

## Negotiating with the Enemy

### The United States–Taliban prisoner swap and whether negotiating with the enemy should ever be off the table

BY PON STAFF — ON APRIL 15TH, 2021 / DEALING WITH DIFFICULT PEOPLE



Should negotiating with the enemy always be off the table? The 2014 Bergdahl exchange offers insights for negotiators who are deciding whether to do business with a known enemy.

On May 31, 2014 the White House made the surprise announcement that the Taliban had released Sergeant Bowe Bergdahl, the sole American prisoner of war in the 13-year Afghan conflict, in exchange for five Taliban detainees who had been held for years at Guantánamo Bay, Cuba. The intricate, top-secret negotiations behind Bergdahl's release unfolded over the course of three years, as detailed in a *Wall Street Journal* article by Adam Entous and Julian E. Barnes.

#### A slow and secretive start

In June 2009, Bergdahl wandered off his base in the Paktika Province of Afghanistan under murky circumstances. He was reportedly captured by the militant Haqqani Network, which is linked to the Taliban, and then held in Pakistan.

Over a year later, in November 2010, U.S. and Taliban officials met in Munich to discuss Bergdahl's possible return. At that meeting, the Taliban asked U.S. officials to trade six Afghan Taliban prisoners from Guantánamo, one of whom later died in custody, for Bergdahl.

Direct talks over Bergdahl's release halted in early 2012 because of a new, more stringent U.S. law on prisoner releases and objections from Afghan president Hamid Karzai. But indirect communications continued, with the government of Qatar serving as mediator, according to the *Journal*.

#### An agreement emerges

In September 2013, the Taliban secretly informed the White House through Qatari officials that it wanted to renew the prisoner-swap negotiations. Asked for proof that Bergdahl was alive, the Taliban sent a video in which he looked physically frail. Bergdahl's weakened appearance "galvanized" a recommitment to bringing him home, according to one Obama administration official, as did fears in the U.S. military that Bergdahl's release would be harder to secure after the scheduled drawdown of U.S. troops from Afghanistan in late 2014.

In January 2014, U.S. diplomats flew to Kabul to assure Afghan officials that their planned negotiations with the Taliban would be limited to a potential prisoner swap and not include broader issues regarding Afghanistan's future. Then the United States negotiated with Qatar for assurances that the five Taliban detainees would not be able to return to battle after leaving Guantánamo.

Negotiations between the Taliban and a U.S. team comprising State Department, Pentagon, and White House National Security Council officials got under way in Doha, Qatar, in mid-May. The Qataris served as mediators, shuttling between the two sides with messages and proposals. The deal was sealed when the emir of Qatar promised President Obama by phone that the released Taliban prisoners would be closely monitored.

ANNEX 3

### **An uneventful transfer**

As a Qatari team waited at Guantánamo Bay, the United States and the Taliban negotiated the prisoner transfer, agreeing on a location, the number of forces to be present, and other details. The Afghan government was kept in the dark for fear Karzai would try to scuttle the deal, according to the *New York Times*.

On the morning of May 31, U.S. Special Operations Forces took helicopters to the meeting place in eastern Afghanistan, where Taliban members were waiting on the ground with Bergdahl. The handover was quick and uneventful. Once in the air, the U.S. commandos sent word that the five Taliban detainees could be turned over to the Qatari officials. The released Taliban prisoners were flown back to Qatar, where they are subject to a one-year travel ban and security restrictions.

### **"Torturous" reasoning?**

The transfer set off a fierce debate in the United States, with some arguing that the trade violated long-standing U.S. policy against negotiating with terrorists and others saying that the military has a duty to bring its troops home at any cost.

Appearing before the House Armed Services Committee, U.S. defense secretary Chuck Hagel said that because the White House negotiated not with the militant Haqqanis that held Bergdahl but with the Taliban—a U.S. enemy but not a designated terrorist group—the trade was perfectly legal. Congressman John Kline called this reasoning "torturous," a view shared by other Republicans.

### **Dealing with the enemy**

The negotiation to free Bergdahl raises the broader issue of whether to do business with someone you consider an enemy. Deciding categorically never to negotiate with an enemy is typically a mistake, Program on Negotiation chair Robert Mnookin writes in his book *Bargaining with the Devil: When to Negotiate, When to Fight* (Simon & Schuster, 2010). Because negotiation can be so effective in ending a protracted conflict, it should rarely be off the table.

Before deciding not to negotiate with an enemy, we should reason through three key challenges, advises Mnookin. The first challenge is to identify and avoid emotional traps, which can cause us to irrationally shun negotiation. For example, tribalism, a common emotional trap, causes us to view our own side as familiar and reliable and out-groups as suspicious and unworthy of our trust. Tribalism is often based on differences in group identity, such as language, religion, race, ethnicity, or shared history. Another emotional trap that can lead us astray is demonization, or the tendency to see the other side as evil—not just guilty of bad acts, but bad to the core.

The second challenge is to analyze the costs and benefits of negotiating with the enemy as rationally as possible. This process involves answering the following key questions, writes Mnookin:

- 1. Interests:** What are my interests in the negotiation? What are my adversary's interests?
- 2. Alternatives:** What are my and my adversary's alternatives to negotiation?
- 3. Potential negotiated outcomes:** Are there any potential deals that could satisfy both sides' interests better than our alternatives to negotiation?
- 4. Costs:** What costs will the negotiation entail (including financial, time, and reputational costs)? Might the negotiation set a bad precedent?
- 5. Implementation:** What are the odds that we will be able to implement any deal we might reach?

This framework should add more clarity to the decision of whether or not to engage with an enemy.

The third and final challenge is to address the ethical and moral issues that often surround the decision of whether to negotiate with an enemy. Honor, integrity, and identity can be legitimate factors to consider, writes Mnookin in *Bargaining with the Devil*. However, it's important to base our moral judgments not only on intuition but the type of analysis outlined above. If you are acting solely on your own behalf, you can feel free to allow your personal values to trump reasoned analysis and avoid negotiating with an enemy. But if deciding not to negotiate might harm those you represent—such as your family, coworkers, or your fellow citizens— you may have a greater moral obligation to negotiate.

## Lessons learned negotiating with the enemy

When you are thinking about negotiating with the enemy and opening negotiations with an adversary, in addition to following Mnookin's framework, you might also consider applying the following specific lessons from the Bergdahl negotiation:

**1. Minimize risk.** Though its negotiations with the Taliban were inherently risky, the United States took steps to minimize potential dangers, such as negotiating through a trusted mediator—the government of Qatar—and carefully planning every step of the prisoner exchange.

**2. If the clock is ticking, keep things simple.** Obama administration officials originally had hoped to frame Bergdahl's release within a discussion of broader issues with the Taliban. Eventually the Americans recognized they could increase the odds of meeting their immediate goal—getting Bergdahl home—by limiting the scope of the negotiation.

**3. Learn from the experience.** From the negotiations, the White House learned the Taliban is capable of dealing in good faith and also that the organization has a well-organized command-and-control system—information that could prove useful in the future.

**Do you think there are certain situations where it's OK to negotiate with the enemy? Leave a comment below and explain why or why not.**

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