGOTIATION OF THE CTBT AND THE END OF NUCLEAR TESTING - UNIDIR 10* (2009). In March 1954 the world community woke up to the dangers when a US thermonuclear test, Castle Bravo, produced bigger impact than predicted and contaminated Bikini Atoll and nearby islanders. See GLENN T. SEABORG, *KENNEDY, KHRUSHCHEV AND THE TEST BAN 4* (University of California Press, 1981).

¹⁰ ROBERT A. DIVINE, *BLOWING ON THE WIND: THE NUCLEAR TEST BAN DEBATE, 1954-1960* 3-13 (Oxford University Press 1978). See Michael O. Wheeler, *International Security Negotiations: Lessons Learned from Negotiating with the Russians on Nuclear Arms*, INSS Occasional Paper 62, at 24-25 (Feb. 2006), USAF INSTITUTE FOR NATIONAL SECURITY STUDIOS, USAF ACADEMY, available at <http://www.usafa.edu/df/inss/OCP/ocp62.pdf>.

ister Nehru of India. He called for a “standstill agreement” and tried to halt the nuclear arms race by forming the Movement of Non-Aligned States.¹¹ Around the same time, the Japanese Parliament made separate appeals for nuclear testing to be stopped.¹² However, it wasn’t until the world faced the shared danger of the Cuban Missile Crisis, which nearly resulted in the use of nuclear weapons in October 1962, that governments were brought to the negotiation table.¹³ A call for a comprehensive treaty to control nuclear testing was made at the United Nations General Assembly in late 1962.¹⁴

In 1963, at his famous Peace Speech at American University, President Kennedy made positive overtures to the Soviet Union. The Soviet Union and the United Kingdom responded positively to these overtures to commence tripartite negotiations which ultimately resulted in the three governments signing the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, widely known as the Partial Test Ban Treaty (PTBT).¹⁵

In the 1970s and 1980s, several bilateral treaties moved the world a step closer to getting the CTBT adopted.¹⁶

¹¹ G. Allen Greb, *Survey on Past Nuclear Test Ban Negotiations*, in *NUCLEAR WEAPON TESTS: PROHIBITION OR LIMITATION?* 96 (Jozef Goldblat & David Cox eds., 1988).

¹² Rebecca Johnson during her research for UNIDR divides the nuclear arms control in to three phases. First, from 1954 to 1963, where the Soviet Union, the United Kingdom and the United States settled for the Partial Test Ban Treaty as they agreed to ban testing in the atmosphere, underwater and in outer space, leaving underground testing unregulated. In the second phase (1964–1980) concepts of strategic deterrence and arms control dominated Russian and American policy thinking. Finally, the third phase (1981–1989) involved public mobilizing against nuclear weapons, where nuclear testing was at best a marginal issue of broader anti-nuclear campaigns. JOHNSON, *supra* note 9, at 10.

¹³ FEN OSLER HAMPSON WITH MICHAEL HART, *MULTILATERAL NEGOTIATIONS: LESSONS FROM ARMS CONTROL, TRADE AND THE ENVIRONMENT* 68 (The Johns Hopkins University Press, 1995).

¹⁴ The United Kingdom and the United States sponsored a second resolution, calling for a CTBT with international verification. See JOHNSON, *supra* note 9, at 15.

¹⁵ See JOHNSON, *supra* note 10, at 15; PTBT is also known as Limited Test Ban Treaty (LTBT).

¹⁶ The 1974 Threshold Test Ban Treaty (TTBT), which covered military explosions, and the 1976 Peaceful Nuclear Explosions Treaty (PNET), which covered nuclear testing for civil purposes, were introduced as bilateral treaties between the Soviet Union and the United States. However, both treaties were quickly characterized as shams, designed to present the public with an image of restraint without the real intent of achieving such a goal. See JOHNSON, *supra* note 9, at 20.

A. *The Indo-U.S. Negotiation*

On May 11, 1998, against the advice of United States, India conducted a series of nuclear tests. Pakistan followed days later, on May 28, 1998.¹⁷ The United States and Japan responded with immediate economic and military sanctions. All the major world players including G8 leaders heavily condemned the nuclear testing by India and Pakistan and asked both countries to sign the CTBT and to discontinue the dangerous phase of the arms race in South Asia.

While India, under the guidance of Prime Minister Nehru, had been the first country after the 1945–54 nuclear testing to suggest a universal nuclear test ban mechanism, in 1996 it publicly refused to sign either the NPT or the CTBT. India viewed the NPT and CTBT as unfair; even proponents like the U.S. had not signed the treaty.¹⁸ These sentiments, as well as the resulting nuclear testing did not appear instantaneously. The next section of the article explains the context within which India conducted its 1998 nuclear tests—the history of negotiations with the U.S. since India first suggested a halt to the nuclear arms race. It will also lead us to better understand the failure of CTBT negotiations between the U.S. and India.¹⁹

¹⁷ JOHNSON, *supra* note 9, 22–25.

¹⁸ See Angelique R. Kuchta, *A Closer Look: The U.S. Senate's Failure to Ratify the Comprehensive Test Ban Treaty*, 19 DICK. J. INT'L L. 334 (2005). See also John Edmonds, *A Complete Nuclear Test Ban—Why Has it Taken so Long?*, 25 (4) SECURITY DIALOGUE 378 (1994) (with the United States' ambition behind having India sign both treaties reflected in John J. McCloy's statement on disarmament (McCloy served as adviser on disarmament and arms control to Kennedy in 1961)). A second reason for supporting a test ban agreement is that it could be helpful in preventing the spread of nuclear weapons capabilities among other countries. By establishing an international legal order, to which nations would be expected to join, it will tend to restrain the present non-nuclear powers from obtaining nuclear capabilities. The test ban agreement is certainly not sufficient in itself to prevent this spreading of nuclear capabilities. It will have to be followed by the negotiation of other measures. If the present nuclear powers are engaged in nuclear weapons testing, the possibility of effective agreements restricting the spread of nuclear weapons capabilities will have been severely limited.

¹⁹ "In understanding cultural approaches to conflict, it is important to understand both the general historical context in which conflict has been handled and the key events that form the common cultural memory or experience of conflict." BERNARD MAYER, *THE DYNAMICS OF CONFLICT RESOLUTION—A PRACTITIONER'S GUIDE* 85 (2000).

B. *The Indo-U.S. Negotiation: Background*

The nuclear issue between the United States and India has a deep-rooted history of underlying conflict. Nuclear negotiation is a step of implementing a state's broader foreign relations and diplomacy. In a given negotiation, nuclear policies are brainstormed, debated, and analyzed on the basis of socio-political and economic relations with the other country.²⁰ This segment will focus on the socio-political relations between India and the United States during the past half-century. As with the history of most cultures, there are key events that have come to stand out as historical landmarks. The summary of these events²¹ follows.

In 1947, India gained independence with the division of the Republic of India (with a Hindu majority) and Pakistan (with a Muslim majority). In 1954, due to Nehru's Non-Alignment Policy, the United States allied with Pakistan to support Western security interests.²² Nehru judged *non-alignment* as a basic issue over which the India-U.S. understanding became confounded in 1962, when India and China went to war. The United States aligned itself with the former, giving economic assistance and support to India to prevent India from succumbing to communism and Soviet influence. But soon, in 1965, during the India and Pakistan war, the United States became frustrated with the pace and cost of this strategy, and suspended military transfers to both countries. In 1971, the intertwining of the United States-Soviet, Chinese-Soviet, and Indian-Pakistani conflicts dragged India-United States relations to an all-time low.²³ That same year, while Washington initiated a new relationship with Beijing, New Delhi signed a friendship treaty with Moscow to counteract U.S. and Chinese influence in South Asia.²⁴

²⁰ A number of socio-cultural characteristics formed the background for India's foreign policy during the reign of Pundit Nehru and the trend continued afterwards. See YAACOV Y.I VERTZBERGER, *MISPERCEPTIONS IN FOREIGN POLICYMAKING* 206 (1984).

²¹ See W. NORMAN BROWN, *THE UNITED STATES AND INDIA AND PAKISTAN* 34 (1963) (providing further analysis of the post 1947 India-U.S. conflict escalation); see also VERTZBERGER, *supra* note 20, at 205-08.

²² Prime Minister Pundit Jawaharlal Nehru (hereinafter Nehru) was the first prime minister of the Republic of India. He realized that in modern politics, there is "no alternative to peaceful co-existence than 'co-destruction.'" See K.R. NARAYANAN, *INDIA AND AMERICA: ESSAYS IN UNDERSTANDING* 8 (1984).

²³ See BROWN, *supra* note 21, at 360-66.

²⁴ Americans tended to be preoccupied with the Soviet "heavyweight" land-based missile force, which was perceived as giving the Soviets a first-strike capability as a result of the large number of multiple warheads that these missiles might be capable of delivering against "hard-

The personal rapport between former Indian Prime Minister Indira Gandhi and United States President Ronald Reagan,²⁵ established during a series of meetings in the early 1980s, enabled the two countries to gradually begin improving bilateral relations.²⁶

The Indian perception of Western hypocrisy, which carried on into the CTBT negotiations, began in 1989, when India successfully launched “Agni,” an intermediate-range ballistic missile. The United States asked India to refrain from developing a ballistic missile capability by adhering to the restrictions of the Missile Technology Control Regime (MTCR). India rejected these appeals on the grounds that it had a right to develop such technology and that the Treaty on the Non-Proliferation of Nuclear Weapons and the United States-sponsored MTCR discriminated against non-nuclear states.²⁷

High-level visits to India in early 1995 led to an apparent hiatus from these sentiments and portended greater stability in India-United States relations.²⁸ Secretary of Defense William J. Perry

ened” military targets in the United States. This perceived threat was growing for the Americans at the time, therefore India’s friendship treaty with Moscow sent wrong signals to the United States. For further reasoning and analysis of this issue, see P. TERRENCE HOPMANN, *ARMS CONTROL AND ARMS REDUCTION IN INTERNATIONAL NEGOTIATIONS* 270–71 (Victor A. Kremenyuk ed., 1991).

²⁵ The Reagan administration reassessed its policy toward India and decided to expand areas of cooperation, particularly in the economic and scientific realms, as a means of counteracting Soviet influence in the region. NARAYANAN, *supra* note 22, at 7–8.

²⁶ In the 1980s, the Indian and U.S. governments had divergent views on a wide range of international issues, including Afghanistan, Cambodia, the Middle East, and Central America. Serious differences also remained over the United States’ policy toward Pakistan and the issue of nuclear proliferation.

²⁷ With the end of the Cold War and the emergence of India’s more outward-looking economic policies, the United States became increasingly important to India. In the mid-1990s, the United States was India’s largest trading partner and a major source of technology and investment. Some Indian observers, however, felt that the United States had a “negative agenda” concerning India with respect to human rights, the nuclear program, and the pace of economic reforms. Moreover, the world should have progressed towards global non-proliferation, but with the advent of nuclear race in Southeast Asia, concerns regarding the CTBT were reinitiated. See Kuchta, *supra* note 18, at 335; see also Vijay Lalla, *The effectiveness of the Comprehensive Test Ban Treaty on Nuclear Weapons Proliferation: A review of Nuclear Non-Proliferation Treaties and the Impact of the Indian and Pakistani Nuclear Tests on the Non-Proliferation Regime*, 8 CARDOZO J. INT’L & COMP. L. 103, 104 (2000) (providing further discussion on the CTBT and the non-proliferation regime).

²⁸ In 1995, 178 countries agreed to permanently extend the United Nations Nuclear Non-Proliferation Treaty. It is interesting to note that exactly three years after the NPT was extended, on May 11, 1998, India tested its first nuclear weapon, and two days later followed with several more tests that sent shock waves throughout the world. “Both India and Pakistan indicated during talks with the U.S. that they would sign the treaty only if the U.S. took the lead and ratified the CTBT.” Kuchta, *supra* note 18, at 346. See Erik A. Cornellier, *In the Zone: Why the*

visited New Delhi to sign a landmark agreement on military cooperation that was seen by some local observers as a convergence in India-U.S. security perceptions after nearly fifty years of divergence. However, the blatant refusal of India to sign the CTBT in 1996 turned the tables once again. It was widely thought that either there was a lack of interest on India's part in furthering the cooperative relationship with America, or that India had already made up its mind to test nuclear weapons.²⁹

On May 11, 1998, India tested its first nuclear weapon. Pakistan followed on May 28, 1998.³⁰ The United States, Japan, and all the major world players including G8 leaders condemned the nuclear tests by India and Pakistan and asked both countries to sign the CTBT and discontinue the dangerous arms race in South Asia. Thereafter, America's primary concern was to persuade India to join the nuclear weapons nonproliferation regime. The United States continued its stand on ratification of the treaty, which it claims to be in its national interests.³¹

After seven years of failed attempts, in May 2005, United States President George W. Bush and Indian Prime Minister Manmohan Singh were finally able to issue a joint statement heralding successful negotiations on economic cooperation, nuclear cooperation and other fields.³² This begs the question: why did the

United States Signed the Protocol to the Southeast Asia Nuclear-Weapon-Free Zone, 12 PAC. RIM L. & POL'Y J. 233.

²⁹ The Commission on Integrated Long-term Strategy, *Discriminate Deterrence*, available at www.dtic.mil/dtic/tr/fulltext/u2/a277478.pdf (1988). The Commission report cautions:

The link between national security and arms control might seem obvious and non-controversial: good arms control agreements will give us more security, possibly at a lower cost. But many people prefer to think of arms control as somehow taking place on a different plane from that of defense planning. A great deal of political rhetoric encourages them to believe that the ultimate point of arms control is not so much military as political.

³⁰ *Id.*

³¹ One of the requirements to be a diplomat is to have an ability to defend national interests with good factual and rhetorical statements. See Kuchta, *supra* note 18, at 110. Kuchta explains: "Both India and Pakistan indicated during talks with the United States that they would sign the treaty after the United States takes the lead and ratifies the CTBT. The two countries were under enormous pressure from the major world leaders, especially from the U.S."; see also Charles J. Dunlap, *Taming Shiva: Applying International Law to Nuclear Operations*, 42 A.F. L. REV. 157, 161 (1997) (for further discussion on United States negotiation interests with India).

³² Not everyone is happy with such an agreement. See *A Bad India Deal*, N.Y. TIMES (SEPT. 29, 2008) available at http://www.nytimes.com/2008/09/30/opinion/30tue2.html?_r=1&ref=nuclear program. The article argues that President Bush and his aides were so eager for a foreign-policy success that they did not even try to get India to limit its weapons program in return. The editorial heavily criticizes the Bush government for not getting any promise from India to stop producing bombing-making material, to not expand its arsenal, and not to resume nuclear test-

nuclear negotiations between India and the United States fail until 2005?

III. TROUBLE AT THE CTBT NEGOTIATING TABLE

A. *Entry-into-Force, CTBT & Foreign Policy*

A nuclear test is conducted to showcase the military and technological prowess of a country.³³ The nuclear acts by India and Pakistan demonstrated their desire to be on par with the technologically superior Nuclear Five (N-5)—the United States, Britain, France, Russia, and China.³⁴ The need for becoming a nuclear state is based on the theory of deterrence; a country will not be attacked because the country has nuclear weapons. Best described by Arundhati Roy, the deterrence theory is based on assumptions: others must accept you as a nuclear state for it to work, and the new “nuclear” state must deter others from attacks.³⁵

The entry-into-force (EIF) stage was critical in the CTBT negotiations.³⁶ The EIF requirement for a treaty determines the con-

ing. Interestingly, the editorial acknowledges the benefits of collaborating with India on foreign policy but fails to mention the fact that without reciprocity in nuclear test ban policy, India would not have signed the deal.

³³ Raminder Kaur, *Explosive Narratives: The Articulation of ‘Nuclear Knowledge’ in Mumbai*, in *NEGOTIATING LOCAL KNOWLEDGE POWER AND IDENTITY IN DEVELOPMENT* 51 (Johan Potter, Alan Bicker & Paul Sillitoe eds., 2003). Nuclear weapons are treated as currency of international power, the nuclear tests conducted by India and Pakistan in 1998 were conducted to attain a new global position. Kaur explains: “Due to the West’s subsequent backlash with economic sanctions, this [global position] could be argued to have only been partially successful. Nonetheless, the five declared nuclear states were given the message that other countries wanted admittance to their nuclear club.” *Id.* at 54.

³⁴ Deshingkar Giri, *Equating Technological Progress with Nuclear Bombs*, *ECONOMIC AND POLITICAL WEEKLY*, May 30, 1998, 1297–98. While globally, India and Pakistan are seen as ‘developing’ or as part of the third world, they now have recourse in nuclear science.

³⁵ Arundhati Roy, *The End of Imagination*, *THE GUARDIAN* (U.K.) (Aug. 1, 1998) (pointing to several flaws in the theory of nuclear deterrence). First, “it presumes a complete, sophisticated understanding of the psychology of your enemy,” as it “assumes that what deters you [the fear of annihilation] will deter” the enemy. Second, “deterrence is premised on fear. But fear is premised on knowledge. On an understanding of the true extent and scale of the devastation that nuclear war will wreak. It is not some inherent, mystical attribute of nuclear bombs that they automatically inspire thoughts of peace. On the contrary, it is the endless, tireless, confrontational work of people who have had the courage to openly denounce them, the marches, the demonstrations, the films, the outrage—that is what has averted, or perhaps only postponed, nuclear war.”

³⁶ EIF provisions usually specify the number of states that must ratify the treaty for the treaty to take legal effect. See KIM TAY, *TEST BAN VERIFICATION MATTERS: ENTRY INTO*

ditions that must be met in order for the agreement to take legal effect. EIF leads to reciprocity and implementation, and therefore provides a source of confidence that participants will comply.³⁷ The EIF stage of the CTBT negotiations was a stage in which negotiations turned into a battleground for the P-5,³⁸ and India and Pakistan. The main agenda of most, if not all, of the P-5 states during the EIF stage, was to curb the development and spread of nuclear weapons outside the NPT-recognized nuclear weapon states.

For their part, India and Pakistan were wary of the nuclear test ban starting in the 1960s. The earlier version of CTBT, the NPT, was concluded in 1968, and entered into force on March 5, 1970. By the end of the 2008, 189 states had signed and ratified the NPT. However, it has failed to include India, Israel and Pakistan, which all considered this American foreign policy discriminatory. In short, the principle argument was that America had not empathized with third world countries in their rights to pursue nuclear weapons.

The 1996 CTBT negotiations triggered a significant shift in both Indian and Pakistani foreign policy.³⁹ George Perkovich, a well-known U.S. analyst of South Asia's nuclear politics, circulated a memo to "Parties concerned about the CTBT" in early June 1996 and urged that:

The best politically feasible outcome would be for the treaty to move enough in India's direction that Indian leaders would not foreclose future signature, and that diplomacy and international developments over the next months and years evolve to the point where India can be persuaded to sign, perhaps with additional inducements . . . if Indian accession is unlikely, then making EIF contingent upon this accession is self defeating.⁴⁰

FORCE (1994), VERTIC.org, *available at* http://www.vertic.org/media/Archived_Publications/Matters/Test_Ban_Verification_Matters_No6.pdf.

³⁷ See JOHNSON, *supra* note 9, at 110.

³⁸ The five nuclear power states will be referred as P-5 hereinafter. The states are China, United States, United Kingdom, France and Russia.

³⁹ JOHNSON, *supra* note 9, at 109. The shift occurred towards the end of the CTBT negotiations. Johnson explains:

Though the Indian delegation had participated fully in all aspects of the negotiations from the beginning, the challenges came to a head over the entry-into-force issue, as India became cornered by delegations with regional or strategic concerns seeking to ensure that all states with nuclear weapon capabilities would have to accede to the CTBT.

⁴⁰ Perkovich further added that "putting India in a make-or-break EIF position would create a hot-button political issue in India . . . [No] matter how this or any other scenario played out, it's hard to see any positive aspect to having Indian accession required for EIF, once you accept that Indian signature on the treaty is unlikely." See JOHNSON, *supra* note 9, at 125.

This clearly did not occur. And, as a result, in 1996, Arundhati Ghose, the Indian ambassador to the CTBT negotiations declared at the negotiation table that “India cannot accept any restraints on its capacity if other countries remain unwilling to accept the obligation to eliminate their own nuclear weapons.” She added, “India would not accept any language in the treaty text which would affect our sovereign right to decide, in the light of our supreme national interest, whether we should or should not accede to such a treaty.”⁴¹

India’s biggest concern was that the P-5 was given a special status in the talks. The chief purpose of the CTBT was to curb the development and spread of nuclear weapons *outside* the NPT-recognized nuclear weapon states. The third world countries considered this logic—that the NPT-recognized nuclear-weapon states would not need to be part of ban on nuclear weapons—plainly discriminatory. During the negotiations, a proposal that attracted heavy criticism was the United Kingdom’s idea that states on the IAEA list were not under a legally binding treaty obligation not to manufacture or acquire nuclear weapons.⁴² A few non-nuclear states argued that the British proposal placed an undesirable power of veto in the hands of the targeted states.

B. *India and China: Unequal Neighbors*

Whereas India’s concerns were largely ignored during the negotiation process, China’s were not. The United States addressed the decision-making procedure for on-site inspections, a crucial issue for China.⁴³ Such concessions increased India’s objections to the CTBT negotiations.⁴⁴ Because China is India’s neighbor, its recognition as a world power by the United States suggested to India that India’s needs were of lesser importance. Put simply, India felt it was ignored because it was not a recognized nuclear state.

⁴¹ *Id.* (citing Conference on Disarmament, Final Record of the Seven Hundred and Fortieth Plenary Meeting, CD document, CD/PV.740, 20 June 1996, 16).

⁴² *Id.* at 117.

⁴³ “Under pressure from its allies, and believing that China’s signature of the treaty could be hanging in the balance, the United States modified its position and accepted a decision-making majority of ‘at least 30 affirmative votes’ by members of the executive council as necessary before an inspection could proceed.” *Id.* at 135.

⁴⁴ The U.S. broke its role as a neutral in India’s eyes when, at the CTBT negotiations, it gave a late modification to China. For further discussion on this point, see *id.* at 135–36.

Soon after, the negotiations between India and the United States broke down. India claimed its proposals were ignored, and before withdrawing, voiced strong criticism of the treaty draft—criticism echoed by Egypt, Iran, Nigeria and Pakistan.⁴⁵ The P-5 had rejected any text that talked of curbing nuclear weapon development as a purpose, objective or aspiration of the treaty. India *was* prepared to allow the preamble to refer to “containing the development of advanced new type of nuclear weapons,” albeit only in a limited context. But this late modification to the treaty preamble by the P-5 was not enough for India to accept the full CTBT.⁴⁶

C. *International Offense*

On June 26, 1996, as bilateral and plurilateral meetings over the EIF proceeded, a trust-breaking exchange took place between U.K. ambassador Weston and Indian ambassador Ghose. In that conversation, the U.K. ambassador reportedly asserted that India was “wriggling on the end of a hook.” To this Ghose replied, “India is no longer a colony and could not be bullied.” The same evening, Weston also offended diplomats from Germany and Japan.⁴⁷ India withdrew from negotiations soon thereafter.

What caused the negotiations to break down? Did India go into the negotiations with a pre-determined position? Did the late move by the U.S. to help China cause India’s exit? Or was it the comments made by the U.K. ambassador to India’s ambassador that triggered India’s withdrawal from the CTBT? Perhaps there were multiple reasons for India’s withdrawal, but the following analysis makes clear that it is impossible to divorce culture from the negotiating process. By understanding the role of culture in the various breakdowns in negotiations, we can begin to view the process from a new angle.

⁴⁵ Countries that favored the June 28 draft as proposed by U.S. Secretary of State Warren Christopher included Argentina, Australia, Bulgaria, Canada, Chile, Finland, Germany, Hungary, Israel, Italy, Japan, New Zealand, Norway, Poland, the Republic of Korea, Romania, Spain, Sweden and Turkey.

⁴⁶ Conference on Disarmament, Final Record of the Seven Hundred and Forty-fourth Plenary Meeting, CD document CD/PV.744, 8 August 1996. pp. 5–6.

⁴⁷ See JOHNSON, *supra* note 9, at 130.

IV. CULTURE AND DISPUTE RESOLUTION

A. *The Complexities of Culture*

For more than a century, both Eastern⁴⁸ and Western scholars⁴⁹ have studied the interplay between culture and dispute resolution. As a term, “culture” has multiple definitions.⁵⁰ It is defined as a set of norms, values, beliefs, and ways of life of a particular group of people. It is also defined as texts, artifacts, and performances produced by a variety of artists, entertainers, and cultural craft workers.⁵¹ Anthropologists define culture differently than legal scholars.⁵² A well-known anthropological consensus definition runs as follows:

⁴⁸ See, e.g., JENNIFER LEE & MIN ZHOU, *ASIAN AMERICAN YOUTH—CULTURE, IDENTITY, AND ETHNICITY* (2004); GOH, BEE CHEN, *LAW WITHOUT LAWYERS, JUSTICE WITHOUT COURTS: ON TRADITIONAL CHINESE MEDIATION* (2002); JOO-SENG TAN & CHING R. G. CHI, *EMERGING ISSUES IN ORGANIZATIONAL BEHAVIOR: AN ASIAN PERSPECTIVE OF GLOBALIZATION’S CHALLENGES* (2002); SRI AUROBINDO, *THE FOUNDATIONS OF INDIAN CULTURE* (1959); MIN ZHOU & CARL BANKSTON III, *GROWING UP AMERICAN: HOW VIETNAMESE CHILDREN ADAPT TO LIFE IN THE UNITED STATES* (1956).

⁴⁹ See, e.g., Jeffrey Z. Rubin & Frank E. A. Sander, *Culture, negotiation, and the eye of the beholder*, 7 *NEGOT. J.* 3 (1991); GEERT HOFSTEDE, *CULTURE’S CONSEQUENCES, COMPARING VALUES, BEHAVIORS, INSTITUTIONS, AND ORGANIZATIONS ACROSS NATIONS*, 214–15 (2d ed. 2001); G. HOFSTEDE, *CULTURES AND ORGANIZATIONS: SOFTWARE OF THE MIND: INTERCULTURAL COOPERATION AND ITS IMPORTANCE OF SURVIVAL* (1994); E.T. HALL, *THE HIDDEN DIMENSION* (1981); W. McDUGALL, *THE GROUP MIND* (1920).

⁵⁰ See CLYDE KLUCKHOHN, *MIRROR FOR MAN: THE RELATION OF THE ANTHROPOLOGY TO MODERN LIFE* 1–7 (1949). Kuckhohn defines culture as: (1) the total way of life of a people; (2) the social legacy the individual acquires from his group; (3) a way of thinking, feeling, and believing; (4) an abstraction from behavior; (5) a theory on the part of the anthropologist about the way in which a group of people in fact behave; (6) a store-house of pooled learning; (7) a set of standardized orientations to recurrent problems; (8) learned behavior; (9) a mechanism for the normative regulation of behavior; (10) a set of techniques for adjusting both to the external environment and to other men; and (11) a precipitate of history. *Id.*

⁵¹ GOH BEE CHEN, *NEGOTIATING WITH THE CHINESE* 18 (1996) (defining culture as the habits of our ways); MICHAEL DENNING, *THE CULTURAL FRONT: THE LABORING OF AMERICAN CULTURE IN THE TWENTIETH CENTURY* (1996) (defining culture as an industry); SRI AUROBINDO, *THE FOUNDATIONS OF INDIAN CULTURE* 45 (1968) (asserting different ways of seeing a culture: “[O]ne is the with an eye of sympathy and intuition and a close appreciative self-identification and second is the eye of the discerning and dispassionate critic who tries to see things as it is in its intention and actuality and finally there is the eye of the hostile critic, who provides a strong judgment on other cultures”).

⁵² Anthropologists have defined culture more broadly to include literature, art, architecture and housing, cuisine, traditional dress, gender, courtship and marriage, festivals and leisure activities, music and dance, and social customs and lifestyles. See CAROL E. HENDERSON, *CULTURE AND CUSTOMS OF INDIA* xiii (2002) available at <http://books.google.com.au/books?id=CARVePXX6vEC&printsec=frontcover#v=onepage&q&f=false>; see also, Rebecca Golbert, *An Anthropologist’s Approach to Mediation*, 11 *CARDOZO J. CONFLICT RESOL.* 81, 85 (defining culture as a

Culture consists in patterned way of thinking, feeling and reacting, acquired and transmitted mainly by symbols, constituting the distinctive achievements of human groups, including their embodiments in artifacts; the essential core of culture consists of traditional (i.e., historically derived and selected) ideas and especially their attached values.

Despite the numerous definitions of culture however, four components are shared: 1) a patterned way of thought or behavior, 2) of a group, 3) that is based on certain values, and 4) followed over a period of time.⁵³ The practices include traditions, belief systems, and religion.⁵⁴

In simple words, as aptly put by Professors Oyserman, Kemelmier and Coon, cultures provide insight into a particular group's members behaviors, interactions with others, and priorities.⁵⁵ Culture is a part of us that we all carry all the time, without necessarily being aware of that baggage.⁵⁶ Culture is deep-rooted and shapes how we look on the surface without disclosing what lies

"flexible concept that is both value-laden and meaning-centered—generally, a quality of groups but also derived from individuals—and when we add to this a notion of culture that is dynamic and in-motion, we can begin to think about the complex relationship between culture and conflict"). From a management perspective, culture is defined as, "the configuration of basic assumptions about humans and their relationship to each other and the world around them, shared by an identifiable group of people. Culture is manifested in individuals values and beliefs, in expected norms for social behavior, and in artifacts such as social institutions and physical items." Christina B. Gibson et al., *When does Culture Matter?*, in *CAMBRIDGE HANDBOOK OF CULTURE, ORGANIZATIONS, AND WORK* 47–48 (Rabi S. Bhagat & Richard M. Steers eds., 2009).

⁵³ See CHEN, *supra* note 51, 18–21. See also OSCAR G. CHASE, *LAW, CULTURE AND RITUAL-DISPUTING SYSTEMS IN CROSS-CULTURAL CONTEXT* 1–14 (2005).

⁵⁴ See WILLIAM B. GUDYKUNST & STELLA TING-TOOMEY, *CULTURE AND INTERPERSONAL COMMUNICATION* 136–37 (1988) (discussing the various theories of stereotyping, its advantages and disadvantages). Speaking of the closeness of immigrants to their religion, the authors add "it reflects the power inherent in religion to provide a transcendent foundation for personal and group identity in the midst of the enormous transitions that migration entails." *Id.* at 392.

⁵⁵ Daphna Oyserman et al., *Rethinking Individualism and Collectivism: Evaluation of Theoretical Assumptions and Meta-Analysis*, 128 *PSYCHOL. BULL.* 3, 3–72 (2002).

⁵⁶ See Sukhsimranjit Singh et al., *Bazaar Negotiations: How different is Negotiating in China*, in *EDUCATING NEGOTIATORS FOR A CONNECTED WORLD: VOLUME 4 IN THE RETHINKING TEACHING SERIES* 7 (James Coben et al. eds., 2012); see also, CLIFFORD GEERTZ, *THE INTERPRETATION OF CULTURES* 5 (1973), available at <http://www.slgardiner.com/ERES/Geertz1973b.pdf>. Speaking of culture, Geertz says:

The concept of culture I espouse, and whose utility the essays below attempt to demonstrate, is essentially a semiotic one. Believing, with Max Weber, that man is an animal suspended in webs of significance he himself has spun, I take culture to be those webs, and the analysis of it to be therefore not an experimental science in search of law but interpretive one in search of meaning.

beneath.⁵⁷ Furthermore, culture is not wholly monolithic in any society and changes over time.⁵⁸ Though the exact definitions differ under different “categories” of culture,⁵⁹ these characteristics are generally shared by all of them.

B. *National Culture and Nuclear Negotiations*

Broadly, culture can be divided into three categories: *national culture*, which focuses on national attributes;⁶⁰ *organizational culture*, which focuses upon how an organization functions;⁶¹ and *personal culture*, which focuses on individuals’ belief systems and identities.⁶² It is generally accepted, as stated above, that culture is not monolithic in any given society for any of those three categories.⁶³ It can serve only as a useful lens.

⁵⁷ Ilhyung Lee, *Culturally-Based Copyright Systems?: The U.S. and Korea in Conflict*, 79 WASH. U. L.Q. 1103 (2000). In geographically large countries like India and the United States, regional variations including race, age, religion and caste may warn us against generalizations.

⁵⁸ MARJORIE FINK VARGAS, *LOUDER THAN WORDS AN INTRODUCTION TO NONVERBAL COMMUNICATION* 24–25 (1986).

⁵⁹ See Lee, *supra* note 57, at 1105–08. Three common categories are defined as: National Culture, Organizational Culture and Professional Culture.

⁶⁰ Henderson believes that there are compelling reasons for Americans to obtain some levels of concrete knowledge about Asia. “It is one of the world’s richest reservoirs of culture and an ever-evolving museum of human heritage.” See HENDERSON, *supra* note 52, at xi.

⁶¹ A good example is that of the ‘legal culture.’ Lawyers’ functions represent a different organizational culture than that of non-lawyers. Julie Macfarlane, in writing about the norms of legal negotiations, asserts that “when lawyers negotiate, they consciously or unconsciously use their dominant values and beliefs to navigate their way through the process.” She argues that such beliefs drive lawyers’ choice of strategy and behavior, often at an unconscious level. See JULIE MACFARLANE, *THE NEW LAWYER: HOW SETTLEMENT IS TRANSFORMING THE PRACTICE OF LAW* 75 (2009). Available at http://books.google.com/books?id=hB_cSy_LSoYC&printsec=frontcover#v=onepage&q&f=false Another example is of the culture of European Union. For a detailed analysis, see ALEXANDER SOMEK, *INDIVIDUALISM AN ESSAY ON THE AUTHORITY OF THE EUROPEAN UNION* 1–32 (2008). Available at http://books.google.com/books?id=6ZkHS_6FWdkC&lpg=PR11&ots=pQeSfyAZ6k&dq=Individualism%20Somek&lr&pg=PA2#v=onepage&q&f=false.

⁶² Personal culture also includes sub-cultures, which generally include regional differences, gender, race, education, and life-style. There are other ways in which both cross-cultural and mediation scholars have described such cultural categories. For example, Moore describes the distinction as “[t]he cultural context-professional, educational, ethnic, gender, and national.” CHRISTOPHER MOORE, *THE MEDIATION PROCESS: PRACTICAL STRATEGIES FOR RESOLVING CONFLICT* 211 (2003).

⁶³ See Lee, *supra* note 57, at 1103. As per Lee, three components of culture are: 1) a patterned way of thought or behavior of 2) a group 3) that is based on certain values. *Id.*

The literature on CTBT and NPT has largely ignored differences in national cultures while addressing nuclear negotiations,⁶⁴ despite the fact that national culture has been an area of scholarly study since the beginning of the twentieth century. American anthropologists, in particular Ruth Benedict (1887–1948) and Margaret Mead (1901–78), played an important role in popularizing national culture for a wide audience.⁶⁵ In 1954, two Americans, the sociologist Alex Inkeles and the psychologist Daniel Levinson, published a broad survey of English-language literature and national culture. They concluded that a.) relation to authority, b.) conception of self,⁶⁶ and c.) ways of dealing with conflicts, including the control of aggression and the expression of feelings, summarize the common problems worldwide.⁶⁷

At present there are six models of national cultures that are well studied and accepted. Clyde Kluckhohn (1951), and cultural anthropologists Florence and Fred Strodbeck (1961) put forth some of the earliest models, and they suggest that values in a given society are distributed in a way that creates a dominant value system.⁶⁸

⁶⁴ See RUDOLF AVENHAUS, *CONTAINING THE ATOM: INTERNATIONAL NEGOTIATIONS ON NUCLEAR SECURITY AND SAFETY* (2002); JOSEPH LEVITT, *PEARSON AND CANADA'S ROLE IN NUCLEAR DISARMAMENT AND ARMS CONTROL NEGOTIATION* (1993). See also *NUCLEAR PROLIFERATION AFTER THE COLD WAR* (WOODROW WILSON CENTER SPECIAL STUDIES 1994); Bernadette Mayer, *The Limits of Group Rights: Religious Institutions and Religious Minorities International Law*, 22 ST. JOHN'S J. L. COMMENT. 535 (2007) (exploring the intersection between culture and religion in international dispute resolution); Carlos De Vera, *Arbitrating Harmony: Med-Arb and the Confluence of Culture and Rule of Law in the Resolution of International Commercial Disputes in China*, 18 COLUM. J. ASIAN L. 149 (2004) (discussing the intersection of law, culture and dispute resolution).

⁶⁵ RUTH BENEDICT, *PATTERNS OF CULTURE* (1934). The dominant attitudes, values and beliefs that shape and motivate behavior of the parties to cross-cultural conflict provide us mediators with an exceptional opportunity. The opportunity is to analyze and understand a conflict from newer perspectives. See also, Golbert, *supra* note 53.

⁶⁶ The relationship between individual and society and the individual's concept of masculinity and femininity.

⁶⁷ Inkeles A & D. J. Levinson, *National Character: The Study of Model Personality and Sociocultural Systems*, in *THE HANDBOOK OF SOCIAL PSYCHOLOGY* 447 (G. Lindzey & E. Aronson eds., 1969).

⁶⁸ C. Kluckhohn, *Values and Value Orientations in the Theory of Action*, in *TOWARDS A GENERAL THEORY OF ACTION* (T. Parsons and E. A. Shils eds., 1951); F. KLUCKHOHN & F. STRODTBECK, *VARIATIONS IN VALUE ORIENTATION* (1961).

TABLE 1.1. KUCKHOHN AND STRODTBECK'S
CULTURAL DIMENSIONS⁶⁹:

Cultural Dimensions	Scale Anchors		
Relationship with Time: Extent to which past, present, and future influence decisions	Past: In making decisions, people are primarily influenced by past events or traditions	Present: In making decisions, people are principally influenced by present circumstances	Future: In making decisions, people are principally influenced by future prospects

Kuckholm and Strodtbeck's conclusion with regard to the influence of time on decision-making is pertinent to the multilateral CTBT negotiations. India has many characteristics of a past-centric culture. Indeed, Nehru observed that India as a country cannot be taken out of context—what India is today is a result of thousands of years of history.⁷⁰ In past-centric cultures, as Kuckholm suggests, people make decisions based on past events and traditions. At the CTBT negotiation table, India's ambassador concluded her concerns with CTBT by adding, "The CTBT that we see emerging appears to be shaped more by the technological preferences of the nuclear weapon states rather than the imperatives of nuclear disarmament." She went on add, "This was not the CTBT that India envisaged in 1954. This cannot be the CTBT that India can be expected to accept."⁷¹ The reference to 1954 (past) by Ms. Gosh suggests, possibly, an interest on India's part to connect with history and provides a window into India's decision-making process.⁷²

⁶⁹ KLUCKHOHN & STRODTBECK, *supra* note 68.

⁷⁰ "India today is the outcome not only of the immediate past, but also of thousands of years of the long history of our country. Layer upon layer of thought, experience and action have conditioned us and made us what we are today." Jawaharlal Nehru, *India Today And Tomorrow*, in NEHRU, *INDIA AND THE WORLD 2* (1962).

⁷¹ Conference on Disarmament, Final Record of the Seven Hundred and Fortieth Plenary Meeting, CD document CD/PV.740, 20 June 1996, 16. Ghose continued her justification by adding,

Under such circumstances, it is natural that our national security considerations become a key factor in our decision-making. Our capability is demonstrated but, as a matter of policy, we exercise restraint. Countries around us continue in their weapon programs, either openly or in a clandestine manner. In such an environment, India cannot accept any restraints on its capability if other countries remain unwilling to accept the obligation to eliminate their nuclear weapons.

Id. at 15–16. Another instance, where "past" was used by India was when U.K. ambassador reportedly asserted that India was "wriggling on the end of a hook." Ghose replied that India was no longer a colony and could not be bullied. See JOHNSON, *supra* note 9, at 130.

⁷² The Netherlands' new ambassador, Jaap Ramaker, was made Chair of Working Group 2 on legal and institutional issues, following a dispute within the western group.

V. ANALYZING CULTURE THROUGH A CONTEXTUAL FRAMEWORK

In the case of the CTBT, two cultures were primarily negotiating: the culture of the haves (the P-5 club), and the culture of the have-nots (countries that want to become nuclear powers). The main contention of the have-nots, including India, was that nuclear test ban should apply to every country, regardless of their nuclear status. Here contextual significance multiplies when the parties' backgrounds are strikingly dissimilar. As rightly observed, "[d]iversity is a socially constructed phenomenon. Consequently, what appears as an issue in one culture may not appear as an issue in another culture."⁷³ For example, the issue that the P-5 had already conducted extensive nuclear testing, was brought up by India and Pakistan and quickly ignored. Understanding the cultural context of a nation in such a situation allows us to comprehend more clearly why the negotiations failed.

A. *Saving Face*

In cultural context through which parties approach a foreign policy issue is immensely important.⁷⁴ Nuclear dealings with the U.S. for India are an exercise in the historical, cultural practice of "building face" over India's neighbors.⁷⁵ Many times people living by the cultural norms do not realize the importance of such norms. For example, from a nuclear negotiations perspective, in India, without realization, the term *nuclear* is considered synonymous for *swadeshi*: a notion that has fuelled the development of nationalism since the early twentieth century.⁷⁶

History, as Nehru claimed, provides very valuable clues to a person's belief system, and hence provides a valuable understanding of a person's perspective.⁷⁷ If we are right in suggesting that

⁷³ See Harry C. Trandis, *The Importance of Contexts in Studies of Diversity*, in DIVERSITY IN WORK TEAMS 225 (Susan E. Jackson & Marian N. Ruderman eds., 1996).

⁷⁴ See AVENHAUS, *supra* note 64.

⁷⁵ NRDC, *The Consequences of Nuclear Conflict between India and Pakistan: NRDC's Nuclear Experts Think About the Unthinkable, Using State-of-the-art Nuclear War Simulation Software to Assess the Crisis in South Asia*, available at <http://www.nrdc.org/nuclear/southasia.asp>.

⁷⁶ See Kaur, *supra* note 33, at 52.

⁷⁷ JAWAHARLAL NEHRU: THE ESSENTIAL WRITINGS OF JAWAHARLAL NEHRU (S. Gopal & Uma Iyengar eds., 2003).

our conceptual system is largely metaphorical, then the way we think, what we experience, and what we do every day is very much a matter of metaphor.⁷⁸

As a result of thousands of years of shared history, Asian neighbors India and China share the common cultural practice of saving face. As Pye puts it:

The heavy use of shame as a social control mechanism from the time of early childhood tends to cause feelings of dependency and anxieties about self-esteem, which naturally produces self-consciousness about most social relationships. As a result, a great deal can be gained by helping the Chinese to win face and great deal will be lost by any affront or slight, no matter how unintended.⁷⁹

The Indian negotiators have a similar need, and this need permeated nearly all of the stumbling blocks in the CTBT negotiations. The unwillingness of the P-5 to recognize interests of India and Pakistan, the acknowledgement of China's requests but not those of India, and the offensive remarks of the U.K. ambassador all take on more weight when the need to save face is dire.

B. *Religion: A Strong Cultural Influence*

Religion is a crucial cultural backdrop to India-United States nuclear negotiations.⁸⁰ A number of aspects of Hindu culture and

⁷⁸ MARTIN J. GANNON & RAJNANDINI PILLAI, UNDERSTANDING GLOBAL CULTURES METAPHORICAL JOURNEYS THROUGH 29 NATIONAL, CLUSTERS OF NATIONS, CONTINENTS, AND DIVERSITY xv (2010).

⁷⁹ LUCIAN PYE, CHINESE NEGOTIATING STYLE: COMMERCIAL APPROACHES AND CULTURAL PRINCIPLES 37 (1992).

⁸⁰ Religious influence on Indian culture has been well studied and a common conclusion is that religion heavily motivated Indian culture. "It is interesting to note that Hinduism having the largest followers in India has influenced Indian culture". See GANNON & PILLAI, *supra* note 79, at 475. Gannon & Pillai notes:

In Hindu philosophy, the world is considered illusory, like a dream, the result of God's lila (amusement) In an illusionary world, people cannot achieve true happiness through the mere physical enjoyment of wealth or material possessions. The only happiness worth seeking is permanent spiritual happiness as distinguished from these fleeting pleasures. Absolute happiness can result only from liberation from worldly involvement through spiritual enlightenment. Life is a journey in search of mukti (salvation), and the seeker, if he or she withstands all the perils of the road, is rewarded by exultation beyond human experience or perception (moksha). In the same way that the Dance of Shiva leads the cosmos through a journey, Hindu philosophy directs each individual along a path.

society are directly related to the nuclear bargaining, and Ms. Ghose, as the representative of the cultural interest of Indian people at the negotiating table, took these into account.⁸¹

Religion and politics go hand in hand. Some displays in the annual Ganapati Festival in Maharashtra, India, for example, celebrate India's technological progress, which is seen as a force for the betterment of the people as a whole. This progress is often equated with nuclear weapons. "Vignettes of electricity pylons, dams, satellite dishes, fighter planes, the Agni missile, an astronaut, computers and farming technologies are represented."⁸² The replica of Agni missile hints that India feels the need to protect itself from its neighbors with nuclear development programs. As Kaur, who studied nuclear science in Mumbai in the aftermath of the 1998 nuclear testing by India, suggests, the many depictions of nuclear weapons at the festivals demonstrate an overwhelming acquiescence with a benign nationalism.⁸³

Interestingly, India's chief interest in the CTBT negotiations—to be recognized as a nuclear state—was demonstrated within its citizens' religious celebrations. The participants in a local religious festival equated India with the other five world powers by building replicas of major national symbols including those of the Indian parliament building. The short narration that accompanied the display reads: "You are about to do *darshan* of Ganapati. The sceneries around him show the contemporary situation of all the main countries of the world. We have had fifty years of independence and are celebrating the progress of our nation."⁸⁴

A critical look at India's recent past will help us understand India's national sentiment in 1998. India went through its independence nearly half a century ago. Many Indians lived through the partition and freedom struggle. They were dependent on the British before finally enjoying freedom. The revival of self-dependency plays a crucial role in knowing the deep-rooted Indian

⁸¹ Indian culture is hierarchical. At an early age, children discover that they are members of specific social group and that these groups have internal hierarchies.

⁸² See Kaur, *supra* note 33, at 59–61.

⁸³ See *id.*

⁸⁴ See Kaur, *supra* note 33, at 62.

The major nuclear countries—USA, Russia, France, Britain and China—are represented in all their glory with iconic representations of each country: the Statue of Liberty, Red Square, the Eiffel Tower, Tower Bridge and a Chinese pagoda with a dragon, respectively. These are placed on opposite sides to tableaux of the Indian parliament building, the Lok Sabha (the Indian Parliament) and freedom fighters on the other side.

interests. As one Ganapati temple attendee in India explained, “Now we should be able to protect ourselves, otherwise other nuclear countries will rule over us.”

The feeling of being part of nuclear power also connects with the deepest essence of nationhood. As an Indian nuclear scientist said, “I can now believe stories of Lord Krishna lifting a hill” after India’s infamous successful nuclear tests in 1998.⁸⁵ A few observations can be made from the reaction of Indian citizens after the 1998 nuclear testing. Most importantly, people thought of nuclear testing as a religious right, a byproduct of nationalism. The feeling that to be peaceful one must be powerful has reached the masses.⁸⁶ This rings true as India experiences, on one hand, the rise of nationalism in time of liberalization and rivalry with Pakistan; and on the other, the normalization of discourses on science and technological progress for the national good.⁸⁷ Religion as an aspect of culture goes beyond national sentiment and permeates the negotiating room.

The implications of religious culture with regard to diplomatic negotiations are magnified in importance because a majority of Indian diplomats are religious Hindus.⁸⁸ As a result of the inclination to emphasize a universal being, to which all individuals are subordinated, most Hindus concentrate on the idea of the unity of all things.⁸⁹ India’s religions view the universe as one of intertwined supernatural and natural forces.⁹⁰ Hinduism is not merely a religion but a way of life, and it molds and determines social patterns.⁹¹ For most Indians, Hinduism forms an integral part of their way of living. Unity of all things reflects a thought process, which has an

⁸⁵ INDIA TODAY (June 22, 1998).

⁸⁶ HAJIME NAKAMURA, *WAYS OF THINKING OF EASTERN PEOPLES: INDIA-CHINA-TIBET-JAPAN* 62, 67 (1964) (observing that Indian people are deeply affected by their religious beliefs. In particular, the concept of creator and destroyer under Hinduism has influenced the decisions a normal Hindu makes on daily basis).

⁸⁷ See Kaur, *supra* note 33, at 71.

⁸⁸ Interview with Mr. Ramesh T., Chief Indian Administrative Services Officer, New Delhi (Mar. 26, 2012) (discussing the failures of Indian administrative service officers in understanding their own culture) (last names and the transcripts are on file with the author).

⁸⁹ *Id.*

⁹⁰ VERTZBERGER, *supra* note 20, at 206–09. This view differs to the Western Judeo-Christian philosophy, which divides the natural and supernatural into separate and opposed categories. In India, everything and everyone contain supernatural energy in one form or another.

⁹¹ The foreign policy of India was deeply affected while Nehru was Prime Minister, “Mr. Nehru was born a Hindu, he had his sacred thread ceremony performed in the Hindu way, he lived a Hindu, died a Hindu, and was cremated according to Hindu rites.” *Id.* at 207.

impact on how Indian negotiators negotiate. Indeed, Easterners and Westerners behave in ways that are qualitatively distinct.⁹²

The issue of nuclear power has immense emotional attachment. For example, during the first display of idols in a festivity immediately following India's 1998 nuclear bomb testing, fake models of nuclear weapons were kept onstage alongside idols of gods.⁹³ Such practice reflects the complexity of Indian culture, which includes pride (demonstration of fake nuclear weapons) yet humbleness by giving the credit for the success of becoming a nuclear state to God (through idol worship). The culture can also depict certain religious fervor, as "[i]n case of India, popular conceptualizations of nuclear knowledge are often intertwined with moral, religious, nationalist or *swaraj* (self-reliance or independent) discourses."⁹⁴ Moreover, India, as an independent, young, and resurrected nation, is highly sensitive to threats against national symbols such as territory.⁹⁵ These facts coupled with the nature of recent historical developments, have made nuclear negotiations a highly emotional process for Indian diplomats.

In India, religion divinely connects nationalism and independence to the act of becoming a nuclear power. Once one understands this connection, it becomes clear why India was unwilling to accept separate—and what felt to them discriminatory—treatment in the CTBT negotiations with the P-5 nations.

⁹² See RICHARD NISBETT, *THE GEOGRAPHY OF THOUGHT—HOW ASIANS AND WESTERNERS THINK DIFFERENTLY AND WHY* 191 (2003).

⁹³ See Kaur, *supra* note 33, at 51. With the festivity, a recorded speech was played which emphasized the long struggle of Indians for freedom, the importance of development and power among others. See *id.* at 59–60 (for full text of the speech).

⁹⁴ *Id.* at 54. Such an ideology can be especially attached to Hindutava, whose project likens technology to toughness. She further observes, "Hindu chauvinists point to the need to protect India through the deterrent of nuclear weapons, since the subcontinent has for centuries been either threatened or invaded by foreigners. Nuclear strength is equated with a louder voice in global affairs." *Id.* at 55.

⁹⁵ See VERTZBERGER, *supra* note 20, at 206. "[W]hen Nehru adopted a certain territorial policy, he became bound to it by his national feelings; national territory had become part and parcel of his concept of self-determination." *Id.*

VI. CULTURE AND COMMUNICATION

A. *Culture and Trust in CTBT Negotiations*

Arms control negotiations are different from other negotiations because they involve high politics and the most vital national interests. Survival is “at stake, [and the negotiations] are complex, carrying deep consequences for many states and even for non-participants.”⁹⁶ For these reasons, nuclear negotiations require a very high level of trust with a delicate balance of power. Requirements might thus be dramatically different in different cultural contexts. In another instance of cross-cultural negotiation involving the Japanese and the Westerners, an American attorney, Robert Walters gave the following advice:

An attorney’s failure to appreciate or become familiar with the importance of the cultural influences which affect the Japanese client or party often reveals itself at a critical stage of the transaction, and the results can be disastrous.⁹⁷

This approach can be applied to India as well. Like the Chinese, Indians believe that mutual trust between the parties is more important than written contracts. When U.K. ambassador Weston made the remark during the CTBT negotiations that India was “wriggling on the end of a hook,” trust was broken.

The above example can be subsumed under Beck’s five principles of cognitive therapy, which illustrate how misunderstandings may occur:

- 1) We can never know the state of mind—the attitudes, thoughts and feelings—of other people.
- 2.) We depend on signals, which are frequently ambiguous, to inform us about the attitudes and wishes of other people.
- 3.) We use our own coding system, which may be defective, to decipher these signals.
- 4.) Depending on our own state of mind at a particular time, we may be biased in our method of interpreting other people’s behavior, that is, how we decode.

⁹⁶ See HOPMANN, *supra* note 24, at 271.

⁹⁷ Robert J. Walters, *Now That I Ate the Sushi, Do We Have a Deal? The Lawyer as Negotiator in Japanese-US Business Transactions*, 12 NW. J. INT’L L. & BUS. 335 (1991). See also EDWARD T. HALL, *BEYOND CULTURE* 57–69 (1981).

5.) The degree to which we believe that we are correct in defining another person's motives and attitudes is not related to the actual accuracy of our belief.⁹⁸

Although negotiators' individual personalities and negotiation tactics also play a role in negotiations,⁹⁹ trust and power play a larger role in cross-cultural negotiations.¹⁰⁰ At a macro level, nuclear negotiations at bilateral or multilateral level takes a form of power control. Once trust is broken, it will remain so. This is the concept of continuity,¹⁰¹ a patterned way Indians react to a critical situation.¹⁰² Hindu political culture works the same way.¹⁰³ It is further supported by the Hindu concept of time, which is static.¹⁰⁴ To give another example, during the 1990s U.S.-North Korea nuclear negotiations, the U.S. had to face disadvantageous negotiation conditions due to the hardline stance taken by the Clinton administration, high expectations at the settlement of the Korean peninsula issue, and the fact that the U.S. lacked an effective coordinator who could build trust with North Korea and ensure smooth process.¹⁰⁵

Lastly, the U.S. must consider the influence of Confucianism. Under Confucianism, being trustworthy when dealing with others is a central moral virtue. It is regarded as a great dishonor for one not to live up to one's word, entailing grave consequences for the loss of face.¹⁰⁶ One of the best ways to gain the trust of Asian negotiators is to have the same representative negotiate throughout the process, since trust is created between individuals, and there is likely a feedback loop whereby the forms of trust are "linked and build on each other as a relationship develops."¹⁰⁷

⁹⁸ AARON BECK, *LOVE IS NEVER ENOUGH*, HARPER AND ROW 18 (1988).

⁹⁹ See Michael W. Morris & Michele J. Gelfand, *Cultural Differences and Cognitive Dynamics: Expanding the Cognitive Perspective on Negotiation*, in *THE HANDBOOK OF NEGOTIATION AND CULTURE* 45 (Michele J. Gelfand & Jeanne M. Brett eds., 2004).

¹⁰⁰ See *supra* note 89 and accompanying text.

¹⁰¹ See I. Narain, *Indian Quest for Security and the Philosophical Postulates of the Political System: An analysis in the Context of Nehru's Approach*, *Indian J. Pol. Sci.* 32, 263 (1971).

¹⁰² *Id.*

¹⁰³ A. Nandy, *The Culture of Indian Politics*, *J. ASIAN STUD.* 30, 57-80 (1970).

¹⁰⁴ "It sheds light on the tendency to cling as much as possible to the existing conceptual system—namely to a static set of images unlinked to the passing of time and flow of events, as the essence of things change but little." VERTZBERGER, *supra* note 20, at 207.

¹⁰⁵ Kim Do-Tae, *U.S.-North Korea Nuclear Talks: Pyongyang's Changing Attitude and U.S. Choice*, 16 *E. ASIAN REV.* 1, 20 (Spring 2004).

¹⁰⁶ LUCIAN PYE, *CHINESE NEGOTIATING STYLE: COMMERCIAL APPROACHES AND CULTURAL PRINCIPLES* 37 (1992).

¹⁰⁷ R. J. Lewincki & B.B. Bunker, *Trust in Relationship: A Model of Development and Decline*, in *CONFLICT, COOPERATION AND JUSTICE* 133-72 (B.B. Bunker & J. Z. Rublin eds., 1995).

B. *Cultural Differences and Communication*

In addition to the culture of saving face, religious sentiments, and power distance, which all acted as stumbling blocks of the U.S.-Indian CTBT negotiations, there are several cultural disconnects which hindered communication and facilitated misunderstandings. This section focuses on two such cultural distinctions: individualism versus collectivism, and high versus low context lenses.

1. Individualism v. Collectivism

Communication is multi-channeled and multi-dimensional process of handling meaning.¹⁰⁸ Communication between Indian representatives and American representatives, a cross-cultural communication, can drive meaning differently. One dimension, under which cross-communication is studied, is the dimension of collectivist and individualist. Under Hofstede's Individualism Index Values, India is ranked twenty-first among fifty-three nations (where rank one is most individualist and fifty-three is least). By contrast, the United States ranked number one.¹⁰⁹ Still, in both India and the United States, one can easily find people who will not belong to the label of individualist or collectivist. Professor Triandis explains this best: while societies can be individualist or collectivist, individuals are best described as *idiocentric* (self-oriented) versus *allocentric* (social context-oriented). Therefore, a person can be *allocentric* amidst an individualist society, and vice versa.¹¹⁰

¹⁰⁸ See CHEN, *supra* note 51, at 15.

¹⁰⁹ The Individualism Index and the Masculinity Index were derived from the two main factors that explained the country differences in IMB employees' answers to the 14 work goal questions. HOFSTEDE, *supra* note 49, at 214–15. Since the first publication of this book in 1980, individualism/collectivism dimension has gained great popularity among cross-cultural psychologists. See INDIVIDUALISM AND COLLECTIVISM: THEORY, METHOD, AND APPLICATIONS (U. Kim et al., eds., 1994). Hofstede notes:

The dimensions provide psychologists with a paradigm implying that traditional psychology is not a universal science: It is a product of Western thinking, caught in individualist assumptions. When these are replaced by more collectivist assumptions, another psychology emerges that differs in important respects. For example, individualist psychology is Universalist, opposing the "ego" to any "other." In collectivist psychology the ego is inseparable from its social context . . . Western concept of a "personality" separate from its environment does not exist in the Chinese tradition. Collectivist society is particularistic. The crucial distinction is between the in-group and the out-group.

Id. at 215–16.

¹¹⁰ H.C. TRIANDIS, INDIVIDUALISM AND COLLECTIVISM (1995).

Effective communication represents society at its best.¹¹¹ Negotiations are one mechanism by which social groups cope with conflict, especially when such negotiations cross cultural divides or national borders.¹¹² Intercultural negotiation includes intercultural and intra-cultural communication. In cross-cultural negotiations communication plays a significant role towards the resolution of the dispute.¹¹³

The identification of characteristics in this section may amount to stereotyping.¹¹⁴ That, in itself, is not necessarily bad.¹¹⁵ Indeed, it satisfies the need to establish a starting point of positive interaction by knowledge of the other's general worldview. As provided by Hofstede, at the core the dimensions are clear and distinct and demonstrate that people in different cultures are trained to think differently.¹¹⁶ Most individualist societies reside in the West and most collectivist societies reside in the East. When people from the West train their minds, the focus is generally on the left hemisphere of the cortex, which is the portion of the brain that is concerned with words and numbers.¹¹⁷

¹¹¹ Observed at the U.S.-Korea Negotiation Exercise, organized by the University of Missouri-Columbia School of Law on Oct. 29, 2005. See also PAUL M. LISNEK, A LAWYER'S GUIDE TO EFFECTIVE NEGOTIATION AND MEDIATION § 1.12 (1992), for non-verbal aspects of cultural communication ("the Japanese find the word 'no' to be offensive; Germans are confused if their hand is shaken more than once in greeting.").

¹¹² Roderick M. Kramer, *The "Dark Side" of Social Context: The Role of Intergroup Paranoia in Intergroup Negotiations*, in THE HANDBOOK OF NEGOTIATION AND CULTURE 219 (Michele J. Gelfand & Jeanne M. Brett eds., 2004).

¹¹³ COLIN P. SILVERTHORNE, ORGANIZATIONAL PSYCHOLOGY IN CROSS CULTURAL PERSPECTIVE 227 (2005). It is said that "communication serves four different but equally important functions: control, motivation, emotional expression, and information." *Id.*

¹¹⁴ To characterize a person on the basis of his/her culture, see GUDYKUNST & TING-TOOMEY, *supra* note 54 and accompanying text.

¹¹⁵ See LISNEK, *supra* note 111, at § 1.10. Knowledge about characteristics provide a means for a negotiator to begin a negotiation and to monitor the interaction for the propriety of her own conduct, in addition to pure collectivism there are also many intermediate types, as well as types with both individualist and collectivist attributes.

¹¹⁶ GEERT HOFSTEDE ET AL., CULTURES AND ORGANIZATIONS SOFTWARE OF THE MIND-INTERCULTURAL COOPERATION AND ITS IMPORTANCE FOR SURVIVAL 130 (2010).

¹¹⁷ Edward Hall, an anthropologist who studied culture and wrote extensively on cross-cultural interactions summarizes the point eloquently in the following passage:

In the West, we impose our view of nature on man and nature alike because we think of man as separate from nature. Since the early Greek scholars, we have made world pictures of reality in our heads, projected them on the world, and treated these pictures as real. These projections are like the image of gaslight on the screen of a nineteenth-century Soho stage. Using words and mathematics, our thinking in the West has been predominately linear, out of necessity and design. Our thinking is therefore left brain and love context and ultra-specific. Yet, we learn from Japan that there is another kind of logic, which complements our dialectic—the logic of hara, which is a logic of context and of action not limited to word paradigms. It should

Thus far one premise is becoming clear: East Asians often think holistically, drawn from perceptual field as a whole, and to relations among objects and events within that field. Westerners rely more on categories and on formal logic.¹¹⁸ In an average South Asian's mind, cultural dimensions¹¹⁹ can be all connected under a single construct.¹²⁰ Such arguments have been advanced in academia as well. Professor Richard E. Nisbett for example claims that people from different parts of the world think differently.¹²¹ Studying ancient philosophy of Eastern and Western worlds, the social origins of mind, and the early development of children in both Eastern and Western cultures among others, he concluded that there are profound differences between Westerners and Easterners in the way they think.¹²² To give but one example, he discovers that when shown a thing, Japanese are twice as likely to regard it as a substance than as an object and Americans are twice as likely to regard it as an object than a substance.¹²³

Geert H. Hofstede provides various constructs while studying cross-cultural differences.¹²⁴ He addresses the "relationship between the individual and the group."¹²⁵ In collectivist cultures norms are more important determinants of social behavior. In individualistic cultures attributes are more important. Based on such

begin to be obvious that in some of the most basic elemental aspects of life, Japanese and Americans are radically different.

EDWARD HALL, *THE DANCE OF LIFE: THE OTHER DIMENSION OF TIME* 92 (1983).

¹¹⁸ NISBETT, *supra* note 92, at 191.

¹¹⁹ For example, low context and high context communication, individualist and collectivist cultural dimensions, *see supra* note 110 and accompanying text.

¹²⁰ *See* NISBETT, *supra* note 92 and accompanying text.

¹²¹ *See* NISBETT, *supra* note 92, at xiv–xxiii.

¹²² Such differences were found in almost every study Richard Nisbett and his colleagues undertook. *See id.* 118. Importantly, based upon his series of studies, Nisbett finds that Easterners and Westerners behave in ways that were qualitatively distinct. For example, he finds: 1) Americans on average had hard time detecting changes in the background of scenes, whereas Japanese had hard time with changes in objects in the foreground; 2) Americans in general failed to recognize the role of situations' constraints on a speaker's behavior whereas Koreans were able to; 3) When confronted with two apparently contradictory propositions, Americans tended to polarize their beliefs whereas Chinese moved toward equal acceptance of the two propositions. *Id.*

¹²³ *See* NISBETT, *supra* note 92, 191–92.

¹²⁴ Harry C. Triandis, Christopher McCusker & C. Harry Hui, *Multimethod Probes of Individualism and Collectivism*, in *THE CONFLICT AND CULTURE READER* 52 (Pat K. Chew ed., 2001).

¹²⁵ Ilhung Lee, *In Re Culture: The Cross-Cultural Negotiations Course in the Law School Curriculum*, 20 OHIO ST. J. ON DISP. RESOL. 375, 401 (2005).

attributes, America ranks high on the Hofstede individualism index¹²⁶ while India is in the middle.

TABLE 1.2 HOFSTEDÉ'S CULTURAL DIMENSIONS¹²⁷

<p><i>Individualism-Collectivism:</i> Relative importance of individual vs. group interests.</p>	<p><i>Collectivism:</i> Group interest generally take precedence over individual interests, Example: India, Japan, Korea, Indonesia, Pakistan, Latin America</p>	<p><i>Individualism:</i> Individual interests generally take precedence over group interests. Example: U.S., Australia, U.K., Netherlands, Italy, Scandinavia.</p>
--	--	--

Generally, Americans see their own culture as very individualistic, and this individualism is interpreted as a major contributor to the greatness of the United States.¹²⁸ This contrasts dramatically to the dominant way of thinking in India, where the nature of the individual is seen as dependent on the universal upon which the individual is dependent.¹²⁹

Such cultural distance between India and the U.S. is more likely to produce negative states prior to negotiation than cultural closeness for a number of reasons. First, perceived dissimilarities produce a lack of attraction, which is likely to produce a negative

¹²⁶ In the Hofstede Country Individualism Index (IDV) India was placed on number 21 out of 39 countries with 48 actual IDV; see HOFSTEDÉ, G. CULTURAL CONSEQUENCES: INTERNATIONAL DIFFERENCES IN WORK-RELATED VALUES 219 (1980).

¹²⁷ HOFSTEDÉ, *supra* note 49.

¹²⁸ HARRY C. TRIANDIS, INDIVIDUALISM & COLLECTIVISM viii (1995). "Americans possesses a biased view that individualism is good and collectivism is bad." *Id.* Triandis further explains:

In collectivist cultures this detachment is minimal; people think of themselves as parts of their collectives and in most situations subordinate their personal goals to those of their collectives. People's social behavior is a consequence of norms, duties, and obligations. They do not give up relationships unless the relationship becomes extraordinarily costly. Such cultures are most stable. There is little change in social relationships. People do not leave their collectives; they live and die within them. When they get married, they link with another collective, and personal emotions are much less important than obligations and duties, so divorce is also rare. Children are brought up to be good members of the collective.

Id.

¹²⁹ See NAKAMURA, *supra* note 86, at 61 (language dialects were used to reason this deduction).

affect.¹³⁰ Second, in the presence of such stark cultural differences, it is harder for individuals to find a common frame of reference.¹³¹

Cultural distance affects negotiators' sense of control, almost as much as negotiating in ambiguous, difficult, and hence unpredictable situations.¹³² Similarly, while walking into the cross-cultural negotiations, negotiators may have an expectation that opportunities for rewarding interaction are limited, which in return affects the outcome of the negotiation as it may lower trust from the onset of the negotiation.¹³³ Individualism and collectivism hence provide an important paradigm for cross-cultural negotiations.¹³⁴

The study of languages also provides an important tool for understanding the individualist/collectivist paradigm. Indians are inclined to neglect the individuality, which can be observed in many usages of Indian languages. Sanskrit, the classical Indian language, has no single pronoun to represent 'the same,' 'identical.' So to express 'the same' an indeclinable 'eva' (only, just), which expresses only emphasis, is added after the demonstrative pronoun 'tad,' so that 'tad eva' is a general term of a singular object.¹³⁵ As narrated previously, in most collectivist societies the community

¹³⁰ See generally Rajesh Kumar, *Culture and Emotions in Intercultural Negotiations: An Overview*, in *The Handbook of Negotiation and Culture* 95 (Michele Gelfand & Jeanne Brett eds., 2004); see also, JEANNE M BRETT, *NEGOTIATING GLOBALLY HOW TO NEGOTIATE DEALS, RESOLVE DISPUTES, AND MAKE DECISIONS ACROSS CULTURAL BOUNDARIES* 112 (2005).

¹³¹ See H.C. TRAINDIS, *INTERPERSONAL BEHAVIOR* 97 (1977).

¹³² Harry T. Reis, W. Andrew Collins, & Ellen Berscheid., *The Relationship Context of Human Behavior and Development*, 126 *PSYCHOL. BULLETIN* 860 (2000).

¹³³ Jennifer M. George, Gareth R. Jones & Jorge A. Gonzales, *The Role of Affect in Cross-Cultural Negotiations*, 29 *J. INT'L BUS. STUD.* 752 (1998).

¹³⁴ Hofstede notes that the language spoken in the most individualist countries, English, is the only one that he knew of that writes I with a capital letter. An Arab, a collectivist, saying is, "The satanic term 'I' be damned!" S. HABIB, *CONCEPTS FONDAMENTAUX ET FRAGMENTS DE PSYCHOSOCIOLOGIE DANS L'OEUVRE D'IBNKHALDOUN: AL-MUQUADDIMA 1375-1377* (1995); *LES CAHIERS INTERNATIONAUX DE PSYCHOLOGIE SOCIALE* 27, 101-21. The scope of implications of the individualist-collectivist paradigm is made apparent in that the paradigm is embedded not only in our ways of thinking, but also in the languages we speak. The relationship between culture and language is well studied and scholars have recorded three specific linguistic features amongst 39 languages used in 71 countries: (1) pronoun drop, i.e., the practice of omitting the first person singular pronoun (I) from a sentence; (2) single or multiple second-person pronouns, such as *you* in English versus *Tu* or *Vous* in French; and (3) single or multiple first-person pronouns, such as *I* in English versus *watasi*, *boku*, *ore*, and others in Japanese. It was discovered that languages spoken in individualist cultures tend to require speakers to use the *I* pronoun when referring to themselves; languages spoken in collectivist cultures allow the dropping of this pronoun. Kashima, E.S., & Kashima, Y. *Culture and language: The case of cultural dimensions and personal pronoun use*, *J. OF CROSS-CULTURAL PSYCHOL.* 461, 461-486 (1998).

¹³⁵ See *supra* note 134.

comes first. Such a thinking pattern affects the way one negotiates at any level, be it the individual, group or institutional.¹³⁶ Knowledge of and attention to this fundamental difference between individualism and collectivism can help negotiators avoid assumptions, which can be quite literally lost in translation. That loss could result in the failure of trust and understanding.

2. High v. Low Context Cultures

TABLE 1.4 HALL'S CULTURAL DIMENSIONS

<p><i>Context:</i> Extent to which the context of a message is as important as the message itself</p>	<p><i>Low Context:</i> Direct and frank communication: message itself conveys its meaning. Examples: Germany, U.S., Scandinavia</p>	<p><i>High Context:</i> Much of the meaning in communication is conveyed indirectly through the context surrounding a message. Example: Japan, China, India</p>
---	---	---

In addition to linguistic differences, cross-cultural negotiations face the complexity of low context versus high context cultures. A so-called “high-context interaction” occurs when a significant part of the communication is implied or understood rather than expressed overtly.¹³⁷ Proper communication demands the words to be understood in proper context.¹³⁸ In high context cultures, information is rarely communicated verbally, and what is not said is sometimes more important than what is said.¹³⁹ In contrast, in low context cultures words represent truth and power.¹⁴⁰

Because they exist in a high context culture, “Indians are more likely to assume a non-confrontational, indirect attitude towards conflict. There is predominance of words over action. The gap between what is done in reality and the stated principles of the policymaker were not taken too seriously.”¹⁴¹ On the other hand,

¹³⁶ See Gibson et al., *supra* note 52, at 48.

¹³⁷ MAYER, *supra* note 19, at 97.

¹³⁸ Carley H. Dodd, *Cultural Differences in Information Processing*, in CROSS CULTURAL NEGOTIATION AND DISPUTE RESOLUTION READINGS AND CASES 27 (Grant R. Ackerman ed., 2003).

¹³⁹ *Id.*

¹⁴⁰ Stella Ting-Toomey, *Toward A Theory of Conflict and Culture*, in THE CONFLICT AND CULTURE READER 46 (Pat K. Chew ed., 2001).

¹⁴¹ S. DASGUPTA, HINDU ETHOS AND THE CHALLENGE OF CHANGE 211 (1972).

Americans tend to approach conflict directly and aggressively.¹⁴² Even the sense of duty and rights towards work and towards personal relations differ between cultures.¹⁴³ An Indian gets offended very easily, if not given due respect to his or her professional position. Such disrespect may lead to a complete lack of communication and motivation on the part of the Indian negotiator.¹⁴⁴

In context of the CTBT negotiations, diplomats must be aware of the difference between personal and professional opinions. Cross-culturally, in the low context cultures, individuals are better able to separate the conflict issue from the person involved in the conflict.¹⁴⁵ In high context cultures however, it is difficult to separate the conflict issue from the person involved in the conflict. For example, in a tense situation such as a national security threat, like the India-China war of 1962, the situation under discussion during a negotiation was aggravated by the Hindu habit of secretiveness, even when the subject matter did not warrant it. Such secretiveness often prevented the effective flow and distribution of information outward to the relevant bodies.¹⁴⁶

Low context players “will probably be more likely to engage in the hard bargaining rational strategies of factual-inductive style or axiomatic-deductive style in handling conflicts; high context players will probably be more likely to use the soft bargaining strategies of affective-intuitive style in managing various conflict episodes.”¹⁴⁷ For the U.S. diplomats, it is important to understand

¹⁴² See BENEDICT, *supra* note 65. See also JEANNE M BRETT, NEGOTIATING GLOBALLY HOW TO NEGOTIATE DEALS, RESOLVE DISPUTES, AND MAKE DECISIONS ACROSS CULTURAL BOUNDARIES, 20–23 (2005).

¹⁴³ For example in India, the senior engineer feels he must stay close to his parents and that New York is simply too far, even if he get paid 25 times more than his present job. He would not want to leave his father. If his father were dying, it would be the engineer’s duty to be at his bedside and facilitate his passage to the other state. Under similar conditions in the United States, it is more likely that the parent would be placed in a nursing home. The parent and his son have their own lives and are independent entities. See TRANDIS, *supra* note 73, at 3.

¹⁴⁴ *Id.* Trandis observes: “One needs to take the time to get to know them as individuals in order to develop professional trust. Indians are very good hosts and will therefore, invite you to their homes and indulge in personal talk often. All this is very much a part of business.” *Id.*

¹⁴⁵ Stella Ting-Toomey, *Toward A Theory of Conflict and Culture*, in THE CONFLICT AND CULTURE READER 48 (Pat K. Chew ed., 2001). Ting-Toomey observes: “LCC individuals can fight and scream at one another over a task-oriented point and yet be able to remain friends afterwards’ whereas in the HCC system the instrumental issue is closely tied with the person that originated the issue.” *Id.*

¹⁴⁶ See DASGUPTA, *supra* note 141, at 212. See also VERTZBERGER, *supra* note 20, at 207–211. Therefore, while dealing with nuclear issues, which associate directly with security of country, the scope for ignorance for negotiators decreases and the magnitude of importance increases.

¹⁴⁷ See STELLA TING-TOOMEY, *supra* note 1, at 5.

that in India, the term *nuclear* is considered synonymous for *swadeshi*¹⁴⁸ although at the same time it must be considered that it is not the knowledge of the term but the sentiment. For example, Kaur notes “[N]uclear knowledge is deemed alien to the Indian landscape, even though Indian nationalists see the development of nuclear technology as part of the *swadeshi* discourse.”¹⁴⁹

For a smooth and effective communication process to take place, participants must be aware of how context, which differs by culture, plays into the equation. In addition to the culture of saving face, religious sentiments, and power distance, which had direct impacts on the stumbling blocks of U.S.-Indian CTBT negotiations, the previously mentioned cultural disconnects, if not properly understood, can hinder communication, facilitating misunderstanding.

VII. CULTURE IN STRATEGY: CROSS-CULTURAL DISPUTE RESOLUTION MODEL

The methodology presented in this section is the cultural approach to strategy in decision-making. This approach is not to suggest a replacement for the linear negotiation approach, which includes multiple steps from agenda setting and definition of issues to problem solving, generating movement, and final bargaining.¹⁵⁰ Neither does it challenge the cyclical model of negotiation, where a repetitive, cyclical behavior of the parties postulates a systemic, process-based connection among a number of components, “from the receipt of information and assessment of it, to learning and adjustment of preferences and expectations, to tactical decision and to the offer of information to the other party.”¹⁵¹ This approach will work with both models and adds two steps. Step one is an awareness and understanding of one’s own cultural beliefs and knowledge of a negotiation party’s cultural attributes. Step two is an awareness of the sub-cultural negotiation process, without over-utilizing cultural stereotypes.

¹⁴⁸ A notion that has fuelled the development of nationalism since the early twentieth century. See ITTY ABRAHAM, *INDIA’S NUCLEAR FANTASIES: COSTS AND ETHICS PRISONERS OF THE NUCLEAR DREAM* 52 (M. V. Ramana & C Rammanohar Reddy eds., 2003).

¹⁴⁹ *Id.*

¹⁵⁰ See generally ROGER FISHER, WILLIAM URY, BRUCE PATTON, *GETTING TO YES* (1991).

¹⁵¹ P. H. GULLIVER, *DISPUTES AND NEGOTIATIONS-A CROSS-CULTURAL PERSPECTIVE* 113 (1979).

In recent years, it has been argued that the interest-based approach is applicable to cross-cultural negotiations,¹⁵² especially if the interests are defined as culturally motivated interests.¹⁵³ The focus of this approach is towards three stages surrounding negotiation: 1.) preparation, 2.) bargaining, and 3.) agreement writing. The approach presented here is suggestive and illuminating, rather than definitive. This approach may be useful to understand *what* occurs in the negotiation and *why*, instead of necessarily providing a definite answer to *how* a negotiation occurred.

TABLE 1.5. THE APPROACH TABLE:

IMPACT OF CULTURE ON NUCLEAR (CTBT) NEGOTIATIONS	
↓	
BEFORE NEGOTIATION: PREPARATION	
CONSCIOUS OF ONE'S OWN CULTURE	UNDERSTANDING OTHERS CULTURE
DURING NEGOTIATION: BARGAINING/DECISION MAKING	
CONTEXTUAL DECODING	MINDFUL OBSERVATION

Bilateral nuclear negotiations deal with high politics; the stakes are high for both the participants and non-participants.¹⁵⁴ A wrong approach or indeed even a wrong step could lead to crisis.¹⁵⁵

The aim of the parties in a bilateral negotiation is to reach an agreement by utilizing the style and constructs of effective bargaining. The methods used, styles adopted, and tactics employed are based on negotiators themselves and their inter-personal skills.¹⁵⁶ To be an effective negotiator, one must not only possess strong negotiation skills, but also be a good negotiator across cultures. In addition, the cross-cultural negotiator must be aware of the different cultural norms and rules that play a role, mostly uncon-

¹⁵² See John Barkai, *Cultural Dimension Interests, The Dance of Negotiation, And Weather Forecasting: A Perspective On Cross-Cultural Negotiation and Dispute Resolution*, 8 PEPP. DISP. RESOL. L.J. 403 (2008).

¹⁵³ See Harold Abramson, *Selecting Mediators and Representing Clients in Cross-Cultural Disputes*, 7 CARDOZO J. CONFLICT. RESOL. 253 (2007).

¹⁵⁴ BRIGID STARKEY, MARK BOYER & JONATHAN WILKENFELD, *NEGOTIATION A COMPLEX WORLD: AN INTRODUCTION TO INTERNATIONAL NEGOTIATION* 85–87 (2005).

¹⁵⁵ See Han Yong Sup, *Northeast Asia's Nuclear Situation in the 21st Century and the North Korean Nuclear Issue*, 16 E. ASIAN REV. 1, 19–39 (2004); Kim Keun-sik, *The North Korean Nuclear Crises and Inter-Korean Relations*, 7 E. ASIAN REV. 3, 3–23 (1995).

¹⁵⁶ For further analysis of negotiating skills and inter-personal skills development, see HERB COHEN, *YOU CAN NEGOTIATE ANYTHING* (1980); GERARD NIERRENBERG, *THE COMPLETE NEGOTIATOR* (Nierenberg & Zeif Publishers 1986).

sciously, behind cross-cultural negotiations.¹⁵⁷ The next section lays out the author's suggested approach to cross-cultural negotiations. Please bear in mind that the stages are not linear.

Step I: Before the Negotiating Table: Comprehending Culture

A. Consciousness of One's Culture and Worldview

Like Hindu philosophy, the Indian concept of time is cyclical, characterized by origination, duration, and disappearance *ad infinitum*.¹⁵⁸ Consciousness of one's own culture comes through critical thinking of worldview, awareness of limitations, and practice. Awareness should begin with one's own culture. A negotiator's awareness of his or her own belief system, value patterns, and traditions will lead to awareness of bias and judgment within self. Across cultures, a negotiator must be aware of his or her own limitations, for example not knowing local customs and traditions.¹⁵⁹

From a psychological perspective, the awareness that is necessary to operators of international negotiations can be summarized as follows¹⁶⁰:

¹⁵⁷ Style guides and controls the interior dynamics of interaction while tactics structure the disclosure of information. See LISNEK, *supra* note 111, at § 4.1.

¹⁵⁸ The practice of Hinduism survived the invasion of foreign powers over the centuries, and the practice of religion at home was given as a main reason behind such sustenance. See MARTIN J. GANNON & RAJNANDINI PILLAI, *supra* note 78, at 478–79.

¹⁵⁹ See SINGH ET AL., AS WE SEE IT, IN EDUCATING NEGOTIATORS FOR A CONNECTED WORLD: VOLUME 4 IN THE RETHINKING TEACHING SERIES 15 (DRI Press 2012).

Personally, the first element of awareness while visiting China was to avoid judging the practice of bargaining. Secondly, I was determined not to over-generalize the experiences. For example, if one were to surmise that the Chinese bargain very hard based on just a few bargaining experiences, I would respectfully disagree (and so would a number of scholars on the subject). The assessment of a national culture should constitute a more rigorous exercise, with study of bargaining tendencies of Chinese citizens in a wide variety of settings within and outside of China (Goh 1996; Henderson 2002; Hofstede 2006).

I have noticed casually, however, that Chinese and Indian salespeople are comfortable with the notion of bargaining. It is not a big deal for them; however, even this is changing. As culture evolves and changes over a period of time, so does national culture (Hall 1984). Comparing my living in India in 2005 to my visit in the summer of 2011, I noticed the dominance of fixed-price shops and the fact that people did not bargain much, if at all. I was disappointed since I was looking for the old bargaining experience; the establishment of new shops like the new Wal-Mart (in collaboration with a local corporation) in my parents' village did not allow this.

Id.

¹⁶⁰ Francesco Aquilar and Mauro Galluccio, *Psychological Processes, in International Negotiations: Theoretical and Practical Perspectives* (2008).

- a.) Every human being, rather than living “in the reality” lives in this “representation of the reality” that could more or less correspond to the reality commonly perceived.
- b.) This “representation of the reality” is influenced by biological-evolutionistic, anthropological-social and psychological-individual aspects.
- c.) From the “representation” could originate powerful emotions that could determine inadequate behaviors in a wide sense.
- d.) Part of the “representation” can be unconscious and many methods exist in order to acquire a greater consciousness of one’s own thought and emotional process, and the thought and emotional process of the “other” with whom one enters a relationship (or conflict).
- e.) These “representations” come into contact though the codes of communication (and of the meta-communication, that is, to communicate on what we have communicated).

A simultaneous mental exercise is to control snap judgments. Through preparation, this approach teaches practitioners to be aware of their categorizations.¹⁶¹ The goal should be viewing the other culture through a neutral lens, not one controlled by emotion, be it based on sympathy or hate, and to study this personal lens *before* the negotiations.¹⁶² Another goal is to become aware of one’s norms and values. This step serves two purposes: it provides better understanding for one’s actions and beliefs and expectations¹⁶³ and it gives a reason to appreciate the opposite party’s interests. For example, acknowledgement by an Indian ambassador of the Indian belief that time would resolve India’s political and military problems, which stems from the Hindu belief that time in itself was a problem-solving mechanism,¹⁶⁴ can lead to an interest-based negotiation on the issue of the length of the agreement.

¹⁶¹ Categories actually help explain what has happened and predict what will come next. “Your ability to think of people as ‘German’ partly depends on your general ability to categorize anything—to divide a flood of perceptions into birds and trees, gears and Gummi bears, hip-hop on the radio and grapes in a bowl on the table.” DAVID BERREBY, *US AND THEM: UNDERSTANDING YOUR TRIBAL MIND* 21–22 (2005).

¹⁶² See AUROBINDO, *supra* note 51 and accompanying text.

¹⁶³ For example in 1995, India’s expectation was to gain military support from the United States but India was not aware (or pretended to be unaware) of a strong belief they themselves were acting under, that ‘time has an inbuilt healing power’ whereas the United States was still suspicious of India’s dual policy structure. Another example is the role that ‘Hindutava ideology’ played on their unsuccessful nuclear negotiations. It could be the fact that Indians give more than a necessary amount of importance to the national security and the Kashmir problem has deeply influenced their foreign policies since partition.

¹⁶⁴ See Dasgupta, *supra* note 141, at 213.

Our worldviews and our belief systems impact us. Studies, both cognitive and biological confirm this basic intuition.¹⁶⁵ Understanding nuclear moves and setting up a framework for better nuclear negotiations may prevent an unnecessary war or conflict.

Another piece of preparation is flexibility. Cultural change starts with global culture, which eventually modifies the behaviors and thought of individuals in a given society. In 1999, a study found that Indonesian managers were closer in individualism and power distance to their American counterparts than the gaps previously reported by Hofstede. However, the core argument in this section is that culture matters in nuclear negotiations, and this grid offers a platform to think about culture-based preparation.¹⁶⁶

B. *Understanding of the Other(side)'s Culture*

Faure conducted direct observations of intercultural negotiations in the field for six years, with a specific focus on China-U.S. negotiations in order to study cross-cultural differences in negotiation.¹⁶⁷ He found that culture influences various aspects of negotiation, from actors to structure, strategies, process and outcome.¹⁶⁸ He concluded his research by finding that the Chinese spend more time on relationship-building prior to negotiation, use more emotional appeals, and prefer loose agreements and implementation over formal contracts, under the joint quest metaphor.

As stated earlier, a negotiator can view the other's culture with sympathy, neutrality, or with disapproval. Understanding the

¹⁶⁵ See generally RICK HANSON AND RICHARD MENDIUS, *THE PRACTICAL NEUROSCIENCE OF BUDDHA'S BRAIN HAPPINESS, LOVE AND WISDOM* (2009); BERREBY, *supra* note 161, 182–200.

¹⁶⁶ Culture and cultural variations do not matter in all types of international negotiations and they matter more in some situations than in other. K. Leung et al., *Culture and International Business: Recent Advances and Future Directions*, 36 J. INT'L BUS. STUD. 357, 357–78 (2005).

¹⁶⁷ G.O. Faure, *The Cultural Dimension of Negotiation: The Chinese Case*, 8 GROUP DECISION & NEGOT. 187, 187–215 (1999). First in terms of actors, or general characteristics of negotiators, Faure observes that the Chinese are significantly influenced by historical memories of past international relations, often in the scale of hundreds to thousands of years, and use moral debt owed to China as a tactic in weakening the position of negotiators from different countries. Second, culture also seems to influence the structure of negotiations. He observed that it is typical for the number of individuals for a single negotiation party in China to consist of fifteen to thirty people, far greater than the American norm. Furthermore, it is more common in China than in the U.S. for the real decision-maker to not be present in the negotiation in order to save face.

¹⁶⁸ G.O. Faure, *Negotiations to Set up Joint Ventures in China*, 5 INT'L NEGOT. 157, 157–89 (2000).

other culture starts with a willingness to learn. Learning is best achieved if no negative emotion is attached towards the other culture.¹⁶⁹ Indeed, such emotions may even lead negotiations toward dysfunctional cognitive cycles.¹⁷⁰ For instance, one can appreciate India's attraction towards its history and traditions yet discount the traditions of *sati* or resistance against widow remarriage. As Dr. Ranbir Singh, Indian delegate to the United Nations Human Rights Convention, observed: "delegates from Western nations had a judgment about us [Indian representatives] and the issue is that they were not willing to break their stereotype."¹⁷¹ Dr. Singh continued, "[t]he problem is that people tend to ignore India's rich history and strong cultural norms, that continuously surrounds the way an Indian delegate thinks."¹⁷²

In his book on negotiations across cultures, Cohen observes that cultural differences were indeed reflected in specific behaviors at various stages of negotiation. For example, Mike Smith, a former U.S. trade representative, notes that "compared to Americans, the Japanese have smaller discretion during negotiations."¹⁷³ Similar observations have been made of other hierarchical cultures, including Mexico, Egypt, China, and India.¹⁷⁴

The goal of the first step in this approach is to gather information to attain useful cultural knowledge before the process of negotiation starts. This is the best way to attain success.¹⁷⁵ Learning about the other's culture also tests our expectations about the other culture's negotiating behavior and "one should go out of

¹⁶⁹ See CHEN, *supra* note 51, at 19.

¹⁷⁰ See FRANCESCO AQUILAR AND MAURO GALLUCCIO, PSYCHOLOGICAL PROCESSES IN INTERNATIONAL NEGOTIATIONS THEORETICAL AND PRACTICAL PERSPECTIVES 11 (2008).

¹⁷¹ In person interview with Dr. Ranbir Singh, Vice-Chancellor, Delhi Law University, New Delhi, March 29, 2012 (interview record on file with author).

¹⁷² *Id.*

¹⁷³ R. COHEN, NEGOTIATING ACROSS CULTURES (U.S. Institute of Peace Press 2007), as quoted in LYNN IMAI & MICHELE J. GELFAND, CULTURE, CONFLICT, AND NEGOTIATION, CAMBRIDGE HANDBOOK OF CULTURE, ORGANIZATIONS, AND WORK 360–61 (2009).

¹⁷⁴ See *supra* note 173 and accompanying text. While writing about Europe's culture of superiority, Sri Aurobindo writes,

The modern European civilization, which has invaded Asia and which all violent attacks on Indian ideals represent, is the effective form of this materialistic culture. India, true to her spiritual motive, has never shared in the physical attacks of Asia upon Europe; her methods had always been an infiltration of the world with her ideas, such as we today see again in progress.

INSTITUTE FOR WHOLISTIC EDUCATION SRI AUROBINDO INFORMATION PAGE, <http://www.aurobindo.net>.

¹⁷⁵ See Jeffrey Z. Rubin & Frank E. Sander, *Culture, Negotiation, and the Eye of the Beholder*, in THE CONFLICT AND CULTURE READER 15 (Pat K. Chew ed., 2001).

one's way to acquire as much information as one can beforehand about the way people in other cultures view the kind of problem under consideration."¹⁷⁶ With strong preparation, negotiators learn to look below the surface of what they readily observe.¹⁷⁷ "Above the surface we find behaviors, artifacts and institutions. Just below the surface we find norms, beliefs, values and attitudes. A sensitive observer can 'uncover' these and become more knowledgeable about a culture."¹⁷⁸

For example, an American's direct negotiating behavior, to an unknowing Eastern negotiator, will come across as threatening.¹⁷⁹ As discussed earlier, individuals from high context cultures prefer to establish personal relationships with their counterparts prior to negotiating, to a much larger extent than individual from low context cultures.¹⁸⁰ Such information should be analyzed before the start of negotiations, taking into account national orientations and shifts. Another example where gaining information before the negotiation comes in very handy is the case of India and its love for philosophy. India's bargaining style at the CTBT negotiations—which employed many circular and complex arguments—illustrates India's philosophical tradition on life.¹⁸¹ Indeed, in India philoso-

¹⁷⁶ *Id.*

¹⁷⁷ See Sanford Budick, *Cross Cultural, Chiasmus, and the Manifold of Mind*, in *THE TRANSLATABILITY OF CULTURES FIGURATIONS OF THE SPACE BETWEEN* 224 (Sanford Budick & Wolfgang Iser eds., 1996). Sanford observed the importance of knowledge when he said, "Assuming that knowing another—or getting to know another—is a significant part of what is called thinking, can we retrieve a picture of the joining together of our attempts to know and be known by another?" *Id.*

¹⁷⁸ See Jayne Seminare Docherty, *Cultural and Negotiation: Symmetrical Anthropology For Negotiators*, 87 MARQ. L. REV. 714 (2004).

¹⁷⁹ *Id.* Belonging to individualistic society might have failed to value strong Indian beliefs in strong words, time and space.

¹⁸⁰ See IMAI & GELFAND, *supra* note 173, at 360. To substantiate their point, Imai and Gelfand take example of 1984 negotiations over reforms in Japan's financial markets, the abrupt manner of Treasury Secretary Donald Reagan who was seen as if he was cutting a deal on Wall Street offended many Japanese who considered diplomatic negotiation to be a more interpersonally delicate issue.

¹⁸¹ GANNON & PILLAI, *supra* note 78, at 475. In Hindu philosophy, the world is considered illusory, like a dream, the result of God's *lila* (amusement). According to one interpretation, Bharata Varsha, the ancient name of India, literally means "land of the actors." In an illusionary world, people cannot achieve true happiness through the mere physical enjoyment of wealth or material possessions. The only happiness worth seeking is permanent spiritual happiness as distinguished from these fleeting pleasures. Absolute happiness can result only from liberation from worldly involvements through spiritual enlightenment. Life is a journey in search of *mukti* (salvation), and the seeker, if he or she withstands all the perils of the road, is rewarded by exultation beyond human experience or perception (*moksha*). In the same way that the Dance of Shiva leads the cosmos through a journey, Hindu philosophy directs each individual along a path.

phy is not regarded as a subject but as “a key to life itself, clarifying its essential meaning and the way to attain spiritual goals.”¹⁸²

Similarly, American negotiators in the past have failed to understand the *Hindutava* ideology and the impact it has on Indian decisions, and thus misunderstood Indian bargaining tactics as being based upon the situations in Kashmir or Pakistan and hence pro-Soviet. A common pattern for Indian negotiators, as exhibited by India’s dealings with China and Japan, is that a dual process of rejection and adoption was possible, whereas for China and the United States, this approach is considered hypocritical.¹⁸³

Perhaps the bigger question is: do the American negotiators understand the depth of connection between religion and nuclear power in the failed India-U.S. nuclear negotiations? Empathizing with a nation’s sentiments effectively provides understanding of the nation’s motivation behind a negotiation.¹⁸⁴ Proper recognition of such sentiments before the initiation of negotiation and at the negotiation table has the propensity to change the course of negotiation.

India also needed to be aware of its own affection with religion. India has deep rooted connections with strong cultural religious beliefs.¹⁸⁵ As Swami Vivekananda, one of India’s foremost thinkers, succinctly stated, “Each nation has a theme in life. In India religious life forms the central theme, the keynote of the whole music of the nations.”¹⁸⁶ Religion surrounds people’s thinking all the time.¹⁸⁷ With this background, it is clear that India will not negotiate on religious beliefs and will act strongly when its religiosity is challenged.

¹⁸² See *id.* In Europe and in America the study of philosophy tends to be regarded as an end in itself, and as such it seems of little importance to the ordinary man or woman. Whereas in India, philosophy tends to override with religion.

¹⁸³ See VERTZBERGER, *supra* note 20, at 207–09.

¹⁸⁴ See Kim Do-Tae, *supra* note 105, at 3–20.

¹⁸⁵ The concept of Karma, or a Hindu’s desires for positive outcome of daily activities lead scholars to discuss the importance of astrology in Indian political life. See GANNON & PILLAI, *supra* note 78, at 477.

¹⁸⁶ *Id.* at 470.

¹⁸⁷ However, this is changing, India is rapidly growing and to make the situation further complex: culture is constantly changing:

For 2,000 years of tis history, India was almost completely Hindu, but for the last millennium or more, Indian culture has been synthesis of different racial, religious and linguistic influences. Hinduism itself has undergone many changes owing to the impact of other faiths. It is, therefore, incorrect to contend that Indian culture is solely a Hindu culture, although Hindus represent 81% of the population.

Id. at 470.

The first lesson for Western negotiators is that when the U.S. negotiates with India, it cannot successfully do so if it negotiates in a way that challenges India's religious beliefs, especially since India's recent history has taught it to be cautionary in this area.¹⁸⁸ The partial success of the Next Steps in Strategic Partnership in 2005 can be attributed to change in demands from the West¹⁸⁹ that took cultural considerations into account.

Step II: At the Negotiating Table: Encoding Context

A. Generalizations and Cultural Stereotypes

Regardless of how serious an attempt one makes in not labeling a class or a group of people as one, the reality is that stereotyping based upon culture is very common.¹⁹⁰ This approach is proposing use of generalizations only when needed and as a concept that is based on exceptions. Cultural metaphors, on the other hand, are probabilistic statements that apply to a group but not to every individual within it. However, it is important to be aware that different cultures abide by different rules and one shouldn't judge others. The golden rule for negotiators is to always keep an

¹⁸⁸ Hindus generally believe that social conflict, oppression, and unrest do not stem from social organizations but originate in the non-adherence to dharma by those in position of power. Their actions have created they cycles of disharmony. Hindus see a quarrel as a drama with three actors—two contestants and a peacemaker—and it is not the protagonists but the peacemaker who is seen as the victor in the dispute, as it is he or she who has restored harmony. R. LONNOY, *THE SPEAKING TREE: A STUDY OF INDIAN CULTURE AND SOCIETY* 198 (1971).

¹⁸⁹ The gesture of lifting sanctions and showing more flexibility towards India's response to CTBT came out to be two good reasons, for the successful Next Steps in Strategic Partnership (NSSP). The U.S. Government website provides the following summary of the events between 1999 and 2005:

In late September 2001, President Bush lifted sanctions imposed under the terms of the 1994 Nuclear Proliferation Prevention Act following India's nuclear tests in May 1998. The nonproliferation dialogue initiated after the 1998 nuclear tests has bridged many of the gaps in understanding between the countries. In a meeting between President Bush and Prime Minister Vajpayee in November 2001, the two leaders expressed a strong interest in transforming the U.S.-India bilateral relationship. High-level meetings and concrete cooperation between the two countries increased during 2002 and 2003. In January 2004, the U.S. and India launched the Next Steps in Strategic Partnership (NSSP), which was both a milestone in the transformation of the bilateral relationship and a blueprint for its further progress.

U.S. DEPARTMENT OF STATE, *Country Fact Sheets: India*, <http://www.state.gov/r/pa/ei/bgn/3454.htm>.

¹⁹⁰ See C. NEIL MACRAE, *STEREOTYPES AND STEREOTYPING* (1996).

open mind, and be ready to discard one's predictions as the occasion requires."¹⁹¹

Some consider that stereotyping has several apparent benefits. For example, it allows the perceiver to reduce a world of enormous cognitive complexity into terms of black versus white, good versus evil, friend versus enemy, thereby making it easier to understand the world one sees. Secondly, "armed with stereotypes, it becomes far easier to communicate in shorthand fashion with others who we suspect share our views."¹⁹² But, it is also a known fact that stereotypes rob both perceiver and victim of a sense of underlying individuality. Moreover, once preconceived notions are in place, there is little that the object of stereotyping can do to undo or reverse these prejudices. Furthermore, stereotyping proceeds on the assumption that "all persons are fundamentally the same when it comes to reasoning, emotionality, needs, and desires."¹⁹³

A middle road solution to the problem would be acceptance of the idea that stereotyping would be positive and useful if used only for the purpose of gaining starting knowledge in a negotiation¹⁹⁴ and it would be negative if stretched to extreme generalizations.¹⁹⁵ Here positive stereotyping would include assuming the individualistic, low context characteristic of Americans while considering the collectivist, high context characteristics of Indians.

Awareness that such dimensions are not absolute is critical. Professor Geert Hofstede, creator of many of such cultural dimensions, agrees that such dimensions are not unyielding but do serve a useful purpose.¹⁹⁶ In other words, they are merely tools to be used to gauge cultural differences. However, one should be aware

¹⁹¹ See BERREBY, *supra* note 161, at 186–87. "No wonder we care about other people's morals—even those of people we will never meet. For the brain to learn the codes of conduct that 'our kind' use to get through life, it wants to live in an environment that confirms that lesson." *Id.* at 187.

¹⁹² See Rubin & Sander, *supra* note 175.

¹⁹³ See DOCHERTY, *supra* note 178, at 713.

¹⁹⁴ See MACRAE, *supra* note 190, 11–23.

¹⁹⁵ Generally stereotypes of national and ethnic cultures do not apply to individual negotiators who are members of that national or ethnic group. James K. Sebenius, *Caveats for Cross-Border Negotiators* 18 NEGOT. J. 121 (2002).

¹⁹⁶ Dimensions do not exist—but they can serve. Geert stresses that dimensions of cultures do not exist in a tangible sense. They are constructs. A construct is "not directly accessible to observation but inferable from verbal statements and other behaviors and useful in predicting still other observable and measurable verbal and nonverbal behavior" (Teresa Levitin, 1973). Culture itself is a construct, so are values. It makes no sense asking how many dimensions of culture there are. This is like asking how many types of cloud exist—it is a matter of definition, and practical significance should be the criterion. GEERT HOFSTEDE, *Research and VSM*, <http://www.geerthofstede.nl/research—vsm.aspx> (last visited July 29, 2012).

that culture's influence on any given negotiation might depend upon variety of factors that cannot be easily segregated.¹⁹⁷ In addition, over-reliance on cultural dimensions can create cross-cultural blunders.¹⁹⁸

B. *Mindfulness*

“Mindful” means “to be aware of one’s position and to be aware of the moment.”¹⁹⁹ Mindfulness refers to formal and informal practices that are oriented around cultivating present moment awareness.²⁰⁰ Traditional forms include sitting practices where one closes or lowers their eyes and concentrates awareness on their breath, noticing the arising of thoughts, emotions, and sensations. The different applications of this foundation level practice are varied and have paved the way for modern treatments to reach and accommodate a diverse group of legal professionals.²⁰¹ Mindfulness can be practiced by “using introspection and self-observation to discern how our habits of attention and unnamed assumptions shape who we are, what we see, how we relate. In this way we become conscious of ourselves apart from the usual bounds of time, image and habit.”²⁰² For the purposes of present discussion, ‘cultural fluency’ means “to engage others with a spirit of inquiry, learning about the ways our and their perceptions differ rather than seeing only the familiar picture that shows us the world as we

¹⁹⁷ For example, in negotiations between U.S. Soldiers and Iraqi civilian leaders, other factors like power, constituency demands, potential to apply force, history, politics, psychology, personality among others played roles according to the American soldiers on ground. David M. Tressler, *The Soldier and the Sheik: Lessons from Negotiating in Iraq*, 13 HARV. NEGOT. L. REV. 67, 85 (2008).

¹⁹⁸ In a study, recent immigrants to the United States commonly indicate that they are more religiously active in the United States than they were in their native country. GORDON NAGAYAMA HALL & SUMIE OKAZAKI, *ASIAN AMERICAN PSYCHOLOGY: SCIENCE OF LIVES IN CONTEXT* 292 (2002).

¹⁹⁹ It is defined as “paying attention in a particular way: on purpose, in the present moment and nonjudgmental.” JON KABAT ZINN, ZINDER V. SEGEL, MARK G. WILLIAMS & JOHN D. TEASDALE, *MINDFUL WAY THROUGH DEPRESSION: FREEING YOURSELF FROM CHRONIC UNHAPPINESS* 47 (2002).

²⁰⁰ Scott L. Rogers, *The Mindful Law School: An Integrative Approach to Transforming Legal Education*, 28 TOURO L. REV. 1189.

²⁰¹ See Leonard L. Riskin, *Awareness in Lawyering: A Primer on Paying Attention*, in *THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION* 447–71 (Marjorie Silver ed., 2007).

²⁰² MICHELLE LEBARON, *BRIDGING CULTURAL CONFLICTS A NEW APPROACH FOR A CHANGING WORLD* 84 (2003).

would like to be.”²⁰³ Furthermore, the more open and respectful disputants are about the different approaches the other has towards conflict, and to nuclear issues in particular, the more successful they will be in dealing with cross-cultural nuclear talks.²⁰⁴

Negotiators must become aware of the current research in international negotiations. For example, Faure and Rubin studied a collection of river disputes. First, “the greater the cultural distance between the parties in an intercultural negotiation, the more complications arise.”²⁰⁵ Second, they note that, “the more power asymmetry there is between the parties, the party with the least power is less likely to be influenced by culture, as behavior will be determined by compliance to high status parties.”²⁰⁶ Finally, they argue that “the greater the number of parties involved in the negotiation, that is, the more multilateral the negotiation is, the more likely that the main effects of culture are dampened.”²⁰⁷ A negotiator should be mindful of any ethnocentric belief. The Dalai Lama rightly concluded the importance of mindfulness by saying, “I learned to be mindful that Buddhism is not the best religion.”²⁰⁸

²⁰³ *Id* at 85. LeBaron finds out five ways in which knowing can be obtained:

1. Somatic ways of knowing-physical attunement;
2. Emotional ways of knowing-emotional fluency;
3. Spiritual ways of knowing-centering in purpose and connection;
4. Imaginative ways of knowing-releasing out hold on our givens;
5. Integrative ways of knowing (combining all the previous ways of knowing)-focusing and meditation, caring and love.

Id.

²⁰⁴ See STARKEY, BOYER & WILKENFELD, *supra* note 154, at 87. “Sometimes people handle cultural differences best by ignoring them and reaching out on a simple person to person basis. . . .” *Id.* Mr. Bernard warns us that an overemphasis on cultural differences, particularly on the part of someone from a dominant culture, can be patronizing and controlling. “Of course the ideal is for conflict participants to synthesize these two approaches, to be sensitive and respectful of cultural differences and to relate to each other as individuals, not as simple carriers of particular cultural patterns.” *Id.*

²⁰⁵ FAURE & J.Z. RUBIN, *CULTURE AND NEGOTIATION* (NEWBURY PARK 1993).

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ DALAI LAMA, *ETHICS FOR THE NEW MILLENNIUM* 21 (2000).

When I was younger and living in Tibet, I believed in my heart that Buddhism was the best way. I told myself it would be marvelous if everyone converted. Yet this was due to ignorance. We Tibetans had, of course, heard of other religions. But what little we knew about them came from Tibetan translations of secondary, Buddhist sources.

Id. at 21.

VIII. CONCLUSION: CHARACTERISTICS OF CROSS-CULTURAL NEGOTIATING

Jimmy Carter, former U.S. President, in his Nobel Lecture (2002) said:

Instead of entering a millennium of peace, the world is now, in many ways, a more dangerous place. The greater ease of travel and communication has not been matched by equal understanding and mutual respect. There is a plethora of civil wars, unrestrained by rules of the Geneva Convention, within which an overwhelming portion of the casualties are unarmed civilians, who have no ability to defend themselves. And recent appalling acts of terrorism have reminded us that no nations, even superpowers, are invulnerable. It is clear that global challenges must be met with an emphasis on peace, in harmony with others, with strong alliances and international consensus.²⁰⁹

India conducted nuclear tests as a step to gain power²¹⁰ and stability.²¹¹ In some ways, this goal has been met as the government enjoyed 'domestic political popularity' after the tests.²¹² From the United States' perspective, bilateral nuclear negotiations are attributed high importance.²¹³ Maintaining the status of world power²¹⁴ in the arms race and imposing restrictions on other states creates a complex situation for American negotiators.²¹⁵ U.S. policymakers and negotiators face a very different kind of pressure to that of their Indian counterparts.²¹⁶ Seeking to stop India from

²⁰⁹ President Jimmy Carter, Nobel Lecture at 2002 Nobel Peace Prize Ceremony (Dec. 10, 2002), available at http://www.nobelprize.org/nobel_prizes/peace/laureates/2002/carter-lecture.html.

²¹⁰ India thought of nuclear capability as a currency of power similar to the power China had obtained by going nuclear in 1964. Helen Cousineau, *The Nuclear Non-Proliferation Regime: A U.S. Policy Agenda*, 12 B.U. INT'L L.J. 407 (1994).

²¹¹ See VERTZBERGER, *supra* note 20, at 130. It was more to cause deterrence for immediate neighbors (China and Pakistan).

²¹² *Id.*

²¹³ "While the United States has negotiated bilaterally on proliferation issues with Third World countries in the past, the negotiations usually result in blackmail, with the United States making key concessions in return for dubious pledges." Michael Dutra, *Strategic Myopia: The United States, Cruise Missiles, And The Missile Technology Control Regime* 14 J. TRANSNAT'L L. & POL'Y 58 (2004).

²¹⁴ *See id.*

²¹⁵ The U.S.-North Korea nuclear negotiations resulting in the 1994 Agreed Framework and the concessions granted after North Korea launched a medium-range ballistic missile in 1998 are illustrative as to why the United States should not deal bilaterally with potential proliferators.

²¹⁶ "Though the world of national security is an elite preserve, it is evident that those who make foreign policy decisions always have an eye on the public reactions." Richard J. Barnet,

nuclear testing is considered less emotional and more tactical. "In mustering public support for national security policy, national security managers find it necessary alternately to frighten, flatter, excite, or calm, the American people. They have developed the theater of crises into a high art."²¹⁷

But at the same time even in America, a strong *national will* is acknowledged to be a crucial element of national power, an important chip in the game of nations.²¹⁸ History has shown the United States has used power as a diplomatic tool in negotiations even with close allies.²¹⁹ This begs the question, are these not just public views or beliefs? How do they have impact on negotiations? Do they constitute a part of the definition of 'culture'?²²⁰

Harold Nicolson divides modern diplomacy theories into two categories: The 'warrior' or 'heroic' theory,²²¹ which regards diplomacy as another war resorting to another means, and the 'mercantile' or 'shopkeeper' theory, which regards it as playing the role of helper."²²² Over the nuclear issue, both the United States and India have shown differences in their approaches. For example, the United States followed the mercantile or shopkeeper in the negotiations between U.S and India in 1995. By contrast, in the second U.S.-North Korea nuclear negotiations in 2002,²²³ the United States assumed the role of helper.²²⁴ However, like Korea, India

How The Government Uses The Press To Manipulate Public Opinion, in Conflict in American Foreign Policy - The Issues Debated 145 (Don L. Mansfield & Gary J. Buckley eds., 1985).

²¹⁷ *Id.*

²¹⁸ See RICHARD J. BARNET, *THE MANIPULATION OF PUBLIC OPINION IN THE ROOTS OF WAR* 266 (1972).

²¹⁹ CHARLES COGAN, *FRENCH NEGOTIATING BEHAVIOR DEALING WITH LA GRANDE NATION*, 211 (2003) ("[A]lthough the U.S. actions in the Security Council were regarded as cavalier, the French on the other hand seem not to have fully realized that President Bush considered it in the U.S. vital national interest to threaten to go to war with Iraq.").

²²⁰ See KAUR, *supra* note 33, at 52 ("[N]uclear knowledge is deemed alien to the Indian landscape, even though Indian nationalists see the development of nuclear technology as part of the *swadeshi* discourse.").

²²¹ In this theory diplomacy is treated like military tactics. See Song Jong-hwan, *North Korean Negotiating Behavior: A Cultural Approach*, 15 E. ASIAN REV. 2, 94 (2003). The merchant theory is based on the belief that compromising with enemies is, in general better than complete defeat.

²²² *Id.*

²²³ See Kim Do-Tae, *supra* note 105, at 4-6; Park Jong-chul, *Pyongyang-Washington Conflict Structure*, 12 UNIFICATION POL'Y REV. 127 (2003).

²²⁴ For example in the case of North Korea the political culture is believed to be factor in "the militant negotiating style of the North Korean delegates. It differs markedly from South Korea's style, despite a variety of other similarities such a national history, language, Confucian influence, and Japanese colonialism. What follows will examine the impact of political culture on the characteristics of North Korea's negotiation style." Do-Tae, *supra* note 105, at 91.

follows the warrior or heroic theory.²²⁵ The local Indian sentiment is that the U.S. is hypocritical.²²⁶ It led the world in nuclear power,²²⁷ and decided not to ratify the CTBT. This, some believe, has had a major impact on “how other nuclear rogue states such as Korea, Iran and Iraq will decide on the CTBT.”²²⁸ Many in India view this as a misuse of hegemony.²²⁹ Secondly, it is seen as a ‘double diplomacy’ stand by the U.S., increasing the tension between India and Pakistan. For example, by providing armed supply to Pakistan on one side, U.S. actions supported the speculation that America is helping Pakistan over the military support.²³⁰ Hence the Indians, like the Koreans, have considered this “power tactic” by the United States something of a double standard.²³¹

Awareness and appreciation of the different cultures that come to the bargaining table can make a big difference in the outcome of negotiation.²³² With the increasing tensions of the nuclear

²²⁵ Both countries have double-edged objectives. One is to obtain security assurances for the regime and economic assistance from the U.S., leading to a genuine negotiations and an agreement. The other purpose was to maintain nuclear capability through a nuclear freeze, rather than complete dismantling. See Do-Tae, *supra* note 105, at 7–8. In case of India another objective is to gain legitimacy over genuine security threats.

²²⁶ Kuchta notes that India’s concerns are more stringent and apprehensive. It stipulates that the nuclear powers particularly the “Big Five”, should work toward full nuclear disarmament to make India more equal and secure in the world community. See Kuchta, *supra* note 18, at 345–46. Indian Foreign Minister Jaswant Singh, Article Submitted to Foreign Affairs; *India’s nuclear doctrine: A Pakistani perspective*, Foreign Minister of Pakistan read at Foreign relations in Washington, D.C., available at http://www.pak.gov.pk/personal/main/india_doctrine.htm (last modified Sept/Oct 1998).

²²⁷ See Kuchta, *supra* note 18, at 345.

²²⁸ *Id.* at 346. See also Sophia Williams, *Brüstle v. Greenpeace: The Court of Justice of the European Union Interprets the Term “Human Embryo” Widely, Restricting Member States’ Discretion to Pass National Patent Legislation for Biotechnological Inventions*, 20 TUL. J. INT’L & COMP. L. 571 (2012).

²²⁹ It is unlikely that India will sign the CTBT until the U.S. ratifies it. India and Pakistan, by wide agreement, are not now under as much pressure to sign the treaty, even though experts believe that the tensions between these two countries have made their region a potential ground for nuclear conflict. *Id.* at 333, 359.

²³⁰ The argument is if the U.S. has started a war against ‘global’ terrorism, then it should be concerned about the supplies that reach such organizations.

²³¹ “In India, the increased visibility of nuclear power is exemplified by National Republic Day parades of Agni ballistic missile warheads.” See Kaur, *supra* note 33, at 54.

²³² Negotiations on the CTBT covered political and technical aspects at the high degree of specialization. In order to cope institutionally with this challenge, the negotiation forum and its participating governments were bound to dispatch representatives of different professional cultures to the conference table. Did they cover the viewpoint of local citizens? Kaur, in her essay on ‘Nuclear Knowledge’ observed: “this chapter considers the nuclear issue largely from the viewpoint of non-scientists and non-politicians, that is, from the more local perspectives of Mumbai residents who are just as affected by India’s decision to enter the nuclear arms race as are nuclear experts and government representatives.” Kaur, *supra* note 33, at 53.

race around the world, studying the impact of culture on such negotiations is critical. While most of the literature on the arms race and on negotiation has devoted relatively little attention to these aspects of negotiation process,²³³ such process may help in overcoming impasses and overcoming future nuclear weapon tests.

²³³ P. TERRENCE HOFMANN, *ARMS CONTROL AND ARMS REDUCTION IN INTERNATIONAL NEGOTIATION* 270 (Victor A. Kremenjuk ed., 1991).

