The Soldier and the Sheik: Lessons from Negotiating in Iraq

David M. Tressler*

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* Juris Doctor, Harvard Law School; Hewlett Research Fellow, Harvard Negotiation Research Project of the Program on Negotiation at Harvard Law School. This paper was funded by the Harvard Negotiation Research Project through a grant from the William and Flora Hewlett Foundation. The author would like to thank the U.S. Army and Marine Corps officers who discussed their experiences negotiating in Iraq and the following individuals who provided assistance in discussion, advice, debate, and suggestions: Robert C. Bordone, Deputy Director of the Harvard Negotiation Research Project and Thaddeus R. Beal Assistant Clinical Professor of Law, Harvard Law School; Dr. Douglas V. Johnson, Research Professor of National Security Studies, Strategic Studies Institute of the U.S. Army War College; James McCallum, Professor, U.S. Army War College; Major John Clearwater, United States Army, National Training Center, Fort Irwin, California; Major Jonathan Velishka, United States Army, National Training Center, Fort Irwin, California; Dr. Colonel George J. Woods III, Director of Public Administration, U.S. Army War College; and Roger Fisher, Samuel Williston Professor of Law, Emeritus, Harvard Law School.

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Introduction

The American military's mission in Iraq requires a set of skills and outcomes that are very different than the traditional warfighting for which soldiers are trained. These include negotiation. U.S. soldiers in Iraq – from junior to senior leaders – conduct thousands of negotiations with local leaders while pursuing tactical and operational objectives that can affect the overall strategic direction of the U.S. mission in that country. Negotiation has become for many military leaders, particularly the increasingly important lower level leaders on the ground, a daily task in their role of helping to stabilize, secure, transition, and reconstruct Iraq. As long as U.S. troops operate under conditions like the ones they currently face while conducting a *Stability, Security, Transition, and Reconstruction* (SSTR)

Operation,[1] negotiation will continue to be a common activity. Yet even given the prevalence of negotiation in the current operating environment, there has been no systematic effort to study the negotiating experience of the American military in Iraq or Afghanistan or to understand negotiation's increasingly important role in accomplishing missions. More importantly, there has not been enough attention paid to how effective negotiation could be better leveraged to achieve results traditionally sought through the use of force.

The United States is engaged in two major operations abroad in which the government's priorities are to establish and maintain stability and security, affect transition to local governance, and reconstruct the country's infrastructure and institutions. While such SSTR operations could be, and are, undertaken by a variety of U.S. governmental institutions, the primary instrument for conducting the current SSTR operations in Iraq and Afghanistan is the United States military.[2] These operations command substantial human, financial, and intellectual resources and have challenged U.S. institutions to think differently about the way they have traditionally operated. The U.S. Army and Marine Corps, in particular, are required by the circumstances to adapt to and execute a variety of different missions that are often very different than the ones for which their soldiers have trained.

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1. *See* DEP'T OF DEF., DIRECTIVE NO. 3000.05: MILITARY SUPPORT FOR STABILITY, SECURITY, TRANSITION, AND RECONSTRUCTION (SSTR) OPERATIONS 1-4 (2005). SSTR is the comprehensive U.S. Government term for operations following conflict that are necessary to lead to sustainable peace, while advancing U.S. interests. *Id.* *See also* NAT'L SECURITY COUNCIL OF THE U.S., NATIONAL STRATEGY FOR VICTORY IN IRAQ 3-5, 7-9 (2005) (explaining how SSTR operations are to be applied in Iraq).

2. Military support for or participation in SSTR usually takes the form of Stability and Support Operations (SASO), the goals of which are typically to provide the local population with security; restore essential services; meet humanitarian needs; and develop indigenous capacity for securing essential services, a viable economy, rule of law, democratic institutions, and a robust civil society. DEP'T OF DEF., *supra* note 1, at 6; *see also* DEP'T OF THE ARMY, FIELD MANUAL NO. 3-07: STABILITY OPERATIONS AND SUPPORT OPERATIONS 1-1 to -7 (2003) [hereinafter SASO FIELD MANUAL] (defining and describing both Stability and Support Operations); DEP'T OF THE ARMY, FIELD MANUAL 3-0: OPERATIONS chs. 9, 10 (2001) (listing characteristics and types of Stability and Support Operations). SSTR also include reconstruction operations. Operations comparable to the ones in which the U.S. military is engaged are also known as peace operations, stability operations, and/or stabilization and reconstruction operations. *See* CTR. FOR TECH. & NAT'L SECURITY POLICY, NAT'L DEF. UNIV., TRANSFORMING FOR STABILIZATION AND RECONSTRUCTION OPERATIONS 3-4 (Hans Binnendijk & Stuart E. Johnson eds., 2004); U.S. ARMY PEACEKEEPING & STABILITY OPERATIONS INST., U.S. DEP'T OF STATE & U.S. INST. OF PEACE, SYMPOSIUM REPORT: STABILITY OPERATIONS: WHERE WE ARE AND THE ROAD AHEAD 7 (2004); BRIAN G. WATSON, STRATEGIC STUDIES INST., RESHAPING THE EXPEDITIONARY ARMY TO WIN DECISIVELY: THE CASE FOR GREATER STABILIZATION CAPACITY IN THE MODULAR FORCE 7-8 (2005).

In Iraq the proportion of time that U.S. military units spend in non-kinetic operations (i.e. those not involving the use of lethal force) relative to kinetic operations (i.e. those that use potentially lethal force) is substantial, and for some units in some locations in Iraq, a significant majority of their time.[3] Non-kinetic operations are a critical part of mission success in Iraq. The prevalence of civil-military interaction in the context of SSTR operations results in a significant number of interactions that can only be characterized as negotiations. These negotiations have tactical importance and sometimes operational significance in Iraq because of the role they play in most non-kinetic operations, in which U.S. soldiers are focused on such objectives as strengthening local political institutions or securing information and intelligence.[4] They can also play a role in kinetic operations. In an important way there is more at stake in a kinetic operation than in any one negotiation. Threats to Iraqis, U.S. troops, or stability in general are more immediate and lethal. Lives are at stake. The U.S. military rightly focuses its training efforts on preparing for kinetic operations. Yet, there are many times when negotiations arise amid operations that often end up turning kinetic or have the potential to do so, such as cordon and searches, raids, checkpoints, and foot patrols. Negotiations are sometimes the last chance to prevent a situation from turning lethal. This means they are sometimes the last chance for U.S. troops to solve a problem in a way that may pose less risk of creating more enemies than the goal of the operation is worth.

In many cases, negotiation may be one of the primary tools the U.S. military uses to achieve mission objectives. Even when there is not a risk of immediate use of force, negotiations can contribute to accomplishing the stated objectives of the U.S. in Iraq: involving Iraqis in creating, establishing, legitimizing, and running their own

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3. *See* U.S. ARMY CTR. FOR ARMY LESSONS LEARNED, INITIAL IMPRESSIONS REPORT No. 04-13: OPERATION IRAQI FREEDOM STABILITY OPERATIONS-SUPPORT OPERATIONS, INFORMATION OPERATIONS, CIVIL MILITARY OPERATIONS, ENGINEER, COMBAT SERVICE SUPPORT, at ii-iii (2004) [hereinafter 2004 CALL REPORT]. There is no doubt that as long as U.S. troops operate in Iraq and face an insurgency and sectarian violence, negotiation will be a common activity. More importantly, the lessons from the military's experience in Iraq can be helpful in future operations with SSTR character.

4. *See* CTR. FOR TECH. & NAT'L SECURITY POLICY, *supra* note 2, at 31 ("What the Army and Marine Corps can do in the post-conflict environment is no less important than what they do in war."); Associated Press, *Rumsfeld Acknowledges U.S., Insurgents Met: Confirmation Follows Newspaper Account of 'Face-to-Face' Meeting*, MSNBC, June 27, 2005, http://www.msnbc.msn.com/id/8359553/.

government and security, implementing an effective counterinsurgency plan to establish stability and security, and reducing the risks to American soldiers.

For this reason, such challenges have begun to inform the Army and Marine Corps' training efforts, but the U.S. military's improvements in post-conflict capabilities have nevertheless not kept pace with its improvements in warfighting.[5] The U.S. military has adapted and started to train and prepare for Iraq's SSTR operation in a variety of new ways. The U.S. Army's new pre-deployment training in negotiation is an important development that reflects a "mindshift" within the Army at the tactical level.[6] But the skill and practice of negotiation continues to occupy a very minor role in pre-deployment training for SSTR operations. The time spent training for negotiations is still not sufficient given the amount of time that soldiers and commanders will actually spend negotiating with local Iraqi leaders and in light of the importance of those negotiations to mission success.

The armed services have centers for lessons learned, combat training centers, and a variety of schools for continued education, training, and development of their soldiers and leaders. But there has been no formal study of the negotiating experience that U.S. military officers and non-commissioned officers have gained over the course of their tours in Iraq or Afghanistan that applies the broader field of negotiation theory to the practical needs of the U.S. military in conducting those negotiations.[7] This paper attempts to fill the gap by (1) analyzing the negotiations described in narrative interviews conducted in late 2005 and 2006 with officers who had recent experience in Iraq or Afghanistan and (2) examining the pre-deployment training currently conducted at the U.S. Army's National Training Center.

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5. Ctr. for Tech. & Nat'l Security Policy, *supra* note 2, at 3.

6. Interview with Major RP, U.S. Army at Nat'l Training Center, Fort Irwin, Cal. (Mar. 2, 2006) (discussing the enhanced focus on information operations). The names of the interviewees have been made anonymous for their protection. Their names and the transcripts of their interviews are on file with the author and the Harvard Negotiation Law Review.

7. There appear to be only ad hoc efforts such as the U.S. Army National Training Center's use of a negotiation curriculum adjusted by the personal experience of the lead negotiation trainer, who was in Iraq during the invasion and the early months of OIF. The U.S. Army Center for Army Lessons Learned collects best practices submitted online by soldiers and officers. This system, to which the author generally did not have access, relies on voluntary submissions. The information collected, in the words of one field grade officer at the National Training Center, "lacks analytical rigor."

It is not easy to reorganize and rethink the way soldiers conduct missions, but it is necessary for the Army and Marine Corps to prepare for the missions they will be called upon to accomplish in the new strategic environment of the 21st century.[8] The costs of not adapting to the new roles soldiers are being asked to play are high, because they will undoubtedly continue to play similar roles in the future.[9] Those new roles will involve negotiations with local civilian leaders. Yet there has been little training focus on preparation and strategy at the tactical level for such engagements when they may in aggregate take a significant proportion of a unit's time.[10] More importantly, these engagements may have substantial value to the unit in achieving its objectives in its local area of responsibility, operational value to the U.S. military across Iraq, and even be of strategic importance.[11] In such nation-building SSTR operations, every junior leader is a "strategic corporal" and all officers, from lieutenant to general, are expected to be adaptable, flexible leaders who are prepared to accomplish their missions in what is often a confusing, tense, unfamiliar environment.[12] There are many scenarios that cannot be anticipated for which soldiers must call upon the judgment, adaptability, and tactics, techniques, and procedures (TTPs) that the Army or Marine Corps has trained them to use. However, when it is inevitable that soldiers will repeatedly need to negotiate with civilians, it only makes sense to train them to do it well and to provide negotiation TTPs based on proven theory from the field of negotiation research.[13] I offer several recommendations – based on analysis of the interviews and on negotiation literature – for U.S. officers to consider when negotiating with local civilian and military leaders, for U.S. military trainers to consider when reviewing their pre-deployment negotiation training curriculum, and for the Army and Marine Corps training and doctrine commands to consider when planning and structuring pre-deployment training.

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8. *See* Steven Metz & Raymond Millen, *Intervention, Stabilization, and Transformation Operations: The Role of Landpower in the New Strategic Environment*, PARAMETERS, Spring 2005, at 41, 51; CTR. FOR TECH. & NAT'L SECURITY POLICY, *supra* note 2, at 87-96.

9. *See* Metz & Millen, *supra* note 8, at 51.

10. *See* CTR. FOR TECH. & NAT'L SECURITY POLICY, *supra* note 2, at 89.

11. *See id.*

12. Tactical and individual decisions can have "strategic implications" because soldiers on the ground are the face of U.S. policy. *See id*. Hence, they can be "strategic corporals" – lower-level leaders who can affect the direction or success (or failure) of U.S. policy through their decisions on the ground.

13. *See id.* at 88 (suggesting that the U.S. military develop "mission essential task lists" (METL's) for these operations, just as it has for combat operations).

A. *Research Sample*

This study is based on interviews with military officers. Their experience includes thousands of negotiations in Iraq and Afghanistan which they conducted with civilian and military Iraqi or Afghan leaders, usually local mayors, sheiks, tribal leaders, police chiefs, or town council members. Some were conducted in formal meetings, some informally on the street. The issues negotiated reflect the entire range of challenges and priorities that the American military has faced and continues to face in its ongoing mission in Iraq. Some negotiations related to security concerns, information about insurgents or terrorists, cooperation in supporting elections, or support for American and Iraqi military and police security efforts. Many negotiations were over cooperation with, or the scope of, reconstruction efforts. Some negotiations involved the terms of a reconstruction or supply contract. Others were negotiations with newly-established councils over governance issues in their towns or neighborhoods. Still other negotiations were over detainees or hostages.

The negotiations discussed by the interviewees reflect the experience of the U.S. military throughout the entire period of its occupation of Iraq that can be characterized as an SSTR operation – from the time that the U.S. declared victory in the invasion through the current efforts to support Iraqi civilian government and leadership and establish Iraqi security forces.[14] Except for one who spent a year in Afghanistan during Operation Enduring Freedom (OEF), all of the officers served in Iraq during Operation Iraqi Freedom (OIF).[15] Their time of service spanned from the initial invasion in March, 2003 to January, 2006 and time periods in between. The officers include U.S. Army active duty officers or former officers, one former member of the National Guard, and officers or former officers of the U.S. Marine Corps. They include infantry, field artillery, civil affairs, transportation, and armor officers.[16]

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14. All but one of the interviewees served in Iraq since 2003, and Iraq is therefore used here as the representative example from which the paper generalizes to SSTR operations more broadly, although some of the findings may be limited to Iraq.

15. For the sake of simplicity, I refer to any iteration of OIF as "OIF" instead of, for instance, "OIF IV."

16. There are no battalion or brigade commanders represented in the sample, but many of the officers participated in and prepared for negotiations between such commanders and Iraqi leaders. In fact, this disproportionate number of lower-level leaders is consistent with the high proportion of negotiations in Iraq in which the member of the U.S. military who is negotiating with an Iraqi civilian leader is not a battalion or brigade-level commander but a junior officer or NCO.

B. *Summary of Findings and Recommendations*

The narrative interviews with United States military officers provide an opportunity to take a structural approach to studying military-civilian negotiations in SSTR operations by examining the key elements of such negotiations.[17] Analysis of the interviews identified three key elements in these negotiations between U.S. military officers and local civilian leaders that have particular importance for their outcomes. First is the context in which SSTR negotiations take place and which can make these negotiations especially unique and demanding. Second, culture is an important, but relative, or variable, factor in such context; it can significantly affect the conduct and outcome of a negotiation, or, more surprisingly, have little effect. Third, the element of power is shaped by a variety of factors rather unique to military SSTR operations, particularly the tactical or operational value placed on the relationships at stake in the negotiation. How military negotiators exercise their negotiating power makes a difference in how successful they are. The interviews also indicate that while these are unique negotiations taking place under unique circumstances, negotiation theory generally holds true for these as for other negotiations.

Analysis of the interviews, the negotiations recounted in them, and review of an extensive body of negotiation literature provide a basis for suggesting (1) several negotiation tactics and techniques that may enhance the effectiveness of U.S. soldiers negotiating with local civilian or military leaders in SSTR operations – in Iraq and in the future;[18] and (2) several ways to supplement current U.S. military training for soldiers preparing to deploy to SSTR operations such as those in Iraq.

The first half of the paper discusses the findings in each of the three key areas described above and provides recommendations for military negotiators that integrate negotiation research and theory with the lessons learned by interview subjects and analysis of the

17. Structural analysis of negotiations relates the key elements to outcomes and enables a comprehensive approach. *See* I. William Zartman, *The Structure of Negotiation*, *in* International Negotiation: Analysis, Approaches, Issues 71, 72 (Victor A. Kremenyuk ed., 2d ed. 2002).

18. It is reasonable to assume that the U.S. military will in the future continue to deploy to new countries or regions, tasked with a mission to secure, stabilize, support transition, and/or reconstruct a nation, locality, region, or society – as the military has been deployed in the recent past to Haiti, Somalia, Bosnia, Kosovo, Afghanistan, and Iraq. *See* Ctr. for Tech. & Nat'l Security Policy, *supra* note 2, at 3-6.

negotiations described in their interviews. The second half of the paper examines pre-deployment Army negotiation training as conducted at the National Training Center and offers several recommendations.

In the process of examining current pre-deployment training, the second half of the article makes the observation that, given the new strategic environment in which the U.S. military has been and will be asked to operate, current training is impressive but insufficient as it relates to negotiation. There is U.S. Army doctrine that is based on the best practices and theory of negotiation research and literature.[19] The Army's graduate schools have experts in the field and offer educational courses in negotiation.[20] However, the interviews conducted for this research and observations made at the National Training Center suggest that the link is rather weak between (a) written military guidelines for negotiation and the military's expertise in general negotiation education, and (b) mission-specific training prior to deployment.

This article argues that this link should be strengthened, so that those who train soldiers to negotiate are familiar with and apply the best of existing doctrine and negotiation literature to their training curriculum. This article's recommendations complement the military's existing doctrine and training but would require more training, practice, and evaluation than is currently allowed. The recommendations apply the negotiation literature and analysis of the negotiations described in the narrative interviews to the unique and complex environment of SSTR operations in which U.S. officers are negotiating to achieve mission objectives. Most importantly, the recommendations advise the U.S. military to expand its negotiation training in time, content, and number of officers and non-commissioned officers who receive such training.

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19. *See* SASO Field Manual, *supra* note 2, app. at E; The Joint Warfighting Ctr., Joint Task Force Commander's Handbook for Peace Operations, at IV-15 to -20 (1997). The U.S. Army War College's *Peacekeeping and Stability Operations Institute* (PKSOI) is the Army's "center of excellence at mastering peace, stability, and reconstruction operations at the strategic and operational levels." It recognizes the important role that negotiations play in SSTR operations. *See* Negotiations, http://www.carlisle.army.mil/usacsl/divisions/pksoi/politicalNeg.aspx (last visited Dec. 7, 2007).

20. *See* Telephone Interview with James McCallum, Professor, U.S. Army War College, at Carlisle Barracks (Nov. 22, 2005).

I. Lessons From Negotiating in Iraq

A. *The Paramount Importance of Context*

1. *Army and Marine experience in Iraq's Negotiating Context*

Negotiations that take place in SSTR operations like Iraq are dominated by the context within which they are conducted. Such an obvious point almost goes without saying. Yet it is well worth exploring because the context sharply distinguishes these negotiations from other types of negotiations that take place in other settings. Negotiations between U.S. officers and Iraqi civilian leaders often cannot be characterized entirely by dealmaking or entirely by dispute resolution, two very different negotiation paradigms. The context makes it more difficult to apply standard negotiation theory to these negotiations. Yet, as this paper will argue, the fundamental principles described in the negotiation literature still hold true for negotiations in SSTR operations.

The experience of the U.S. officers interviewed, as well as a significant body of negotiation research, provides support for one aspect of the way the Army is now training officers prior to deployment, namely to prepare for a negotiation by understanding the situation in which it takes place.[21] The Army places primary emphasis on achieving situational awareness and a thorough understanding of its area of operations in its negotiation training for units preparing to deploy. This focus on the context within which military-civilian SSTR negotiations take place is appropriate.

A significant majority of the officers interviewed, and all of those with the most experience negotiating, highlighted the importance of understanding the context.[22] One Marine officer who served as the commander of an Iraqi army base near Tall Afar, Iraq negotiated

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21. For instance, one approach suggests that cognition is situated in the particular context and cannot be reduced to individual cognitions. The products of cognition, including accurate perceptions, judgments, as well as biases, are also situated in the context, as is "the very nature of integrative potential in a negotiation . . . ." Leigh Thompson et al., *The Evolution of Cognition and Biases in Negotiation Research: An Examination of Cognition, Social Perception, Motivation, and Emotion*, *in* The Handbook of Negotiation and Culture 32-33 (Michele J. Gelfand & Jeanne M. Brett eds., 2004). *See also infra* Parts II and III.

22. *See* Interview with Major JD, U.S. Army (Mar. 2, 2006); Interview with Captain MM, U.S. Army (Feb 28, 2006); Interview with Captain JJ, U.S. Army (Feb. 28, 2006); Telephone Interview with Major CG, U.S. Army (Mar. 9, 2006); Interview with Captain TS, U.S. Army (Nov. 30, 2005); Interview with Captain JV, U.S. Army (Mar. 1, 2006); Interview with Captain JW, U.S. Marine Corps (Ret.) (Nov. 21, 2006); Written Interview with Captain EH, U.S. Army (Feb. 19, 2006); Interview with Captain DS (Nov. 30, 2005); Interview with Captain BP, U.S. Army (Ret.) (Jan. 16, 2006).

often with a local sheik. He noted that, "If you didn't have a good understanding of the situation, you were flatfooted . . . [and] could be easily taken advantage of, manipulated, or maybe unintentionally promise something that you couldn't deliver on . . . ."[23] It was critical, he said, that he had a thorough understanding of the entire situation, and not just his own position.[24] He believes that his success was limited in a series of negotiations with a local sheik over the use of equipment needed to enhance security at his base, because the sheik may not have been the right person to talk to or may not have been someone who could be trusted.[25] Other soldiers echoed this lesson.[26]

Those who felt unprepared for the task of negotiating learned the importance of understanding the context. An armored cavalry officer expressed what other interviewed officers also articulated: that in business and contractual negotiations with Iraqis they felt the most unprepared because they did not yet have an understanding of the local economy, prices, and the structure of local businesses, among the many other situational factors.[27] An infantry officer who arrived in Iraq with the initial invasion force and was later assigned to civil-military tasks and information operations, discussed – as an example of his lack of preparation for negotiating with Iraqi civilians – a negotiation for the use of a building needed by the U.S. Army. As he was negotiating the rent, he realized he did not know what an Iraqi dinar was worth. He believed that he appeared unprepared when he had to call his unit for the exchange rate.[28] A field artillery officer who was also in Iraq in 2003 noted that they "didn't have the landscape in front of us."[29] Another field artillery officer serving as a civil-military

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23. Interview with JW, *supra* note 22, at 41-42.

24. *Id*. at 30.

25. *Id*. at 12, 20.

26. One emphasized knowing who in the situation has power to act. *See* Interview with Colonel M, U.S. Army (Mar. 1, 2006). Captain JV stressed the importance of knowing who has influence and power locally – the sheik, the mayor, or others. *See* Interview with Captain JV, *supra* note 22. Major JD discussed the need to understand the local dynamics of the area's leaders; for example, whether they are Kurds, Sunnis, or Shiites, and how that affects the dynamics of the local community. *See* Interview with Major JD, *supra* note 22. Captain MM argued that knowing (1) who to talk to and (2) who you are talking to are two of the most important requirements for conducting negotiations in environments like Iraq. *See* Interview with Captain MM, *supra* note 22.

27. Interview with JJ, *supra* note 22, at 25.

28. Interview with JV, *supra* note 22, at 25.

29. Interview with TS, *supra* note 22, at 23.

operations officer in 2004 and 2005 noted his inexperience at negotiating and his lack of knowledge about the Iraqi economy.[30] These simple examples demonstrate the complex realities that soldiers face when they are deployed as part of SSTR operations and are required to negotiate with civilians outside their areas of expertise and training. It makes a deep understanding of the context even more important.

Other negotiations demonstrate the positive impact that an understanding of the context and all of its variable elements can have. For the field artillery officer who started negotiating in Iraq with too little knowledge about the context in which he was dealing, the time he spent negotiating hundreds of reconstruction agreements provided him with not only a facility at negotiating with Iraqi contractors but a reputation as well. That reputation among Iraqis reflected his improvement; contractors knew his limits and knew they could not take advantage of him.[31] In negotiations over the administration of a local hospital, an armored cavalry officer successfully took part in negotiations within a complex set of hidden contextual factors.[32] His U.S. Army unit was responsible for an area several miles outside of Baghdad. It negotiated with a hospital administrator to use more hospital resources to increase hours and services for the general public. The administrator claimed that he did not have enough resources, but the U.S. officers involved knew the hospital was directing a disproportionate amount of resources to preferential treatment provided to local sheiks. These soldiers understood the social and political context in which the hospital operated and the extent to which it had to rely on U.S. Army financial support. They used that knowledge to apply their own and third-party pressure to convince the administrator to increase the hospital's hours and doctors.

This negotiation also demonstrates how an understanding of the local area and culture and the individuals involved in a negotiation – the entire context – can affect one's strength in the negotiation.[33] One officer noted that it is important when negotiating in Iraq to let

30. Interview with BP, *supra* note 22, at 9 ("I would sit there and try to negotiate price. Basically, I would just try to bring them down to something that seemed a little bit more reasonable to me. And really, on the Iraqi economy, I was ball-parking it. I wasn't somebody who was experienced in that sort of thing. I'm a soldier. By trade I'm a soldier.").

31. *Id*. at 26.

32. *See* Interview with JJ, *supra* note 22, at 14-17.

33. Interview with JD, *supra* note 22; *see also* Interview with BP, *supra* note 22, at 26; *cf.* DAVID A. LAX & JAMES K. SEBENIUS, THE MANAGER AS NEGOTIATOR: BARGAINING FOR COOPERATION AND COMPETITIVE GAIN 255 (1986).

your counterpart know that you understand the dynamics of the situation.[34] If they were trying to take advantage of you, it calls attention to their deception, causing them to lose face. Almost all negotiations pose a risk of one party taking advantage of another poorly informed party. For soldiers conducting negotiations in SSTR operations located in different countries with different cultures, languages, currency, customs, traditions, and norms, the potential is even greater and the need to become well-informed even more important. As a U.S. Army trainer with experience negotiating in Iraq directed, "You have to be fanatical about understanding your area of operations. It's what you're going to do for the next year of your life. You wouldn't move into a new house without knowing every nook and cranny of it and getting it inspected. So why don't you move into negotiation with the same intensity?"[35]

The outcome of a SSTR negotiation cannot be understood without understanding the context in which it took place. Effective negotiation in such situations turns on the research and preparation needed to appreciate the many particular elements that make up the entire situation. The context in SSTR negotiations, as in all negotiations, will have many variable elements, including, but not limited to, different individuals, organizations, and structural relationships; different locations, politics, and history; different issues, priorities, and interests; as well as cultural differences, power dynamics, and relationships. Analysis of the interviews conducted for this paper strongly suggests that these latter three elements dominate the context of any particular military-civilian SSTR negotiation, wielding the most influence on how soldiers and sheiks conduct negotiations and the outcomes of those negotiations.

2. *Recommendation: Be Prepared and Strategic When Negotiating and Exercising Power*

First, U.S. soldiers negotiating with local civilian or military leaders in SSTR operations should, in preparing for a negotiation, choose a deliberate approach to conducting the interaction. When considering which approach or strategy to use, U.S. soldiers will, as part of the military decision-making and planning process, consider the tactics needed to execute each strategy and the effects those tactics may have on the outcome. They should ensure that they include in their decision-making all of the many different contextual factors

34. Interview with JD, *supra* note 22.
35. Interview with JV, *supra* note 22, at 17.

that will influence their negotiating and affect the outcome. They should also consider the relationship(s) involved and the military unit's priorities outside of the negotiation that may be affected by its outcome or the tactics used. Whether soldiers focus on power or not, their power in the negotiation will still play a fundamental role in influencing the outcome. They should be strategic about how they demonstrate and exercise that power.[36]

There are numerous options, but they can be grouped into four general strategic approaches described in the negotiation literature:

(1) Focus on power: Alternatively called contending, competition, distributive bargaining, or claiming value.[37]

(2) Focus on interests: Also called problem-solving, collaboration, integrative bargaining, or creating value.[38]

(3) Accommodate: Also referred to as yielding; relevant to a party who values the relationship with his counterpart more than the negotiation's outcome.[39]

(4) Avoid: Relevant when the cost of negotiating is higher than the potential gain from the negotiation, or when a party can achieve the same gain without negotiating.[40]

There are appropriate times for each of these strategic choices, and U.S. soldiers preparing for negotiations should consider the advantages and disadvantages of each.[41] *Focusing on interests* and *accommodating* both offer higher chances of securing agreement than

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36. It may often be wise to downplay the obvious fact of highly asymmetric military power as either a gesture of good will or a way of managing tension and diminishing the chances of conflict escalation. Two officers often removed their vests and left their rifles outside of the room when in safe, well-guarded locations as a way of decreasing the barriers between themselves and their Iraqi counterpart. *See, e.g.*, Interview with Captain RM, United States Marine Corps, at 11 (April 5, 2006) ("I would take some of my gear off and try to be less threatening to these people. I began just to present myself as a human being, because the more you try and hide behind all your armor and your weapons and everything, you're just more threatening. Again, that's just counterproductive.").

37. *See* Dean G. Pruitt, *Strategy in Negotiation*, *in* INTERNATIONAL NEGOTIATION: ANALYSIS, APPROACHES, ISSUES, *supra* note 17, at 85, 85 (citations omitted).

38. *See id*.

39. *See id*. at 85; ROY J. LEWICKI ET AL., THINK BEFORE YOU SPEAK: THE COMPLETE GUIDE TO STRATEGIC NEGOTIATION 59 (1996).

40. LEWICKI, *supra* note 39, at 58.

41. Mnookin et al. suggest that negotiators ask three questions when preparing their strategy. They can be analogized to the military-civilian context: Is this the rare situation when the military truly cannot afford anything but the precise outcome it is demanding, given the relationships, competing priorities, and prospect of future negotiations? How can I create value by exploring trades based on differences in preferences? Are there opportunities to accomplish more than the immediate desired outcome by exploring a broader range of potential agreements that satisfy the soldier

focusing on power. Focusing on power offers a potentially more favorable outcome for the stronger party if an agreement is reached, but an agreement is much more difficult to secure and enforce afterward and entails several risks.

A part of being strategic is preparing for the negotiation and understanding thoroughly the context in which it takes place. That context will shape the negotiation. The preparation taught at the NTC, as discussed in Parts II and III, and other methods of preparation are an important prerequisite to negotiating effectively. They are included in recommendations offered below.

B. *Culture in Context: The Relative Influence of Culture in Military-Civilian SSTR Negotiations*

The narratives of the U.S. officers interviewed for this paper provide a basis for drawing conclusions about the extent to which culture and cultural differences influence the conduct of military-civilian negotiations in the unique and sophisticated context of an SSTR operation.[42] All of the U.S. officers interviewed for this study emphasized the importance of understanding the cultural differences that exist

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as well as the civilian and provide a platform for a continued productive relationship. *See* Robert H. Mnookin et al., Beyond Winning: Negotiating to Create Value in Deals and Disputes 225-26 (2000).

42. This study is consistent with appeals to examine the role of culture together with other contextual factors in negotiation, presenting a dynamic view of culture in negotiation, instead of a static, oversimplified study of group differences. *See* Michele J. Gelfand & Jeanne M. Brett, *Integrating Negotiation and Culture Research*, *in* The Handbook of Negotiation and Culture, *supra* note 21, at 419-22. My study analyzes the interviews for conditions and factors that may make cultural difference more or less influential in military-civilian negotiations in SSTR operations. I have tried to avoid an oversimplified study of culture in these negotiations in favor of studying the role of culture in relation to other contextual variables, such as military power, relationships, and the many conditions that exist in, and define, SSTR operations (the concurrent existence of violence, reconstruction and transition efforts, newly formed civil governing institutions, a foreign military presence, psychology of occupation). Unlike experimental research, this study has the advantage of presenting the multi-level "contextual complexity" in which cross-cultural negotiations take place. *See id.* at 421; *see also* Robert A. Rubinstein, *Cross-Cultural Considerations in Complex Peace Operations*, 19 Negot. J. 29, 32 (2003). The military-civilian SSTR negotiations discussed in this paper provide a rich sample in which individualistic and national culture variables can be studied, as well as the macro levels of analysis involving institutions and social networks (e.g. U.S. military culture, tribal organization) as well as the structure of military occupation. Finally, the method used in this study – narrative interviews – are, in the words of Gelfand and Brett, "essential" to capturing the multi-level, contextual complexity of cultural dynamics. Gelfand & Brett, *supra*, at 425.

between U.S. soldiers and Iraqis.[43] The details of their stories and comments revealed a more complex reality, however – one in which cultural differences interacted with other elements of the overall context, particularly the way in which power was exercised, displayed, or perceived by U.S. military negotiators. Moreover, to say that culture is "important" does not explain how cultural differences actually influence the way in which U.S. soldiers and their civilian counterparts conduct negotiations, or how the presence of culturally different values or norms affect their strategies.[44]

In this section I suggest that: (1) The influence of culture in military-civilian SSTR negotiations can be significant.[45] (2) The influence of culture is, however, dependent on (a) the relative, or variable, influence that other elements in the negotiation's context exert on the parties, including the many different cultures (e.g. national, organizational, ethnic, tribal, political, regional, professional) at play in a negotiation and the many interacting contextual elements described above,[46] and (b) the negotiators' individual personalities and negotiation tactics.[47] Therefore, even in the cross-cultural negotiations of SSTR operations, cultural difference is only one of many factors a U.S. soldier should consider when preparing for a negotiation, and so he should not allow cultural difference to become a barrier to negotiated agreement.

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43. Army and Marine units now include cultural awareness and rudimentary language training of some sort in their pre-deployment preparations, and the combat training centers integrate such training throughout their exercises. Cultural understanding and languages have been central to the military's Special Operations Forces, civil affairs units, foreign-service officers, and language programs for many years. This paper does not document the vast experience these specialties have in interacting with civilians of different cultures. It does not attempt to document everything the U.S military understands about how to operate in cross-cultural situations or about particular cultures. It does not explore the U.S. military's perspective on the influence of culture. Nor is this is a primer on Iraqi culture.

44. Study of the role of culture in negotiation is still relatively young, but scholars in the field have tried more recently to study it directly and apply research from other fields to the topic. Gelfand and Brett's *The Handbook of Negotiation and Culture*, *supra* note 21, is a substantial effort at bringing this research together. *See also* James K. Sebenius, *Caveats for Cross-Border Negotiators*, 18 NEGOT. J. 121 (2002).

45. *See, e.g.*, JEANNE M. BRETT, NEGOTIATING GLOBALLY: HOW TO NEGOTIATE DEALS, RESOLVE DISPUTES, AND MAKE DECISIONS ACROSS CULTURAL BOUNDARIES (2001); Gelfand & Brett, *supra* note 42; Rubinstein, *supra* note 42.

46. *See* Shirli Kopelman & Mara Olekalns, *Process in Cross-Cultural Negotiations*, 15 NEGOT. J. 373, 374 (1999); *see generally* Sebenius, *supra* note 44.

47. *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, *supra* note 21, at 45; Sebenius, *supra* note 44, at 122-26.

1. *Culture Can Matter*

Cultural difference can be a significant factor affecting military-civilian negotiations in SSTR operations.[48] Cultural values, norms, institutions, and ideologies that are not shared by U.S. soldiers and Iraqi civilians may cause each to pay different levels of attention to the issues involved and to each other's interests, to define appropriate behaviors differently, and to interpret situations differently.[49]

Some scholars suggest that three features of culture are related to this variability of negotiation strategy among negotiators from different national cultures: individualism vs. collectivism, egalitarianism vs. hierarchy, and the low-context vs. high-context norm for communication.[50] Another framework identifies five models for understanding the ways in which relations between military officers and others can be culturally influenced: narrative and verbal styles, context style, thinking and reasoning style, information processing (ambiguity) style, and power style.[51] These culturally variable features shape the way people understand their experiences, but they do not determine them.[52] Culture is the "lens" that refracts the issues or disputes to be negotiated.[53]

This means that culture can affect the negotiation. Morris and Gelfand conclude that three factors – the social context, the tasks presented to the negotiator by the conflict or his counterparts, and the negotiator's state of mind – determine whether or not culturally shared knowledge structures are likely to make a difference at the bargaining table due to their cross-cultural variation.[54] These three factors are helpful in identifying the sources of various conditions that may affect a negotiation. For instance, some negotiator biases may be culturally variable because the social judgments they reflect

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48. A useful definition of culture refers to "socially transmitted values, beliefs and symbols that are more or less shared by members of a social group. These constitute the framework through which members interpret and attribute meaning to both their own and others' experiences and behavior." Kevin Avruch, *Culture as Context, Culture as Communication: Considerations for Humanitarian Negotiators*, 9 HARV. NEGOT. L. REV. 391, 393 (2004).

49. *See* BRETT, *supra* note 45, at 7.

50. *See id.* at 15.

51. *See* Rubinstein, supra note 42, at 32-37.

52. *Id.* at 38.

53. *See* Kevin Avruch & Peter W. Black, *Conflict Resolution in Intercultural Settings: Problems and Prospects*, *in* CONFLICT RESOLUTION THEORY AND PRACTICE: INTEGRATION AND APPLICATION 131, 131-32 (Dennis J.D. Sandole & Hugo van der Merwe eds., 1993).

54. Morris & Gelfand, *supra* note 47, at 60-63.

are likely to diverge across cultures.[55] Culture can influence the availability, accessibility, and activation of the social knowledge structures or constructs that inform a negotiator's cognition of the negotiation context.[56] This can lead to negotiators not sharing the same understanding of an issue or the same framework for thinking about the issues involved in the negotiation. Morris and Gelfand use these three factors to predict conditions under which cultural differences will be pronounced (and presumably more influential) or diminished, but the various conditions they cite amount to a conclusion that cultural difference may or may not matter.[57]

The interviews are consistent with this scholarship. Officers described particular cultural differences and norms, mostly national and ethnic, that affected their negotiations with Iraqi civilian leaders by sometimes influencing what strategies they used while negotiating in Iraq. While these are necessarily specific to Iraq, their impact on the conduct of negotiations can be generalized to provide insight into the dynamics of military-civilian negotiations in SSTR operations, as well as possible tactics for, and responses by, U.S. military negotiators.[58]

Most officers said explicitly that it was essential to understand the local customs and culture. Many claimed it was the most important factor, saying that understanding the culture of their counterpart was the most important variable in negotiating successfully. For instance, a Marine commander stationed near Tall Afar noted that without appreciating the culture, the nuances of cultural difference between Americans and Iraqis, and the role within Iraqi culture of the sheik and tribe, "you fail at whatever you need to do."[59]

This is an important observation because cultural differences have sometimes created misunderstanding and even disgust on both

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55. *See id.* at 45-53.

56. *Id.* at 54.

57. For instance, in discussing conditions of the social context which may have an impact on activation of knowledge structures that, in turn, may vary across cultures, Morris and Gelfand demonstrate how contextual all of these variables are. Therefore, they are dependent on context, the facts and issues of the negotiation, and the personal characteristics of the parties a cross-cultural negotiation is. *See id.* at 60-65.

58. This paper takes care not to make too broad a claim with respect to the cultural differences that affect negotiations between the U.S. military and civilians in Iraq. Given the broad experience of the fourteen interviewees, however, the experience described in their narratives appears to be representative and to capture the most pertinent cultural dynamics.

59. Interview with JW, *supra* note 22, at 31, 45. This reflects the necessity of "cultural competence" for successful cross-cultural negotiation. *See* Avruch, *supra* note 48, at 394.

sides of U.S.-Iraqi interactions.[60] A civil-military relations officer assessing the general prerequisite of trust in Iraqi culture acknowledged that "[t]here is not a lot of trust between men in a place like Iraq. However, the appearance of trust (or the societal obligation to demonstrate trust) is almost as powerful as trust itself."[61] Because of their different ways of communicating and relating, U.S. soldiers and Iraqis interpret differently statements made to each other in negotiations and attribute different meanings to them. For example, U.S. soldiers and Iraqi civilians exhibit different notions of commitment and degrees of willingness to make promises.[62] Iraqis are more likely to understand some statements made by U.S. officers to be promises when no promise was intended.[63] U.S. officers negotiating with Iraqi civilians therefore need a sophisticated understanding of their cultural differences and an ability to utilize that understanding effectively and productively.

2. *The Influence of Culture is Relative*

The officers' descriptions of their experience confirm that cultural differences exist between U.S. soldiers and civilian leaders in SSTR operations and that cultural difference has the potential to influence the success or failure of a negotiation from the perspective of the U.S. soldier. The officers emphasize that understanding the relevant cultural styles helped them negotiate.[64] Yet, their experience also uniformly shows that culture's influence on the conduct of any given negotiation is dependent on many other contextual factors. The dynamic, variable interaction of factors, such as the parties' interests, power, constituency demands, potential to apply force, history, politics, psychology, personality, as well as culture, means that no two negotiations will be the same. The influence that culture will have on a negotiation depends on how these factors influence the parties and whether they trigger culturally-specific responses or even

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60. Interview with EH, *supra* note 21, at 4.

61. *Id.* at 10; *see also* Telephone Interview with Lieutenant HB, Wis. Nat'l Guard (Ret.), at 12, 33 (Feb. 16, 2006) (suggesting that trust was relatively low and always contingent on verification).

62. *See, e.g.*, Interview with DS, *supra* note 22, at 17; Interview with JV, *supra* note 22, at 23-26.

63. *See, e.g.,* Interview with Captain IW, (Mar. 2, 2006) at 3; Interview with JV, *supra* note 22, at 7-8; *see also* Interview with RM, *supra* note 36.

64. *Cf.* Rubinstein, *supra* note 42, at 38 (discussing potential conflicts arising from conflicting approaches to peace operations).

override the differences in cultural values.[65] Culture is not always an important factor.

A relationship observed across the interviews – that between power and cultural difference – illustrates just how highly contextual the role of culture is in negotiations, even between two parties as culturally different as American soldiers and Iraqi sheiks. Cultural differences may have less effect in a negotiation when power increases in importance, which happens when the relative power between the parties becomes more imbalanced. In other words, the greater the asymmetry of power between the parties (or perception of such), the greater the chance that the cultural differences between them will play *less* of a role in affecting how the parties negotiate.[66] The stronger party will have the power to ignore or violate the cultural norms of the weaker party with less risk of consequences. As will be discussed in the next section, there are substantial reasons to believe that this would rarely be a productive use of one's negotiating power in the context of a military's relatively long-term SSTR mission.[67] It may also decrease one's power in the negotiation itself, if the weaker party's response leads to an increase in his power.[68] This relationship demonstrates that the influence of cultural difference will be, or can be, minimal in many military-civilian negotiations beyond the cultural niceties of polite negotiators.[69]

The interviews suggest further that biases, perspectives, and the many other conditions that affect negotiation are not always different across cultures. There are three explanations. First, often the general stereotypes of national or ethnic cultures do not apply to individual negotiators who are members of that national or ethnic group.[70]

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65. *See* Kopelman & Olekalns, *supra* note 46, at 374.

66. This is consistent with international negotiation research that suggests that negotiations characterized by large asymmetries of power between the parties may be more efficient. I. William Zartman & Jeffrey Z. Rubin, *Symmetry and Asymmetry in Negotiation*, *in* POWER AND NEGOTIATION 271, 272-74 (I. William Zartman & Jeffrey Z. Rubin eds., 2000) [hereinafter Zartman & Rubin, *Symmetry and Asymmetry*].

67. As discussed below, the relationship between the parties plays an important role and may override this effect.

68. *See* Jeswald W. Salacuse, *Lessons for Practice*, *in* POWER AND NEGOTIATION, *supra* note 66, at 255, 256-57.

69. *But see* Interview with RM, *supra* note 36, at 7, 10 (stating that cultural differences did not matter as long as one was aware of them).

70. The likelihood that an individual will exhibit the most likely (average) group characteristics is actually rather low. *See* Sebenius, *supra* note 44, at 122-26. This "prototypicality error" may be worse than ignoring differences of national culture altogether. *Id.*

Second, while there are cultural differences, there are also similarities, and those similarities may in any given negotiation be more important than the differences.[71] Finally, in many cases, the social knowledge structures informed by culture and reflecting cultural differences may not be activated in a negotiation and never become a factor. Some officers understood this and put culture into context.[72]

Yet, some of the interviewed officers demonstrated a tendency to overemphasize the role of culture in the negotiations they described, which may explain the overwhelming proportion of the officers who said that culture was the most important factor in their negotiations.[73] The same tendencies may have reflected information bias, a widely-studied phenomenon in which negotiators interpret information favorably to their side and exaggerate the other side's position.[74]

Analysis of the narrative interviews in this study suggests that negotiation theory should take neither an entirely universalist nor relativist approach to culture in negotiations. A universalist approach suggests that culture does not matter; negotiators everywhere

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71. One similarity noted in the interviews was the familiarity of communicating in the language of the military. Two officers observed that Iraqi civilians had dealt with an ever-present military for so long that the differences between military and civilian cultures were not a factor in their negotiations. It may have been easier in some ways for U.S. soldiers to communicate with Iraqi civilians than to communicate with other civilians, such as aid workers, who are not used to working with soldiers. *See* Interview with EH, *supra* note 22, at 15; Interview with JJ, *supra* note 22, at 30.

72. The officers interviewed who worked on reconstruction while serving in Iraq uniformly said that money played a powerful role in these negotiations. Money, one officer said, is a "universal language." Interview with DS, *supra* note 22, at 20. They noted that the business character of reconstruction contract negotiations broke through the cultural differences that may otherwise have prevented effective cooperation. *See e.g.*, Interview with BP, *supra* note 22, at 13-14. One officer concluded that in such negotiations, money was the most important lever of power, which he used frequently to help him secure fair prices, guarantees of timely completion, and to enforce standards of construction quality. *See* Interview with EH, *supra* note 22, at 12.

73. A number of officers viewed their counterparts' reluctance to make commitments as exclusively reflecting a cultural norm instead of possibly resulting from the negotiation's failure to meet the Iraqi's interests sufficient to motivate a firm commitment. The cultural dynamic cited is epitomized by Iraqis' use of "Inshallah," which means "God willing" in Arabic. *See* Interview with CG, *supra* note 22, at 31-32; Interview with JW, *supra* note 22, at 38, 45; Interview with MM, *supra* note 22, at 5-7. This could reflect an excessive attribution of Iraqi behavior to national or ethnic culture. *See* Avruch, *supra* note 48, at 405; Sebenius, *supra* note 44, at 126-28 (citing the misguided tendency to view national culture as the indispensable key to explaining and predicting the behavior of one's counterpart and blaming culture for unwanted outcomes instead of focusing on more important contextual factors such as power, economics, or interests).

74. For more on self-serving perceptions of a negotiator's side and partisan perceptions of the other side in the cross-cultural context, see Sebenius, *supra* note 44, at 129.

share the same biases and think about conflict and dealmaking in the same ways.[75] The relativist approach suggests that all of the biases and perspectives pertinent to negotiation vary across cultures, preventing entirely the application of negotiation research from one culture to the negotiators of another culture.[76] The evidence here and a substantial amount of negotiation literature recognizes that neither extreme is realistic. However, that study of cross-cultural negotiations supports a universalistic-leaning notion that there will often be less cultural variance in cross-cultural military-civilian SSTR negotiations than is often assumed.[77]

Finally, U.S. officers negotiating with Iraqis can control and manage the effect that culture has on the negotiation.[78] A number of officers successfully managed the conditions of the negotiations and their own behavior to effectively neutralize a potential barrier to agreement posed by a cultural difference. Or they simply set the conditions of the negotiation to maximize the possibility for an optimal outcome, given the likely influence of a particular cultural norm of which the officer was aware. Several of the officers demonstrated a cultural competence derived from their extensive study of Iraqi national and tribal culture, their astute situational awareness of the area in which they were operating, including the local politics and economy, and their own personal skills.[79] They used this to anticipate, manage, and operate effectively in the cross-cultural environment, often eliminating cultural difference as a factor or barrier to agreement. Morris and Gelfand arrive at a conclusion that is supported by this analysis of this study's interviews – that culture can have an important effect on a negotiation but is highly contextual and can even be manipulated, managed, or diminished by astute and

75. *See* Morris & Gelfand, *supra* note 47, at 53.

76. *Id.*

77. For a similar perspective, *see generally*, Sebenius, *supra* note 44

78. *See generally* Interview with RM, *supra* note 36 (showing interests, trust, and relationships to be paramount, and cultural differences largely irrelevant, in his negotiations); Interview with DS, *supra* note 22, at 22 (stating that it was important to "not let [cultural awareness training] push around the way business should be done. Like, we're there to do a job, and either you can help us do that job or not . . . . This is what I need and if you can't provide that, then I'm sorry. Then I will look elsewhere. It's no different than how we would operate here.").

79. Several officers believed that personality was as likely to have a powerful effect on a negotiation as culture. *See, e.g.*, Interview with JW, *supra* note 22; Interview with EH, *supra* note 22; Interview with BP, *supra* note 22; Interview with RM, *supra* note 36. *See also* Kopelman & Olekalns, *supra* note 46, at 375-76 (discussing the importance of rapport).

effective negotiators.[80] It may often be advantageous, for instance, to effectively anticipate a cultural norm in order to diminish its effect or complement it to the advantage of securing a commitment, instead of mimicking the Iraqi counterpart's culture.[81]

3. *Recommendation: Understand, Manage, and Adapt to Cultural Differences*

One of the major lessons from this study is that U.S. soldiers operating in SSTR environments conducting frequent negotiations with civilian leaders in the local population must operate with an acute awareness – based on a thorough understanding of the culture – of the many contextual factors that can and might influence their negotiations. These factors include conditions that are culturally variable and may present cultural barriers to an agreement. This will allow skilled negotiators to control or manage some of these contextual factors and cultural conditions, in order to maximize the potential for an optimal outcome.

First, soldier-negotiators operating in an SSTR environment – as opposed to an exclusively kinetic, combat operation – must understand the culture of their counterparts. The U.S. military's integration of cultural awareness into its pre-deployment training suggests its belief that cultural awareness is not only diplomatically beneficial, but that soldiers can utilize that knowledge tactically in a negotiation. The soldier should not only understand the "culture" in a generic way but should understand what cultural variables will be potentially in play in a negotiation, given the other factors making up the context. He should consider what elements are present in the negotiation's context that may accentuate or diminish such cultural variables.

U.S. soldiers should also be aware that context may change the cultural variables and reduce or enlarge the cultural differences between the parties. For instance, Rubinstein has noted in the context of peace operations that failure to pay attention to the changing nature of normative expectations can lead to counterproductive consequences.[82] The unique context of SSTR operations means that

80. *See* Morris & Gelfand, *supra* note 47, at 64-65 (noting that their theory shows how negotiators can control and mange cultural influences as active participants in creating and managing culture).

81. *See* Sebenius, *supra* note 44, at 130.

82. Rubinstein, *supra* note 42, at 43.

generalized theories of culture and negotiation may not apply, because cultural norms can themselves change in response to new social and environmental conditions, such as the occupation of one's country and disintegration of political and governmental order and institutions.[83] That is, the context of the SSTR operation may alter the cultural skeleton of the negotiation, influencing culture rather than culture influencing the negotiation.[84] Some officers noted that Iraqis adapted to the communication styles of U.S. soldiers, diminishing the importance of certain cultural norms. Context may rule.

Second, a U.S. military negotiator can use this understanding of the cultural differences to manage his behavior and try to prevent activation of certain culturally variable factors that could present an obstacle to the negotiation.[85] This requires a thorough understanding of the other's culture and an ability to reflect on one's own cultural and cognitive biases and control them.

Third, a U.S. soldier-negotiator can use his understanding and awareness to control conditions that may trigger the activation of his counterpart's cultural responses, such as setting the atmosphere, controlling the pace, or demanding proof.[86] The interviews suggest several other ways that U.S. military negotiators could do this in the particular setting of SSTR operations.

A soldier's ability to navigate the cultural dynamics inherent in these negotiations can have an effect on the success or failure of the negotiation. The U.S. military is already aware of this and has embraced the need to better understand the culture with which it interacts in SSTR operations such as those in Iraq and Afghanistan.[87]

C. *Power and Relationships*

The study's interviews support and reflect the view of the negotiation literature that each party's power in a negotiation is highly context-dependent. Analysis of power in these military-civilian SSTR

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83. *See id.* at 42. The changes that resulted from OIF and the ensuing SSTR operation may have precipitated changes in cultural norms because they cause fractures in traditional attitudes and the normative order surrounding social relationships.

84. *See id.*; *but cf.* Avruch, *supra* note 48, at 400 (noting that culture is neither timeless nor changeless but emerges in new forms out of changing social context).

85. *See* Morris & Gelfand, *supra* note 47, at 65. For instance, perception of time is one difference between U.S. soldiers and Iraqis that is both cultural and organizational. Several officers mentioned that their impatience in negotiations became a barrier to agreement. *See, e.g.*, Interview with TS, *supra* note 22, at 23.

86. *See* Morris & Gelfand, *supra* note 47, at 65.

87. *See, e.g.*, 2004 CALL Report, *supra* note 3, at 39-42.

negotiations confirms that power in negotiations is "notoriously slippery."[88] On the one hand, the obviousness and overwhelming nature of the U.S. military's occupation as the legitimate superior force in Iraq is a commanding factor in negotiations with civilians.[89] On the other hand, this power is far from absolute, a reality which complicates the relationships between the U.S. military and civilian leaders. This is why so many military-civilian interactions in Iraq are negotiations, instead of one-way communications.

There is good reason to explore the particular contours of power in military-civilian negotiations in SSTR operations. It has the potential to provide a number of lessons for the U.S. military conducting SSTR operations in the future, whether in Iraq, Afghanistan or elsewhere.[90] U.S. military negotiators will benefit tactically from thinking about how power affects the conduct of their negotiations. Understanding the relative balance of power between the occupying military and corresponding civilian leaders, how power is perceived and exercised by the parties, and how the relative power of the parties can change during the course of the negotiation may help soldier-negotiators achieve their objectives.[91]

This section explores these issues but does not engage merely in an analysis of the parties' bargaining power.[92] It first discusses negotiating power from a theoretical perspective, drawing on leading research from the field of negotiation. It then describes how power is constituted and exercised in military-civilian SSTR negotiations. This includes the issue of military force, the officers' perceptions of their negotiating power, and the interaction between interests, rights, and power in these negotiations. It also includes the tension between creating and claiming value. Finally, this section concludes

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88. LAX & SEBENIUS, *supra* note 33, at 249.

89. Interview with JJ, *supra* note 22, at 31.

90. Negotiating power is a practical subject for negotiators to think about, but most negotiators do not think about a theory of power. *See* Salacuse, *supra* note 68, at 255. This is unfortunate in the SSTR context, because power is such a central element in the military-civilian negotiations. If negotiators do not examine their power in a rational and systematic way, they may not use it as wisely as they otherwise could. *Id.* at 256.

91. Just as the U.S. Army National Training Center's lead negotiation trainer emphasizes preparation and understanding the area of operations as necessary to successful negotiation in Iraq, this suggestion puts forward the idea that an understanding of the dynamics of power in negotiations, especially military-civilian ones, can give a negotiator an advantage.

92. Lax & Sebenius warn that analyzing power in and of itself can be a sterile exercise and suggest focusing instead on the factors that change perceptions of the bargaining set and how those changes can influence outcomes. *See* LAX & SEBENIUS, *supra* note 33, at 257.

with a discussion of the effect that relationships – and their importance to the military in an SSTR operation – have on such negotiations, in particular the interaction between relationships, culture, and power.

1. *Power in Negotiation Theory*

Negotiating power, reduced to its most elementary form, depends on the alternative available to each party, understood as the strength of one's *best alternative to a negotiated agreement* (BATNA).[93] The power that comes from having alternatives depends, however, on how the parties perceive those alternatives and the other party's assessment of the alternatives. For this reason, the term *estimated alternative to a negotiated agreement* (EATNA) is sometimes used because it reflects the human and cognitive complications of defining one's negotiating power.[94] The narrowly structuralist definition of power is limited, however, in its ability to explain negotiation outcomes.[95] The best way to understand the negotiating power of a party is to define it as "an action by one party which is intended to produce movement by another."[96]

Lax and Sebenius provide a description of negotiating power that is helpful in understanding the complexity of power's role in SSTR negotiations. Generally, power is associated with the "ability to favorably change the bargaining set."[97] The bargaining set under which a negotiator operates is a probability distribution of different potential outcomes.[98] A favorable change in the bargaining set is a revised probability distribution – that the negotiator prefers to the original distribution and that reflects a change in the various likelihoods of outcomes – caused by a new tactic, a new factor injected into

93. *See, e.g.*, Roger Fisher, William Ury & Bruce Patton, Getting to Yes: Negotiating Agreement Without Giving In 100 (Penguin Books 1991) (1981); Russell Korobkin, *Bargaining Power as Threat of Impasse*, *in Three Conceptions of Power*, 87 Marq. L. Rev. 867, 867-68 (2004); Zartman, *supra* note 17, at 75.

94. *See* Heidi Burgess & Guy Burgess, *Constructive Confrontation: A Strategy for Dealing with Intractable Environmental Conflicts*, (Conflict Research Consortium, Working Paper No. 97-1, 1997), *available at* http://www.colorado.edu/conflict/full_text_search/AllCRCDocs/97-1.htm.

95. *See* Zartman, *supra* note 17, at 74.

96. I. William Zartman & Jeffrey Z. Rubin, *The Study of Power and the Practice of Negotiation*, *in* Power and Negotiation, *supra* note 66, at 3, 8 [hereinafter Zartman & Rubin, *Power and Practice*].

97. Lax & Sebenius, *supra* note 33, at 250.

98. *Id*. at 251.

the negotiation, or a change in the actual or perceived parties' relative power.[99] Of course, the bargaining set can potentially shift in various directions.

Whether a negotiator has achieved a favorable change in the bargaining set depends on the negotiator's subjective distribution of beliefs about how the negotiated outcome that is conditional on using a new tactic compares with his subjective distribution of beliefs about the outcome that is conditional on not using the tactic.[100] The U.S. Army's negotiation training regime at the U.S. Army National Training Center seems to implicitly understand this. As discussed in more detail below, the training is focused on using a system of preparation that mirrors the Military Decision Making Process (MDMP). The MDMP includes wargaming and assessments of potential alternative outcomes, which is analogous to Lax and Sebenius' bargaining set and the potential favorable or unfavorable shifts in the bargaining set that the commander's tactical decisions can cause. The process leads to a commander's judgment call on what course of action is preferable. This must involve a comparison of the subjective distribution of beliefs about the various potential outcomes which are conditional on different tactical decisions.

The concept of power in negotiations is complex because power cannot be identified by just one characteristic, and there is no general model for explaining its role and effect in negotiations.[101] There are many different ways to define and understand negotiation power, and different types can be used in different settings and in different ways.[102] Keltner identifies four types of power: structural, agreement, persuasive, and performance. Lax and Sebenius identify five factors that serve as underlying bases of power.[103] While not described as types of power, they complement Keltner's four types. The first, *coercion*, is discussed more below. *Remuneration* refers to the ability to trade, to offer something of value in exchange for the desired agreement. *Identification* takes into account the ability of a leader or negotiator's charisma to exert pressure on or influence the

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99. *Cf. id.*

100. *Id.* at 251 n.5.

101. *See* Jayne Seminare Docherty, *Power in the Social/Political Realm*, *in Three Conceptions of Power*, 87 MARQ. L. REV. 860, 864-65 (2004) ("[P]ower comes in many forms, and the motivation to use different forms of power in any given situation is a complex process . . . ."); LAX & SEBENIUS, *supra* note 33, at 251, n.5.

102. *See* JOHN W. KELTNER, THE MANAGEMENT OF STRUGGLE: ELEMENTS OF DISPUTE RESOLUTION THROUGH NEGOTIATION, MEDIATION, AND ARBITRATION 49-63 (1994).

103. For a more complete description of these five factors, see LAX & SEBENIUS, *supra* note 33, at 255-58.

other party, similar to Keltner's persuasive power.[104] *Normative conformity* refers to the power exerted when a negotiator claims his position is right, legitimate, or carries some principled weight. This corresponds to Fisher et al's theory of principled, interest-based negotiation. *Knowledge* can be a basis for power because information can change the understanding of the parties as to the value of various potential agreements.[105]

Coercive power focuses on the ability to "win," to get what one wants and protect one's interests.[106] This is the ability to convince a party to do something that is not in the party's interests to do, that is, to "bend the opponent to your will."[107] Parties with poor BATNA's who cannot otherwise credibly persuade the other party that their BATNA is higher than it truly is will find themselves weaker relative to their negotiating counterpart.[108] Scholars have identified various forms of coercive power. Docherty describes three forms of coercive power: direct, process, and the power of the spoiler.[109] *Direct* power is the rawest form. It concerns who participates, who gains and who loses. *Process* power concerns the ability to shape the negotiation process, control the agenda, and include or exclude certain parties. *Power of the spoiler* refers to the power held by secondary parties away from the negotiating table who could prevent agreement. Coercive power springs from the ability to leave the negotiation table or deprive the opposing party of something it needs.[110]

Each of these types of coercive power, as well as some of the forms of power described above, exist in military-civilian SSTR negotiations and can be exercised by the parties. In the experience of the interviewees, they are used by both sides in negotiations.

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104. *See* Keltner, *supra* note 102, at 77.

105. In addition to Lax & Sebenius, *supra* note 33, see Howard Raiffa, *Analytical Barriers*, *in* Barriers to Conflict Resolution 132, 139 (Kenneth J. Arrow et al. eds., 1995).

106. Docherty, *supra* note 101, at 862.

107. Russell Korobkin, Negotiation Theory and Strategy 151 (2002); *see also* William L. Ury et al., Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict 7 (2d ed. 1993).

108. *See* Korobkin, *supra* note 107, at 156-62.

109. Docherty, *supra* note 101, at 865.

110. *See* Max H. Bazerman et al., *Enlarging the Societal Pie — A Cognitive Perspective* 15-18 (Harvard Negotiations, Orgs. & Mkts. Unit, Working Paper No. 02-17, 2001), *available at* http://ssrn.com/abstract=310166.

2. *The Constitution and Exercise of Power in Military-Civilian SSTR Negotiations*

The negotiating strength of a U.S. military officer in an SSTR operation is not as simple as his or her BATNA or EATNA. Power is dynamic and situational.[111] It would also be a mistake to think that a U.S. military negotiator's power is limited to his ability to apply force.[112] Traditional indicia of power – political power, wealth, prestige, social influence, governmental or statutory authority, or most relevant to this study, military superiority, control, and ability to apply force – may not necessarily translate into power at the negotiating table.[113] A party's power can come as much from the making of a credible threat as from the actual capability to carry out the threat.[114] Perception plays an important role,[115] as can patience.[116] A skillful negotiator can increase and exercise his power through communicative processes that enable him to exercise influence.[117] Even with a weak BATNA, the capacity to use what latent or potential power one does have is itself a form of power, because it can affect the way the other party in a negotiation behaves.[118] These latter

111. *See* Korobkin, *supra* note 93, at 867; Zartman, *supra* note 17, at 76.

112. *See* Interview with RM, *supra* note 36, at 10 ("It would be totally counterproductive.").

113. *See* David C. King & Richard J. Zeckhauser, *Legislators as Negotiators*, *in* NEGOTIATING ON BEHALF OF OTHERS 208 (Robert H. Mnookin & Lawrence E. Susskind eds., 1999); LAX & SEBENIUS, *supra* note 33, at 250 (citing THOMAS SCHELLING, THE STRATEGY OF CONFLICT 22 (1960)) ("[M]ore military potency [and other traditional indicia of power] are by no means universal advantages in bargaining situations; they often have a contrary value."); *see also* Interview with JJ, *supra* note 22, at 32 ("It was knowing the theory that we were not there – as an organization, understanding that we were not there to force people to do things at gunpoint. We purposely subjugated ourselves to the District Advisory Council in order to legitimize that government."); *see generally*, Zartman & Rubin, *Symmetry and Asymmetry*, *supra* note 66.

114. *See* KOROBKIN, *supra* note 93, at 868.

115. *See* URY ET AL., *supra* note 107, at 8.

116. *See* KOROBKIN, *supra* note 93, at 870-71 (The interviews show that sometimes U.S. military negotiators would refuse to concede an issue for weeks during an ongoing negotiation to demonstrate their unit's power, to call the bluff of their Iraqi counterpart, or to demonstrate that they would not be pushed around.); Interview with JJ, *supra* note 22, at 22-23. While this is an example of the Army unit asserting its power through its ability to be patient, it also suggests that the Iraqi negotiators were asserting forms of power that the U.S. soldiers felt they needed to resist.

117. *See, e.g.*, KELTNER, *supra* note 102, at 45 ("Power is a potential and actual process of intentionally influencing events, beliefs, emotions, values, and behavior of others in order to satisfy self and/or others' needs and desires by performing some actions which are basically communicative in nature."); Zartman & Rubin, *Symmetry and Asymmetry*, *supra* note 66, at 281.

118. *See* Docherty, *supra* note 101, at 863-64; Zartman & Rubin, *Symmetry and Asymmetry*, *supra* note 66, at 277 (discussing the tactics weaker parties employ as counterstrategies to the domination by stronger parties).

techniques of asserting power in a negotiation are particularly important in the context of a military-civilian interaction, where coercive power is more likely (but not always) to be imbalanced. A U.S. soldier negotiating in an SSTR operation should be aware of these forms of power – not only because he could exercise them when possible but because his negotiating counterparts are very likely to attempt to exercise such power.[119]

For these reasons, it is hard to generalize about the amount and nature of power held by the U.S. military or its Iraqi civilian counterparts, except in two ways: First, the U.S. military has and continues to have (though in changing forms) overwhelming coercive power of one kind – the application or threat of direct military force, including lethal force, arrest, detention, raids, and searches – by obvious virtue of the control that comes with its military control of Iraq and its superior military capability. One officer noted that "[i]t was unavoidable in the negotiations. It was a fact. I walked into the negotiation with a 9mm pistol on my hip . . . . It was an unavoidable fact that my presence there was justified only by my ability to maintain it through violence. And that was accepted. I didn't apologize for it but I tried not to push people around for it."[120]

Second, the U.S. military operates under a number of structural and political constraints that necessarily restrains its use of military power.[121] These two exceptions may not be of equal weight, however. The experience of this study's interviewees suggests that the coercive power held by the military – whether exercised or not – is an ever-present fact in negotiations,[122] while the constraints that mitigate

119. *See* Zartman & Rubin, *Symmetry and Asymmetry*, *supra* note 66, at 277 (noting that weak parties may be cooperative or evasive but not submissive; instead they bluster, dawdle, appeal, borrow power, exercise a veto, etc.).

120. Interview with JJ, *supra* note 22, at 31.

121. The U.S. military is constrained by U.S. and international law as well as its own policies, practices, procedures, protocols, and standards. *See, e.g.*, Geneva Convention Relative to the Treatment of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516; Uniform Code of Military Justice, 10 U.S.C. §§ 801-950 (2000); SASO Field Manual, *supra* note 2. Just as important, it has mission-specific objectives (e.g. establishing local government councils, training security forces, and building independent Iraqi institutions) and political imperatives – supporting the transition from U.S. control to Iraqi sovereignty – which requires the U.S. military to respect Iraqi sovereign authority in many situations. This is increasingly the case in Iraq, as the U.S. pushes to hand over control of the country to Iraqis and its security forces.

122. *See* Interview with BP, *supra* note 22, at 11 ("[T]here's a lot of negotiating power when you're sitting at a table, like we are, say with an interpreter over here and right in front of you, in between us, is an M16.").

that power are more dependent on the situation and context. Nevertheless, beyond (or in spite of) these two factors, the parties in military-civilian SSTR negotiations have varying relative amounts of power in any given negotiation that are constituted by a variety of factors and exercised in many different ways.

(a) *Force and Power in Military-Civilian SSTR Negotiations*

Even though the power of the U.S. military is mitigated by various factors in the unique context of an SSTR operation, some military-civilian negotiations continue to take place in an environment characterized by the overwhelming presence of military force and power. It is important to remember that application of force may often remain an option and the threat of force may sometimes be used. Therefore, when studying the factors that constitute U.S. soldiers' negotiating power and perception of their power in negotiations with civilians, as well as any tactical decisions to try to exercise that power, I paid particular attention to the role played by force.

Analysis of the interviews shows that officers negotiating in Iraq almost always conducted negotiations in which their coercive power was substantially greater than the power of their Iraqi counterpart or in which the officers perceived their power to be significantly greater. In such cases, the U.S. negotiators often exercised their disproportionate power by demanding agreement on their terms.[123] This is consistent with negotiation research suggesting that parties with more coercive power tend to exercise their power.[124] However, the negotiations described in the interviews rarely included the direct use or threat of military force. One negotiation discussed by the officers that did include use or threat of force involved a sheik's initial detention during a raid and the later threat, during negotiations, of his arrest.[125] In a larger sample, there are likely to be more such uses or threats of force as a way of exercising power.

The interviews suggest instead that it is much more common for officers to use indicia of force to demonstrate their ability to exercise force as an alternative to negotiation, hoping thereby to increase or

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123. *See, e.g.*, Interview with CG, *supra* note 22, at 46 (discussing threats to discontinue funding); Interview with JW, *supra* note 22, at 16-21 (discussing negotiations with local sheik seeking release of prisoners in which JW kept sheik waiting for 30-60 minutes as demonstration of power and refused to release the prisoners).

124. *See* Zartman & Rubin, *Power and Practice*, *supra* note 96, at 16-17; Zartman & Rubin, *Symmetry and Asymmetry*, *supra* note 66, at 275-77 (providing support for the proposition that negotiators with high relative power tend to behave exploitatively).

125. Interview with EH, *supra* note 22, at 13.

bolster their negotiating power.[126] One officer arrived at a negotiation with a deliberately over-sized contingent of soldiers as a show of force to demonstrate his seriousness.[127] Another threatened at the end of a negotiation that if his Iraqi counterparts did not fulfill the commitments made during the negotiation, he would return the next day with a lot of soldiers, and "we will discuss this again."[128] In a negotiation with the director of an electric power station that supplied his base but had not been providing power consistently, the base commander first asked for and listened to the director's reasons why his workers were cutting off the base's power. He then responded by trying to guarantee their safety from insurgent threats, but he added that if his safety guarantee was not effective in restoring power to the base, he would resort to force and permanently occupy the power station.[129]

While these negotiations did not include the use of actual force, they included explicit or implicit threats of force. In these instances, the officers were trying to take tactical advantage of what they perceived to be asymmetric power in their favor by influencing the perceptions of their counterparts. In many cases, the negotiations led to successful agreements that satisfied the U.S. military negotiator. This supports relatively new research findings that power asymmetry may actually lead to negotiations that are more efficient and effective than ones characterized by near-symmetric power.[130] Sometimes the results were not as clear, however.

When a civil-military operations unit of the Fourth Infantry Division was attacked in August of 2003 after two and a half months of peaceful operations just north of Baghdad, the commander called a city council meeting of the local sheiks.[131] Describing the interactions between the U.S. Army unit and the local Iraqi leaders, one officer said that "[i]*t didn't really become a negotiation after the attacks started. It was more of a finger proverbially in the chest.*"[132] The sheiks were told that such attacks were unacceptable and that they were expected to provide information on who had committed the attacks and to cooperate with the U.S. forces in the area to prevent

126. This is a classic example of "BATNA bashing." *See* MNOOKIN ET AL., *supra* note 41, at 25.

127. Interview with JD, *supra* note 22.

128. Telephone Interview with CG, *supra* note 22.

129. Interview with JW, *supra* note 22.

130. *See* Zartman, *supra* note 17, at 76 (citations omitted).

131. Interview with TS, *supra* note 22.

132. *Id.* at 6.

future ones. The captain involved had a difficult time calling it a negotiation, because on security issues, it was "very much one way."[133] The conduct of this negotiation and the series of related negotiations between the American soldiers responsible for the area and local sheiks was affected by the U.S. soldiers' perceptions of their power in that particular context. The interview makes clear that the source of that perception was the obvious fact that the U.S. Army was the legitimate military force in the area.[134] The perception of how this translates into power in the negotiation is worth exploring.[135]

According to this perception, the U.S. negotiator's power was constituted primarily, if not exclusively, by the potential to apply force of some kind, and was much greater than that held by the Iraqis. In fact, because such a perception necessarily assumes that the U.S. military has a monopoly on the legitimate use of force, the sheiks were perceived as being relatively weak.

The parties' perceptions play a critical role in this relationship between military force and negotiating power.[136] The potential for cognitive bias in these perceptions is significant. I will not address the substantial body of research on cognitive bias in negotiation or attempt to apply it to the negotiations discussed by the interviewed officers, but it is important to note the likelihood that in at least some cases, a U.S. soldier may overestimate his negotiating power and mistake his ability to apply force (which he may have) for the power to demand concessions in a negotiation (which he may find out he does not have).[137] In negotiations laced with the kinds of opportunities for cognitive bias that both cultural differences and military power present in especially tempting ways, an awareness of the existence, challenges, and effects of cognitive bias may be especially important to those U.S. military negotiators or trainers interested in improving their negotiating effectiveness.[138]

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133. *Id.* at 5.

134. *Id.* at 6.

135. "Much of power is a matter of perception . . . ." Zartman & Rubin, *Power and Practice*, *supra* note 96, at 13. Exploring the perception of power is more useful than trying to define a static objective reality of power between the parties, because perceptions govern the negotiators' behavior. *Id.* at 13-14.

136. *See id.* at 13 (discussing power as "a perceived relation").

137. *See, e.g.*, Daniel Kahneman & Amos Tversky, *Conflict Resolution: A Cognitive Perspective*, *in* BARRIERS TO CONFLICT RESOLUTION, *supra* note 105, at 44, 46-50 (discussing optimistic overconfidence bias); Interview with RM, *supra* note 36 (suggesting that many fellow Marines make this mistake).

138. I raise the issue of cognitive bias because the intensity of the SSTR environment and the incredible amount of new information faced by U.S. soldiers in such an environment, including cultural differences, provide such a ripe set of circumstances

SSTR operations are challenging because stabilization, security, transition, and reconstruction may take place concurrently.[139] In the context of what otherwise would be reconstruction, for instance, a legitimate need to use force may arise for security-based reasons. In some locations, the military may still be performing a more traditional security operation, and in others, it may be executing primarily a reconstruction and transition mission. Nevertheless, for the purposes of studying negotiations that take place in SSTR operations, any particular negotiation can be placed on a continuum according to its immediate context and the particular mix of security, reconstruction, and transition activities taking place.

The use of military force in an SSTR operation can be charted on a continuum showing how the nature of operations changes as an SSTR operation matures.[140] At the beginning of the continuum, the military is primarily concerned with security and stabilization, which will involve basic reconstruction of essential infrastructure and humanitarian aid but will mostly be concerned with securing the country. There are more kinetic operations and a higher chance that lethal force will be used. As the operation progresses, security continues to be a priority, but the mix of activities changes from primarily security-focused objectives to transition and reconstruction activities, which include operations to construct schools and hospitals, train new security forces, and establish, supervise, and coordinate with local civil government. In this context, direct military force is not used or threatened, even though any potential force that the military could apply continues to be an obvious fact.[141]

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for cognitive biases. *See* Morris & Gelfand, *supra* note 47, at 45. The potential for tactical mistakes due to bias is high because of the sometimes overwhelming information-processing demands inherent in negotiating in a war zone with civilians of another culture. *See id*. For an excellent and more general review of the current state of research on cognition and biases in negotiation, see Leigh Thompson et al., *supra* note 21.

139. *See* CONRAD C. CRANE & W. ANDREW TERRELL, U.S. ARMY WAR COLL., RECONSTRUCTING IRAQ: INSIGHTS, CHALLENGES, AND MISSIONS FOR MILITARY FORCES IN A POST-CONFLICT SCENARIO 2-5 (2003);

140. *See id.*; *see generally* CTR. FOR TECH. & NAT'L SECURITY POLICY, *supra* note 2 (discussing how "[t]he changed operational environment that U.S. forces face when combat ceases" require a change in preparation and execution strategies).

141. Resorting to force reflects a failure to resolve the dispute or find an agreement, and while that may sometimes be a necessary result of an interaction in the tense and often violent environment of an SSTR operation, using force because negotiation failed usually represents "a failure of skill, a failure of will, or a dearth of creativity on the part of one or more of the disputants." Michael L Moffitt & Robert C. Bordone, *Perspectives on Dispute Resolution: An Introduction*, *in* THE HANDBOOK OF DISPUTE RESOLUTION 1, 11 (Michael L. Moffitt & Robert C. Bordone eds., 2005).

The interviews show that the issue of force is a factor in the balance of power between the parties to a negotiation to a greater or lesser extent depending on how close to kinetic operations that negotiation falls on the SSTR continuum. The closer a negotiation is on the continuum to combat operations, the greater the chance that the soldier will perceive himself to have more power in the negotiation and the more likely it is that his Iraqi counterpart will believe the same thing.[142] The threat will be more credible. But these perceptions are likely to be different the farther away the negotiation is from kinetic operations, and the more closely it is to transition and reconstruction operations. In this instance, the threat of direct military force will have less influence on the U.S. military negotiator's power in a negotiation with an Iraqi leader.[143] In this case, the negotiating power of the U.S. soldier is more likely to be constituted by factors other than his ability to apply lethal force.[144] In particular, the increasing importance of relationships as operations move from lethal combat to reconstruction likely plays the most significant role in constraining the soldier's exercise of his otherwise asymmetric military power.[145]

Still, the interviews suggest that U.S. soldiers negotiating with Iraqi civilian leaders tend to think of their negotiating power as constituted primarily by their military power, even in situations when their power in a negotiation may not be coextensive with their ability to apply military power. In other words, soldiers often think too narrowly of their power in a negotiation as being mostly made up of the "power" with which they are most familiar: the power they can exert militarily. Yet a structural analysis of the issues and context of the

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142. The perception of power symmetry or asymmetry is related to elements such as force, resources, and reputation. *See* Zartman & Rubin, *Power and Practice*, *supra* note 96, at 13.

143. Analysis of the negotiations discussed in the interviews confirms this. Most of the negotiations in which officers threatened force or used indicia of force to influence their counterpart were negotiations related to security concerns. Generally, the officers did not use the same tactics in the many negotiations they discussed that concerned reconstruction or transition to Iraqi civil government, although they sometimes still characterized their power as being their military power to coerce.

144. By his control of funds, for instance. His power relative to the Iraqi(s) with whom he is negotiating is likely to be reduced by, for instance, the Iraqi town council's control of prioritizing reconstruction projects as part of the transition to Iraqi sovereignty, to which the U.S. military is committed. This reflects research that suggests that relative total power, in this case the military power to coerce and control, is not as relevant as issue-specific power in a particular negotiation, in this case decisions about reconstruction in the town. *See* Salacuse, *supra* note 68, at 261.

145. *See* Zartman & Rubin, *Symmetry and Asymmetry*, *supra* note 66, at 283-84 (citing relationships as the last of three constraints on a strong party's power).

negotiations discussed by the officers leads to the conclusion that even if the negotiation takes place only because the U.S. military has the capability to assert its power through force,[146] the negotiating power that the military holds is constituted by a complex interaction of factors.[147] The U.S. military negotiator is not guaranteed to achieve his intended outcome.[148] The apparent disconnect between most officers' understanding of their negotiating power and the power they may have actually had suggests the need for additional training.

(b) *Interests, Rights, and Power in SSTR Negotiations*

All of the negotiations described in the interviews reflect the complexity of SSTR operations and reinforce the premise that the relative negotiating power of the parties depends on numerous dynamic, interdependent factors. The negotiating power of the U.S. soldier is far from absolute.

Negotiations conducted in the context of an SSTR operation are consistent with the theory that interests, rights, and power exist concurrently in negotiations, and that the parties may choose to focus on one of them, or cycle among the three, during the course of the negotiation.[149] In this framework, interests are discussed and reconciled in the context of the parties' rights and power, while rights are determined and settled in the context of the power each party holds.[150] The parties can make a tactical choice to focus on one of these elements, but research suggests that parties move frequently among interests, rights, and power foci in the same negotiation.[151]

The discussion above concentrated on negotiations in which the U.S soldier focuses primarily on his power (or perceived power), using negotiating power constituted mostly by his military power to coerce

146. *See* Interview with JJ, *supra* note 22 ("There were some people who made it absolutely clear through every negotiation that they were only negotiating with the United States Army because we were the people that were there with the firearms all over Iraq.").

147. The U.S. military negotiator's power to negotiate an outcome may be detached from his military power.

148. *See* Interview with BP, *supra* note 22 (concluding that the military power – the show of weaponry and equipment – was inevitable and obvious but as an effect on the negotiation was limited to keeping the discussion civil, to "a low key, never very heated").

149. Anne L. Lytle et al., *The Strategic Use of Interests, Rights, and Power to Resolve Disputes*, 15 NEGOT. J. 31, 34 (1999); *see generally* URY ET AL., *supra* note 107.

150. Lytle et al., *supra* note 149, at 33-34 (citing URY ET AL., *supra* note 107).

151. *Id.* at 34-38 (finding more emphasis on rights and power in the first and third quarters of the negotiation than in the second and fourth quarters).

his Iraqi counterpart into agreement on the American's terms. However, many of the negotiations discussed by the officers exhibited a cycling between interests and power, if not also of rights, and reflected a more subtle balance of power.

For instance, several negotiations documented in the interviews concerned the U.S. military's need for information from local sheiks, on the one hand, and the sheik's requests for fewer raids and searches of homes, on the other hand. A civil-military operations officer participated in one with a neighborhood advisory council (NAC) in Baghdad.[152] The sheiks' demand appears to have been rooted in their interests and in a claim of right to be free from frequent raids. The U.S. military negotiators addressed the sheiks' concerns in a way that could be characterized as a claim of right to search houses whenever it had information that insurgents or weapons were present. This right was, of course, bound up inextricably with the U.S. Army's power to raid houses. The U.S. officer's statement that the raids would continue as long as his unit believed they were necessary relies on the military's coercive power to search. Interestingly, the negotiation cycled back to interests as the U.S. negotiators offered a solution seemingly based on the two parties' interests. The U.S. Army's primary interest was in getting specific and correct information on insurgents, which would lead to fewer and more targeted raids in the sheiks' neighborhoods, thereby meeting the sheik's interests in less disruption of their constituencies. Consistent with the interest, rights, and power framework of negotiations, this interest-based solution was offered in the explicit and looming shadow of military power. While NACs often rejected such solutions publicly, members often gave information to American forces soon thereafter.[153]

Similarly a Marine junior officer – who spent ten days welcoming and meeting residents as they returned to Fallujah after U.S. and Iraqi forces had cleared the city of insurgents, effectively destroying or damaging most of the city's buildings and houses – negotiated by focusing both on power and interests.[154] Residents scared of and angry at both U.S. forces and insurgents were reluctant to give information to U.S. soldiers about insurgent activity and membership. In a still-tense security environment heavily characterized by military power, the officer reminded the residents that providing the U.S. military with information to help it defeat insurgents and keep them out of Fallujah was the only way that the residents could free themselves

152. *See* Interview with JJ, *supra* note 22, at 7-8.
153. *Id*. at 8.
154. *See* Interview with RM, *supra* note 36, at 3-6.

from both intensive U.S. occupation and insurgent violence and intimidation.[155] This negotiating tactic emphasized the interests of the Iraqi residents in an attempt to persuade them that their interests would be best served by giving him information. He did this while subtly presenting the specter of continuing and overwhelming U.S. military power embedded throughout their city. The Marine's negotiating power was at once limited and enhanced by the residents' interests in ridding themselves of both insurgents and Americans. On the one hand, his military power did not mean the ability to get what he really needed – information – by simply asking, and it may have weakened his bargaining position because of Iraqi resentment. Many residents did not provide any information.[156] On the other hand, by cycling through both interests and power, this Marine was successful at encouraging many residents to provide information because they agreed that it aligned with their interests, even if they were not happy to cooperate.[157]

These findings suggest that military-civilian negotiations in SSTR operations can accommodate the exploration and discussion of parties' interests, even in the shadow of military force and power. Later in this paper I suggest that introducing a focus on interests into a negotiation may increase a soldier's effectiveness and improve his outcome.[158] This requires the soldier to view his negotiating power as constituted by more than just his military power.

3. *The Role of Relationships in Military-Civilian SSTR Negotiations*

U.S. engagement in Iraq evolved from an invasion and quick transition operation to a longer-term SSTR operation in which long-term relationships do matter to the American military's ability to successfully accomplish its various missions in Iraq.[159] Yet, with thousands of negotiations conducted by thousands of U.S. soldiers across Iraq, it is not surprising that some officers conclude that the

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155. *Id*. at 5-8.

156. *See id.* at 9.

157. *Id*. at 4-8. By doing this, RM exercised power that was constituted not by his ability to coerce but by his willingness to engage the interests underneath Iraqi frustration with the American presence, by his personal ability to persuade, and by his skill at quickly building rapport.

158. *See infra* Section 4.

159. *See* Metz & Millen, *supra* note 8, at 51 (arguing that the new strategic environment requires sometimes turning enemies into non-belligerents, allies, and friends); Interview with EH, *supra* note 22, at 17 ("[I]nterpersonal relationships will continue to be an important part of warfare.").

relationship was "paramount" to almost every single negotiation,[160] while others did not think that relationships were always important.[161]

A little more than half of the officers interviewed for this study said that relationships played an important role in their negotiations. This is little more than recognition of the fact that the negotiations they were conducting were embedded in the social, political, and institutional relationships created by the nature of the SSTR operation.[162] In some cases, a relationship of some sort is a prerequisite to engaging in even the most non-contentious negotiation.[163] In other cases, the cultivation and maintenance of good working relationships was important to productive reconstruction efforts, governance, and efficient operations.[164] In still more cases, the relationship itself was a negotiation objective, sometimes taking priority over other potential outcomes.[165] This was true, despite the fact that some negotiations took place between U.S. military personnel and Iraqis who negotiated only because the Americans had the firepower.[166] When a relationship between a U.S. soldier and an Iraqi is long-term, which many are, the value placed on that relationship has an important effect on the negotiation.[167]

The interviews indicate that, generally, U.S. officers are acutely aware of the importance of their relationships with local civilian leaders and are highly cautious about damaging those long-term relationships or violating cultural norms, even at the potential expense of

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160. *See* Interview with JJ, *supra* note 22, at 23.

161. For one officer, "I was just another soldier to them most of the time. In only a few instances did I have the time to get to know an Iraqi closely enough to earn their true trust and friendship." Interview with EH, *supra* note 22, at 15.

162. *See* Roderick M. Kramer, *The Dark Side of Social Context: The Role of Intergroup Paranoia in Intergroup Negotiations*, *in* THE HANDBOOK OF CULTURE AND NEGOTIATION, *supra* note 21, at 220.

163. "[S]ocial relations are really everything . . . your word is everything, and you don't really get anywhere until you know somebody . . . ." Interview with JW, *supra* note 22, at 15, 42; *see also* Interview with RM, *supra* note 36, at 5, 6 (noting that he never got information the first time he met someone).

164. *See* Interview with BP, *supra* note 22, at 33; Interview with JJ, *supra* note 22, at 22.

165. *See* Interview with JJ, *supra* note 22, at 22-23. This is consistent with the negotiation literature. *See* Kopelman & Olekalns, *supra* note 46, at 378.

166. *See* Interview with JJ, *supra* note 22, at 23-24.

167. *See* Interview with MM, *supra* note 22, at 19-20; Interview with RM, *supra* note 36, at 5-6 (stating that when he secured information it was only after a relationship of some sort had been established).

short-term objectives, the accomplishment of which may require tactics that are inconsistent with the maintenance of a positive relationship.[168] In order to maintain a relationship, for instance, a commander may have to let a sheik "win" in front of his people, while achieving the commander's immediate objective would require the breach of a cultural norm certain to alienate the sheik. This conclusion comes with numerous caveats.[169] It often depends on what objectives are at stake and the urgency they are seen to have by U.S. commanders. The U.S. Army's National Training Center (NTC) understands this tension and knows that officers value their relationships with Iraqis sometimes to the point of subordinating immediate objectives. Its negotiation training makes the point that cultural niceties are important, but officers should stay focused on their intended outcome.[170] Following training on cultural awareness, the NTC emphasizes that commanders be prepared to set aside the demands of cultural norms when necessary in order to accomplish a task.[171]

One example demonstrates the difficult balancing act soldiers must undertake due to the role of relationships in the negotiation. A Marine commander, who negotiated frequently with the same local sheik because his town was nearby the base, needed heavy equipment from the town to improve his base's security perimeter.[172] In one analysis, the Marine had the power to demand the equipment and the military capability to seize it. However, another analysis would suggest that the interests and relationship at stake interacted in a more complex way with the commander's and sheik's power, leading the Marine to negotiate differently. The commander never demanded the equipment. Even though the base's security was at stake, the commander did not resort to force or assert the military power to take the equipment. Instead he allowed the sheik to exercise considerable power in withholding the equipment for several weeks when he "desperately" needed it.[173]

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168. *See, e.g.*, Interview with JJ, *supra* note 22, at 6-7.

169. *See* Interview with CG, *supra* note 22, at 38 (suggesting that the U.S. Army often, because it stresses the importance of being culturally aware and sensitive and respectful, does not push the envelope enough when it should, and "say . . . 'Bullshit is bullshit, no matter where you're at.").

170. *See* Interview with Major Jonathan Velishka, United States Army, at Fort Irwin, Cal., at 14 (Mar. 2, 2006).

171. *Id.*; *see also* Training Materials (on file with Major Jonathan Velishka, National Training Center, Fort Irwin, Cal.).

172. *See* Interview with JW, *supra* note 22, at 13-15.

173. *Id.* at 14-15.

What appears to have mitigated the commander's exercise of his military power was the priority he placed on cultivating and maintaining a cooperative, positive relationship *not* based on the applied force of military occupation. He perceived this relationship to be important for two reasons: First, the commander feared that the sheik was or could be networked into the insurgency and could increase the danger to U.S. and Iraqi forces operating near and in his town.[174] Many of the officers cited this or a similar consideration.[175] Second, the relationship may itself have been important to obtaining the equipment, and a stronger relationship with the sheik may have actually translated into more negotiating power if used effectively.[176] For the commander, this was a frustrating negotiation with limited success, but throughout the negotiation he continued to maintain the kind of relationship with the sheik that he believed was a tactical priority because of long-term security concerns.

The importance of relationships to negotiations between soldiers and local civilian or military leaders in SSTR operations leads to the conclusion that the value placed by the relevant military decision maker on the relationship(s) at stake in a negotiation will likely have an effect on the way that the U.S. military negotiator approaches and conducts the negotiation.[177] In one way, it has the potential to weaken the negotiating power of the U.S. soldier because the value placed on a positive relationship may limit his tactical negotiating options as well as his estimated alternatives to a negotiated agreement. To the extent his negotiating power is constituted by his military power or ability to use force, it will be constrained considerably by the priority placed on the relationship. On the other hand, the importance of a positive relationship to the negotiation may increase

174. *Id.* at 15. The sheik never threatened or suggested this, but Captain JW suggested the possibility that the sheik was running guns or bombs through the town. "[I]n the back of our minds at every negotiation, whether it was with the sheik, the power company, or going into these houses during raids, you always wonder what side they're on, you know? You always wonder what side they're on . . . it's not like labor negotiations or something where you know the person's on the [other] side . . . But in these negotiations, you never knew if they were good or bad . . . . [Y]ou didn't know if they really wanted me dead or if they really cared about me and wanted Iraq to be free and prosper . . . ." *Id.* at 36-37.

175. *See, e.g.*, Interview with EH, *supra* note 22.

176. *See* Kopelman & Olekalns, *supra* note 46, at 378 (citing Kathleen L. Valley et al., *Friends, Lovers, Colleagues, Strangers: The Effects of Relationships on the Process and Outcome of Dyadic Negotiations*, *in* RESEARCH ON NEGOTIATION IN ORGANIZATIONS 5 (R.J. Bies et al. eds., 1995)).

177. *See* LEWICKI, *supra* note 39, at 54-55; Keith G. Allred, *Relationship Dynamics in Disputes: Replacing Contention with Cooperation, in* THE HANDBOOK OF DISPUTE RESOLUTION, *supra* note 141, at 83.

the U.S. soldier's negotiating power by enabling him to exercise influence through the relationship that he otherwise could not have exercised.[178] One officer believes that the extensive network of relationships with Iraqis that he developed during his year serving as a civil-military operations officer in the Yarmouk neighborhood of Baghdad became a source of power that he was able to turn into successful, productive reconstruction efforts.[179] Another officer became more confident and effective in his negotiations with a local sheik during his time in Iraq because he negotiated with him repeatedly.[180]

When negotiating with hostile or adversarial parties, one officer suggested that it was as important to establish the boundaries of the relationship as to build a cooperative or friendly one.[181] This may be a tactic necessary to efficiently frame the negotiation and adjust the hostile party's misperceptions of their relative position in the negotiation.[182] It could be understood as a tactic on the part of the U.S. military negotiator to assert his strength and establish a favorable power framework for the negotiation. Or it could be a symptom of what has been termed "intergroup paranoia" based on beliefs – whether true, false, or exaggerated – that may, in the worst case, cause irrational distrust and, in the best case, hinder the cultivation and sustenance of the trust that even the distrustful negotiator recognizes would be beneficial.[183] Heightened suspicion causes negotiators to approach their counterparts with a presumptive distrust.[184] Several officers discussed this challenge to the cultivation and maintenance of trust in their negotiations with Iraqi civilians, and it is worth noting that

178. *See* Kopelman & Olekalns, *supra* note 46, at 378 (noting research that demonstrates a relationship between strength of friendship ties and negotiation outcomes).

179. Interview with BP, *supra* note 22, at 26.

180. *See* Interview with JW, *supra* note 22, at 36.

181. *See* Interview with JJ, *supra* note 22, at 22-24 ("Everything that we did was pushed towards maintaining the relationship, which did not always mean being friends or being polite. Sometimes . . . we were trying to demonstrate our position in the relationship as the ones in authority and the ones that had power; that we would not be screamed at in this meeting, or we would not be pushed around. We were not going to accede to this particular sheikh's demands.").

182. Some research suggests that outcomes may be unnecessarily sub-optimal because concern for the relationship outweighs concern for the task. *See* Kopelman & Olekalns, *supra* note 46, at 378.

183. *See* Kramer, supra note 162, at 221-27.

184. *See id*. at 230. *See* discussion *infra* pp. 35-36. The accuser and excuser biases may have particular relevance in this situation. *See* Allred, *supra* note 177, at 85.

the negotiation literature supports the observations made by the officers.[185]

4. *Recommendation: Try A Problem-Solving, Interest-Based Approach to Exercise Power Effectively*

When choosing a strategy for how to approach a negotiation with a leader of the local population in an SSTR operation, U.S. military negotiators should try an integrative, interest-based approach that seeks to secure agreement by satisfying the interests of both the soldier and his counterpart. A significant body of negotiation literature recommends integrative, interest-based approaches to negotiation that have the potential to produce mutually beneficial outcomes that meet the interests of both parties.[186] This model focuses on the underlying interests and priorities of the parties instead of the positions they communicate.[187]

This model will not always be an appropriate strategy for the U.S. military negotiator operating in an SSTR environment.[188] Nor does it mean that U.S. soldiers should not prepare for and think about the power dynamics of a negotiation; rather, just the opposite. When preparing, they should consider the parties' negotiating power in all its forms and decide beforehand how they will exercise their power.[189] Given the role that power and force play in military-civilian SSTR negotiations, it is unrealistic to think that such negotiations can be conducted using an exclusively interest-based approach. At the same time, the integrative negotiation strategy has a lot to offer U.S. soldiers conducting negotiations.

Negotiating with a power-focused stance entails higher risks of entering into a negative conflict spiral that may prevent achievement

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185. *See, e.g.*, Interview with JW, *supra* note 22, at 13-14. Kramer cites the need for more field research, including ethnographic research in cross-cultural settings, that investigates paranoid cognition and the role and development of trust in negotiations. Kramer, *supra* note 162, at 231. This study tries to offer the qualitative research and "thick" descriptions of conflicts and negotiations that he considers "essential if we are to develop deeper and more nuanced understandings of these important phenomena." *Id.*

186. *See, e.g.*, FISHER, URY & PATTON, *supra* note 93; MNOOKIN ET AL., *supra* note 41.

187. *See* MNOOKIN ET AL., *supra* note 41, at 28-31.

188. There will be negotiations for which a strategy based on power may have advantages, but they tend to be rarer than most negotiators think. *See* Lytle et al., *supra* note 149, at 41-42.

189. For general suggestions and lessons on using power, as either a weak or strong party to a negotiation, see Salacuse, *supra* note 68, at 255-69.

of an outcome desirable to the soldier.[190] The negotiation literature suggests that negotiations dominated by a focus on power or rights result in a contest between the parties over who will dominate.[191] This literature suggests that such negotiations will have a higher frequency of arguments, personal attacks, threats, and demands, and the outcome is more likely to be one-sided.[192] Most importantly, a negotiator who focuses on power in a negotiation is more likely to create new disputes and leave open opportunities (and motives) for revenge.[193] This increases the "costs" of an agreement and may prevent the parties from addressing the original issues of the negotiation. A focus on power has this effect because communications concentrating on power – such as threats and comments about the weakness of the other party – are often reciprocated during a negotiation.[194] A threat prompts a threat. When such communications are reciprocated, the negotiation has a higher chance of becoming a negative conflict spiral, putting a negotiated outcome in jeopardy.[195]

When a negotiated outcome is not necessary for the U.S. military, this may be an acceptable result.[196] Likewise, a one-sided result may achieve the U.S. soldier's immediate negotiation objective. However, when the U.S. military needs a negotiated outcome because it will not resort to force, cannot accomplish the objective without Iraqi cooperation, or because it places tactical value on its relationship or good will with the Iraqi leader, a decision to focus in the negotiation on the parties' power is likely to be a short-sighted choice. A military-civilian negotiation in Iraq that creates new disputes, grudges, and motives for revenge – because one side communicated in terms of power, to the neglect of the other side's interests, and a negative conflict spiral ensued – may cost more in the medium or long term than the short term success was worth.[197]

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190. *See* Lytle et al., *supra* note 149, at 41-42; MNOOKIN ET AL., *supra* note 41, at 224. Allred refers to these as "vicious cycles" of conflict escalation. *See* Allred, *supra* note 177, at 84.

191. *See* Lytle et al., *supra* note 149, at 39 (citations omitted).

192. *See, e.g.*, *id.*

193. *See, e.g.*, *id.*; Interview with RM, *supra* note 36, at 9.

194. *See, e.g.*, Lytle et al., *supra* note 149, at 38.

195. *Id.* at 39.

196. *See* Interview with Col. M, *supra* note 26 (noting that it is important to know when to use and exert power and when not to, based on a judgment that requires understanding the entire situation); Interview with CG, *supra* note 22, at 45 (stating that there is a time and place for using force and power, and one should not be afraid to use it appropriately when appropriate but must know the relevant limits and rules of engagement).

197. The U.S. Army recognizes this. In an initial review of civil-military operations and cultural considerations in Operation Iraqi Freedom, it suggests that

An analysis of the interviews conducted for this paper support the above findings from the negotiation literature. One officer noted that "[m]y approach became much more stern and direct as time passed. I came off as naive and powerless in initial engagements, but was definitely a person with which to deal at the end of the year . . . ." But were the changes successful? "Sometimes, yes; sometimes, no . . . But most of the time, [my approach led] to delays and shameful grudges."[198] It is possible that "delays and shameful grudges" may be a necessary and acceptable collateral effect of a successful negotiation.[199] However, a tactical approach to an engagement that causes such effects is risky, and it is likely to operate against the U.S. military's interest in cultivating or maintaining cooperative, positive, or at least neutral, relationships with Iraqi civilians in an SSTR operation that requires the support and good will of the civilian population to secure the country against insurgents, terrorists, and sectarian fighters.[200]

This is why the U.S. military's relationships with the local leaders in an SSTR operation have an important influence on a soldier-negotiator's power and the conduct of SSTR negotiations in general, and why U.S. Army and Marine negotiators may want to consider deemphasizing their military power and focus instead on ways to satisfy both parties' interests.[201] In the case of this officer, who did not seem to place a priority on preserving relationships with those with whom he negotiated, he believed that it made him appear less naïve and weak to become more forceful as his tour in Iraq wore on. Yet his admission that it caused delays and grudges suggests that his negotiation outcomes were not optimal.

When choosing an overall negotiating strategy, the U.S. military negotiator runs little risk by opening with a focus on interests because it does not have to entail any substantive or tactical concessions or admissions.[202] The circumstances of a negotiation are often such that a focus on interests, in addition to or instead of an exclusive

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soldiers weigh short term tactical gains against long term implications and second-order effects. 2004 CALL REPORT, *supra* note 3, at 42.

198. Interview with EH, *supra* note 22, at 11-12.

199. *See, e.g.*, Lytle et al., *supra* note 149, at 40.

200. *See, e.g.*, Raymond A. Millen, U.S. Army War Coll., The Yin and Yang of Counterinsurgency in Urban Terrain (Oct. 2005) (unpublished manuscript on file with the author); STEVEN METZ & RAYMOND MILLEN, U.S. ARMY WAR COLL., INSURGENCY AND COUNTERINSURGENCY IN THE 21ST CENTURY: RECONCEPTUALIZING THREAT AND RESPONSE (2004); 2004 CALL REPORT, *supra* note 3, at ii-iii.

201. *See* MNOOKIN ET AL., *supra* note 41.

202. *See id.* at 240; Lytle et al., *supra* note 149, at 43.

focus on power, would be a more potent negotiating strategy with several benefits.[203] This recommendation assumes that the U.S. military negotiator will continue to stay attuned to the cultural dimension of the negotiation, as well as the multi-faceted context of the environment.[204]

Relationships among the parties play an important role in the interest-based model, making it a particularly powerful framework for negotiations between U.S. soldiers and civilians in SSTR operations, especially in Iraq, where the value placed on relationships is high – both by the culture of the civilians and the mission objectives of the military. Relationships are an important element of successful negotiation across cultures,[205] but they become even more influential in a negotiation when a long-term working relationship is an objective of the military commander, in addition to an asset in that particular negotiation. A focus on interests is so important in this context because finishing a negotiation by satisfying the Iraqi civilian's interests instead of his negotiating demands (which may be no more than bargaining tactics) is more likely to contribute positively to the long-term relationship.

(a) *Combine Power Moves with Interest-Based Problem Solving*

As the findings above demonstrate, military-civilian SSTR negotiations in Iraq were successful when they combined a focus on the parties' power with attention to the parties' interests. A combined strategy that deliberately cycles between a focus on power and a focus on interests may be the best way to avoid negative conflict spirals, unintended consequences, and counterproductive negotiation outcomes.[206] For reasons already noted, it may also be the most realistic approach in the context of military-civilian SSTR negotiations.

This recommendation means that U.S. soldiers should, when faced with a counterpart who makes a rights-based or power-based

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203. *See id*. *See generally* FISHER, URY & PATTON, *supra* note 93.

204. This emphasis on taking an interest-based approach while maintaining an eye on power, culture, and context recognizes the limits of an exclusive focus on interests in the complicated cross-cultural and militarized environment of SSTR operations. *But see* Avruch, *supra* note 48 at 395, 404 (arguing that strictly interest-based bargaining is limited in international humanitarian negotiations).

205. *See* Jeffrey M. Senger, *Tales of the Bazaar: Interest-Based Negotiations Across Cultures*, 18 NEGOT. J. 233, 234-35 (2002).

206. This approach combining power and interests foci may be just as effective at redirecting negotiations to the parties' interests as an exclusively interests-based approach. *See* Lytle et al., *supra* note 149, at 44.

threat or demand, reciprocate the power threat in as noncontentious a way as possible and simultaneously add a communication that opens the negotiation to a discussion of interests.[207] Combining power and interests in the same statement pairs a credible threat with a specific way for the other party to pursue the positive consequence of agreement rather than only avoid the negative result of the threat's outcome.[208] This provides the soldier's counterpart a way to save face, defuse or "turn off" the power threat, and come to an agreement with which he may be generally satisfied. The soldier will often want the threat to be defused rather than have to carry it out.[209]

This approach could be understood as a combination of coercive and reward power, but to be most effective, the "reward" offered must be based on the counterpart's true interests. The approach should be understood as a productive way to manage the *Negotiator's Dilemma* described by Lax & Sebenius or the tension between creating and distributing value described by Mnookin et al. The dilemma reflects the tension between competitive moves to "claim value" for the negotiator's benefit and cooperative moves to "create value" that enlarges the pie.[210] This tension is inescapable and "affects virtually all tactical and strategic choice."[211] Tactics to claim or distribute value rely primarily on the negotiator's power, and, like a focus on power discussed above, risks a negative result.[212] These adversarial tactics rarely help expand the possibilities of positive outcomes, although they may be sufficient if the proverbial pie truly is fixed. Cooperative moves to create value, on the other hand, offer the possibility of increasing the positive outcomes desirable to the U.S. military negotiator. By combining a focus on power with a focus on interests, a U.S. soldier is likely to manage more effectively this tension between the adversarial impulse to make demands (and have Iraqi counterparts meet

207. *See* BRETT, *supra* note 45, at 115. This is also called "firm flexibility," in which negotiators are contentious about their basic interests but willing to engage in flexible problem-solving. *See* Pruitt, *supra* note 37, at 87.

208. *See* Lytle et al., *supra* note 149, at 48. For a recent example, see David S. Cloud, *In Bid to Rebuild Razed Bridge, Recovery and War Vie in Iraq*, N.Y. TIMES, April 6, 2006, at A1.

209. Carrying out the threat means losing the leverage the threat provided, thereby decreasing the party's negotiating power, not strengthening it. *See, e.g.*, Lytle et al., *supra* note 149, at 48.

210. *See* LAX & SEBENIUS, *supra* note 33, at 29-46; MNOOKIN ET AL., *supra* note 40, at 11-43.

211. LAX & SEBENIUS, *supra* note 33, at 30. Competitive and cooperative elements of a negotiation, like power and interests, are "inextricably entwined." *Id.*

212. "Claiming" tactics can lead to inferior agreements for both parties, risk impasses to agreement, and are more likely to lead to negative conflict spirals of threats and counter-threats. *Id.* at 246.

those demands) and the collaborative impulse to find creative, broader-based solutions.[213]

A conscious effort to negotiate in this way will provide the U.S. military negotiator in an SSTR operation with a better chance at achieving not only his short term objectives but securing opportunities and gains that come with stronger working relationships and more genuinely satisfied negotiating counterparts. Such an approach recognizes the reality that reciprocal reactions may be instinctive, and therefore difficult to avoid; that ineffective efforts are commonly repeated, especially under stressful conditions, despite a negotiator's intellectual knowledge that such efforts continue to fail;[214] that many U.S. military negotiators may be particularly averse to avoiding altogether the reciprocation of threats out of fear that it demonstrates weakness; and that SSTR negotiations take place in militarized, power-saturated environments in which "power" is likely, if not inevitably, to play a significant role in negotiations. It also addresses a challenge of interest-based negotiation: hard bargaining.[215] The approach is flexible enough to be applied in any negotiation, regardless of the issues or people involved. It avoids simplistic approaches that advocate either a "win-win" or "win-lose" approach to negotiation.[216]

Several officers interviewed for this study used this approach with apparent success. It supports the view of one senior officer that civilians in SSTR negotiations know the U.S. military has the power to make them do something, but the talent and art of it is making them want to do it without using force; with force, there are repercussions.[217]

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213. Pruitt describes four techniques for managing this tension between "contending" and "problem-solving." *See* Pruitt, *supra* note 37, at 86-88. This suggestion is consistent with observations that cooperation and a focus on interests are not sufficient to create value. *See* Michael L. Moffitt, *Disputes As Opportunities to Create Value*, *in* THE HANDBOOK OF DISPUTE RESOLUTION, *supra* note 141, at 173, 181-84.

214. *See* Lytle et al., *supra* note 149, at 44 (citing H.G. LERNER, THE DANCE OF ANGER (1985)).

215. *See* Senger, *supra* note 205, at 248.

216. *See* Moffitt, *supra* note 213, at 176 (arguing that zero-sum models are too simplistic to accurately describe the realities of disputes); James K. Sebenius, *International Negotiation Analysis*, *in* INTERNATIONAL NEGOTIATION: ANALYSIS, APPROACHES, ISSUES, *supra* note 17, at 229, 242 (arguing that such approaches do not manage the tension between creating and claiming value and ignore the large number of different approaches, tactics, and procedures available to improve the effectiveness of negotiation).

217. *See* Interview with Col. M, *supra* note 26.

(b) *Avoid Reciprocating Power-Based Communication*

Executing a negotiation strategy that includes a focus on interests will not be successful unless the military negotiator also employs techniques to avoid being drawn into a downward spiral over who has more power.[218] Refusing to reciprocate a threat is often effective, and it avoids the potentially unproductive downward spiral of power and rights reciprocity. Competitive or adversarial tactics, particularly actual or threatened use of force, usually lead to reciprocation with like-kind tactics, conflict spirals, and escalation.[219] Many negotiators make the mistake of reciprocating as a reaction to rights- and power-based threats because they fear appearing weak. Research suggests that reciprocating may be instinctive.[220] Yet reciprocation is likely to be highly unproductive for the U.S. military negotiator and lead to damaged relationships, grudges, obstruction of the agreement's execution, or no agreement at all.[221] This does not mean that a U.S. military negotiator has to concede anything, make unilateral concessions, or show any weakness. By avoiding the trap of a negative conflict spiral, the U.S. military negotiator would actually be demonstrating his strength.[222]

(c) *Listen and Ask Questions*

A simple but effective technique in negotiations is to listen, particularly for a party's underlying interests behind their positional demands. By listening to his civilian counterpart and asking questions to understand what his true interests are, a U.S. military negotiator can use that knowledge to leverage those interests to structure an

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218. *See, e.g.*, Lytle et al., *supra* note 149, at 43.

219. *See, e.g.*, Pruitt, *supra* note 37, at 91; Sebenius, *supra* note 216, at 230.

220. *See* Lytle et al., *supra* note 149, at 44.

221. *See id*. at 39 (noting the prevalence of reciprocation, causing a negative conflict spiral that jeopardizes the outcome, may create a new dispute, and leaves a motive for revenge).

222. Negotiation counterparts who know that soldiers are likely to reciprocate threats and power-based communication may use threats or extreme demands as a tactic to derail or hijack the negotiation, obstruct an agreement, or test the U.S. negotiator. The solution is not, as was suggested to a soldier by one trainer at the NTC, to respond more forcefully, but to avoid reciprocating, maintain one's negotiation strategy, and redirect the discussion back to potential solutions to the dispute or options for an agreement. For an example of a positive approach, see Interview with RM, *supra* note 36, at 11 (using honesty, friendliness, apology, non-threatening conversation over a cigarette to develop relationships and frame negotiations in terms of counterpart's interests).

agreement that achieves his unit's objective as well as his counterparts, and that also cultivates a productive relationship with the civilian leader.[223] One of the officers interviewed noted the importance of listening, and another acknowledged that if he had asked more questions to better understand his counterpart's motivations, subsequent negotiations may have been easier.[224]

II. Army Negotiation Training: Integrating Lessons Learned?

The dramatic change over the last three years in the U.S. Army's training regime for units preparing to deploy to Iraq highlights two developing realities. First, civil-military relations and negotiations have come to play a more substantial role in the daily operations of U.S. military units in Iraq and Afghanistan. Second, the U.S. military has adapted to the mission it has been charged with executing as that mission has changed from early 2003 until now. That mission now requires a broader set of skills and competencies that are very different than those required in traditional combat and for which soldiers are trained. It has meant that many soldiers and officers spend a significant amount of their time interacting with civilian crowds and individuals, especially civilian leaders such as mayors, sheiks, imams, mullahs, city council members, school superintendents, police chiefs, and other government officials. This section explores the training that the Army now conducts for units preparing to deploy to Iraq designed to prepare commanders and soldiers to negotiate with Iraqi civilian and military leaders.[225]

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223. *See* Interview with JW, *supra* note 22, at 25, 27 (volunteering that listening was the most important thing he did in negotiations).

224. *See id.*

225. This does not include negotiation education offered to higher-level officers at various leadership schools and courses in the U.S. Army system. The Army War College requires a two-day negotiation course for all of its students (usually lieutenant colonels and colonels) and offers a 30-credit graduate-level negotiation course that is highly subscribed and popular among the senior officers who attend the Army War College. The Civil Affairs course at Ft. Bragg includes a negotiation module for officers specializing in civil affairs. The Foreign Service Institute offers a one-week negotiation course. Other graduate schools and courses offered by the military education system undoubtedly offer negotiation education as part of their curriculum. Finally, a small group of select officers attend civilian professional graduate schools in which they may take a negotiation course. This negotiation education is distinct from training, however, which prepares officers more specifically to execute particular missions. Officer Basic Courses, in which new officers are trained to be leaders in their specialties, do not include negotiation. Nor is negotiation included in mission-specific training except to the extent that the combat training centers and individual units have integrated it into their pre-deployment training. The schools described above are generally for captains and above who have already finished commanding a company. Most lower-level officers including platoon and company commanders are,

Most of the officers interviewed felt that they were not prepared to negotiate in Iraq, but those who deployed to Iraq most recently have benefited from the military's learning and adaptation to the new SSTR environment it faces there.[226] Those officers involved in the initial invasion of Iraq who were afterwards tasked with stabilizing the country and beginning reconstruction were not trained to operate in an SSTR context or to negotiate with Iraqis.[227] The lessons of past Peace Operations and Stability and Support Operations did not inform the training for most soldiers deployed to Iraq, although it was available.[228] The Army instead has had to re-learn some of the same lessons it learned in previous operations. Still, the Army is learning from the experience of these units and those deployed since then. Through its Center for Army Lessons Learned and various schools and combat training centers, it continues to learn from soldiers' experience in Iraq as they conduct a highly complicated SSTR operation. The recent integration of negotiation training into the U.S. military's pre-deployment training regimen is an important development. Yet, given the frequency and importance of negotiation in the operations of many U.S. military leaders in Iraq, the negotiation training remains insufficient in a number of respects.

A. *The United States Army National Training Center*

Due to the U.S. military's increasing awareness of the importance of non-lethal operations, including negotiations, the Army's

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therefore, not armed with negotiation education or substantial formal training before they find themselves having to negotiate in tense and complex situations like the ones they face in Iraq.

226. *See* Interview with TS, *supra* note 22 *and* Interview with JV, *supra* note 22, Interviews with JJ, *supra* note 22, Interview with MM, *supra* note 22, *and* Interview with CG, *supra* note 22.

227. *See, e.g.*, Interview with TS, *supra* note 22, at 23; *see also* 2004 CALL REPORT, *supra* note 3, at ii.

228. The Army has studied SSTR-like operations extensively before and has recognized many of the same lessons from those operations as it has observed and in some cases had to relearn in Iraq. *See, e.g.*, STRATEGIC STUDIES INST., U.S. ARMY WAR COLL., WARRIORS IN PEACE OPERATIONS (Douglas V. Johnson II, ed., January 1999); THOMAS R. MOCKAITIS, U.S. ARMY WAR COLL., CIVIL-MILITARY COOPERATION IN PEACE OPERATIONS: THE CASE OF KOSOVO (2004); U.S. ARMY PEACEKEEPING & STABILITY OPERATIONS INST., *supra* note 2. However, this has not meant that the military's training has always reflected the missions that soldiers will be asked to execute. *See* CTR. FOR TECH. & NAT'L SECURITY POLICY, *supra* note 2, at 88. In the late 1990s the Army considered two divisions to be no longer combat ready because they had been deployed to peace operations in the Balkans, yet this ignored the skills and experience that such units developed during those missions – the very skills and experience that would have been valuable for all U.S. forces in Iraq in 2003 to the present. *See id.*

combat training centers (CTC's) have adapted their curriculum to include a greater emphasis on such civil-military interactions. Combat training centers provide simulated combat training and prepare units for deployment to Iraq and Afghanistan. The CTC's primarily rely on simulation exercises that provide the unit-in-training with experience facing the same types of tactical problems and challenges they might face during their upcoming mission overseas. This paper focuses on the training conducted by the U.S. Army's National Training Center at Fort Irwin in California.[229]

Until just 2 years ago, the NTC focused on training units for high-intensity conflict using brigade-sized simulated tank battles.[230] The CTC's began changing their curriculum in the wake of Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF-Afghanistan) to respond to the realities that U.S. troops were facing in those two operations. Training evolved as it became clear that the U.S. military would be engaged in Iraq for an extended period of time and the nature of the mission changed from invasion and quick transition to a long-term security, stabilization, transition, and reconstruction operation in the midst of an insurgency.[231]

The NTC has an 800-member Operations Group responsible for conducting training classes, planning and designing simulation exercises and – during the exercises – observing, coaching, mentoring, and evaluating. After each engagement with insurgents or civilians, these trainers provide informal coaching and feedback in After Action Reviews (AAR). At the end of the exercises, they provide formal

229. By one account, one third of the U.S. troops currently deployed to Iraq trained at the NTC. *See* Dexter Filkins & John F. Burns, *Mock Iraqi Villages in Mojave Prepare Troops for Battle*, N.Y. Times, May 1, 2006, at A1. The NTC is the largest of the U.S. Army's three major CTC's and the only accredited joint military training facility. The other two CTC's are the Joint Readiness Training Center at Fort Polk, Alabama (JRTC), and the Joint Multinational Readiness Center in Hohenfels, Germany (JMRC). Although the paper does not explore training conducted by the U.S. Marines and is focused on the training conducted by the largest of the Army's major combat training centers, the description provides a representative picture of how soldiers who will inevitably find themselves negotiating with Iraqi civilian leaders are trained for just such a new and manifestly different mission. The NTC has trained active duty Army, National Guard, and Marine units for deployment to Iraq.

230. Information in this section about the NTC was provided by author's notes from a Command Briefingat the United States Army National Training Center, Major Keith Jarolimek, Secretary of the General Staff, Command Briefing at National Training Center, United States Army (February 28, 2006) [hereinafter Jarolimek, Command Briefing]; Interview with Major John Clearwater, U.S. Army Nat'l Training Ctr., Fort Irwin, Cal. (February 28, 2006).

231. For additional description of the evolution of the Army's training, with particular emphasis on the National Training Center and focus on counterinsurgency training, see Filkins & Burns, *supra* note 229.

AARs to the unit and its leaders. Trainers visit Iraq and Afghanistan on missions to gather best practices, understand emerging challenges, and procure more information about problems faced by troops in theater. Eighty-five percent of the NTC's trainers are combat veterans who served tours in Iraq or Afghanistan. They integrate new lessons and information, as well as their personal experience, into the training. They also integrate lessons learned from the U.S. Army's Center for Lessons Learned.

Army units that train at the NTC spend three weeks at the base, the first of which includes a three-hour negotiation and cultural training for commanders and their staff officers.[232] The live simulation exercises occupy the entire second and third weeks of training. The unit deploys into the desert of the NTC charged with accomplishing a mission and operating as if it were in Iraq. Situated in the middle of the Mojave Desert, the NTC has twelve mock Iraqi villages, an Islamic shrine, cave complexes, and 1,600 role players representing Iraqi civilians and insurgents. 250 of the role players are Iraqi nationals, most of whom speak fluent Arabic. These Iraqis play the most important 127 of 2,200 distinct roles available, each of which has a personal background and history, job, residence, as well as familial and social relationships and associations with other role players. The 127 key roles represent the mayors, sheiks, town council members, imams, and police chiefs.

Negotiations take place throughout the two-week, live exercise. Junior officers or squad leaders frequently interact with mayors or sheiks. Battalion commanders or the Brigade commander also meet with the mayors and sheiks individually or as a group. Negotiation is, as one leader at the NTC said, a bridge between kinetic and non-kinetic operations: failed negotiations may turn non-kinetic operations into kinetic ones.[233] This was demonstrated starkly in one negotiation I observed during a recent NTC training rotation.[234]

After a surprise suicide bomb attack on his unit, a company commander negotiated with the mayor of a village over the custody of

232. This negotiation training is detailed below.

233. *See* Jarolimek, Command Briefing, *supra* note 230. "Kinetic" refers to lethal or potentially lethal operations involving live fire and application of force. "Non-kinetic" refers to non-lethal operations.

234. The author visited the NTC between February 27, 2006 and March 2, 2006 and observed the 3d Stryker Brigade Combat Team, 2d Infantry Division from Fort Lewis, Washington during the last few days of its two week live exercise. The unit deployed to Iraq (for the second time) in the summer of 2006.

four detainees accused by the officer of participating in the attack.[235] The captain asked for the mayor's cooperation. The mayor and police chief, standing in the doorway of the jail, would not allow the U.S. soldiers into the jail to take custody of the prisoners. Noting that he wanted to cooperate, the mayor claimed the detained men were not guilty. The captain stated that "cooperation would be to move out of the way." Still at an impasse, the captain called back to his base for permission to take the prisoners by force. He continued to negotiate with the mayor, without threatening the prisoners' forceful removal. The mayor offered to let him take one of the four prisoners, under his formal protest and as a sign of his cooperation with the captain and battalion commander. This compromise was accepted. As the soldiers were preparing to take the prisoner, the town was shelled with insurgent mortar fire.

This negotiation – which took place in a simulated environment but was neither staged nor scripted – demonstrates the unique, challenging environment in which the U.S. military negotiates with civilians in operations like Iraq. Violence and the threat and fear of violence often exist in the background of negotiations. The entire event was precipitated by a suicide bomber. It ended with mortar fire. Yet, in this situation, negotiation was the best solution for both the Americans and the mayor, and despite the option of using force, the captain found a way to avoid it through continued negotiation. The unit did not destroy its vital relationship with the town's mayor, and the mayor could say to the battalion that he cooperated, while saying to his constituents that he did not give in to all of the officer's demands. The captain deployed to Iraq with experience trying to negotiate under these difficult circumstances.

B. *The NTC's Negotiation Training*

This section describes the NTC's negotiation training and the process and system it teaches U.S. military commanders, their staff officers, and subordinates to use when negotiating with civilian leaders in Iraq.[236] The training begins with an approximately half-hour

235. Negotiation observed by the author on February 28, 2006 at "Medina Wazul," a mock Iraqi town at the NTC.

236. The training curriculum at the NTC was designed by the NTC's lead negotiation trainer, Major Jonathan Velishka, using negotiation training material developed originally by the JRTC in cooperation with subject matter experts and combining it with his personal experience in Iraq, as well as cultural expertise provided by the Defense Language Institute. It was described by Major Velishka, United States Army, National Training Center, Fort Irwin, California.

session on cultural awareness designed to complement the negotiation training and delivered by instructors from the Defense Language Institute. It includes an overview of the cultural norms, differences, and factors that soldiers should take into account when negotiating in Iraq. This is followed by an approximately half-hour presentation on negotiating.

1. *Preparation*

Preparation is the cornerstone of the NTC's negotiation training. The system of preparation it teaches for negotiations is an adapted version of the military decision-making process (MDMP), which requires commanders to take all relevant factors into account, war-game potential alternative outcomes, and make decisions and judgment calls based on that analysis. It tracks the standard mission preparation and analysis used by the U.S. Army to prepare for any tactical engagement. This, by design, is meant to account for conflicting priorities and tension between immediate objectives and long-term ones. Done properly, it will include all relevant interests and priorities, information about and dynamics of the area, and potential strategies, alternatives, and options.[237] The commander and staff war-game the negotiation beforehand, analyzing what courses of action the commander is willing to take to meet his objectives. The commander will then be prepared to make informed judgments in the negotiation based on overall objectives for his mission in that area.

To support this preparation the NTC provides and teaches officers to use its "Leader Preparation Sheet" when preparing for negotiations in Iraq.[238] A completed sheet is the product of an integrated staff process in which members of the battalion or brigade commander's staff fill in the parts of the sheet relevant to their area of responsibility. The preparation sheet provides a framework for a comprehensive mission analysis by demanding a thorough understanding of the local economy and industry, religious and tribal dynamics, educational institutions, civil law enforcement, former military regime elements, and government and civic institutions in the commander's area of responsibility. This includes a cultural and

237. For example, a common tension faced by U.S. military negotiators is the frequent conflict between the immediate objectives or task and the long-term objective of cultivating and maintaining positive, productive working relationships with Iraqi counterparts which are necessary to accomplish the U.S. military's long term mission objectives.

238. Blank Leader Preparation Sheet, U.S. Army National Training Ctr., Fort Irwin, Cal. (courtesy of Major Jonathan Velishka, Lead Cultural Awareness & Negotiation Trainer, on file with author).

ethnoreligious analysis of the particular area.[239] The sheet requires staff officers to develop and fill in a negotiation strategy, information operation themes, mission intent, talking points, sequence of events in the negotiation, possible impasse issues, offers, negotiation points, exit strategy, and the promises made at the last meeting.[240]

The NTC teaches that the preparation sheet should stimulate thinking about a negotiation strategy, an agenda, and the potential directions the negotiation could take, including things that could derail it. The NTC's lead negotiations trainer notes that the overall strategy and preparation should suit the officer who will be conducting the negotiation, and the process requires commanders and their staffs to identify intended outcomes that are suitable and feasible. The NTC training emphasizes that every meeting with a civilian leader should have an intended outcome.[241] The premise of the NTC's preparation system is that a commander, armed with all of the relevant information and focused on his intended outcome, has everything he needs to negotiate successfully. This is an assumption that will be challenged below.

2. *Tracking Promises*

The NTC's negotiation training also focuses on the promises that soldiers make to civilian leaders, because of the importance that keeping promises has on credibility. The NTC teaches soldiers to track carefully all promises or perceived promises they make in any negotiation. During the two-week, live exercise, NTC trainers copy every promise made by a unit and its officers or squad leaders. The unit is evaluated on how many of those promises it kept. The NTC teaches that promises kept are a powerful negotiating tool because a U.S. military negotiator can remind his Iraqi counterpart about the promises that his unit has kept – for instance, the schools built, wells dug, joint U.S.-Iraqi patrols conducted.[242]

Perceived promises are a particular challenge. The NTC's training instructs officers to finish every negotiation with an explicit review of commitments, in order to clarify what was promised as well

239. It is a central emphasis of the training that to be effective at negotiating both particular issues and over the long-term, the U.S. military officers and their soldiers cannot rely on basic cultural awareness – the do's and don't's – but must understand intimately their area of operations. It is, as the NTC's lead negotiation trainer said, "all about homework." Interview with Major Jonathan Velishka, *supra* note 170, at 20.

240. Blank Leader Preparation Sheet, *supra* note 238.

241. *See* Interview with Major Jonathan Velishka, *supra* note 171, at 13-15.

242. *Id.* at 24.

as what may have been perceived as promised, but to which the officer did not commit. Finally, soldiers are instructed to write down their promises to enable consistent tracking of those commitments.

3. *Rehearsal*

The NTC trains officers to rehearse before negotiating with Iraqi civilians. This parallels the rehearsal element of the MDMP. A commander's rehearsal with his interpreter is a critical aspect of this pre-negotiation rehearsal.[243]

After the NTC's negotiation and cultural awareness presentations, officers prepare for and conduct negotiations with Defense Language Institute (DLI) instructors who play mayors and sheiks. Battalion commanders and their staffs prepare for the mock negotiation using the preparation sheet. NTC trainers observe the negotiation, and afterwards the trainer and DLI instructor provide feedback. The staff observes the negotiation via closed circuit TV and provides feedback along with the NTC trainer and DLI instructor. The feedback provides an opportunity for the staff to test how well they prepared their commander.

4. *Negotiation Techniques & Tactics*

The NTC's emphasis on preparation reflects its view that negotiations should be treated as any other tactical mission and may explain why the training focuses on the system of preparation and not on effective negotiation techniques. Its negotiation training does not, generally, include negotiation tactics or techniques, but it does include brief discussion of things to do and not do during a negotiation. They include, for instance: don't lie or bluff; don't rush off to the next meeting; don't promise anything outside of your control; finish on time; don't tell jokes; only make threats if you can and will follow through; watch body language; don't have side conversations; finish with a review of agreements. This is one area of the training that, if enhanced, could provide officers with a set of useful and practical negotiation skills to complement the Leader Preparation Sheet's structural preparation approach.

III. Recommendations for Military Negotiation Training

The NTC's training emphasis on preparation for the negotiation is appropriate and essential, but the training does not necessarily teach U.S. military negotiators *how* to strategize for the negotiation

243. *Id.* at 30-32.

or *how* to negotiate. Yet successful negotiation is a skill that can be developed through effective training techniques.[244] This section suggests five recommendations that, based on the findings discussed above and a review of the negotiation literature, could complement the current negotiation training curriculum offered by the U.S. military to its deploying soldiers. These recommendations are not meant to replace the current emphasis on preparation or the system of preparation developed by the military's combat training centers. Such focus on preparation, situational awareness, and rehearsal is critical to negotiating effectively in the complex SSTR environment.[245] These recommendations would, however, enhance the current training regime by providing soldiers and commanders with additional tools, techniques, and methods to utilize that preparation more effectively.

A. *Expand Training Content to Include Problem-Solving, Interest-Based Negotiation Strategy*

Negotiation training should encourage soldiers and commanders to include an analysis (in their preparation) of the tactical benefits of approaching the negotiation with a focus on interests, so that soldiers will consciously make strategic, informed decisions about how any given negotiation is conducted.[246] The preparation method taught at

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244. *See, e.g.*, Paul W. Meerts, *Training of Negotiators*, *in* International Negotiation: Analysis, Approaches, Issues, *supra* note 17, at 455, 455-56.

245. *See* Mnookin et al., *supra* note 41, at 28-34 (arguing that good preparation consists of identifying issues and thinking about interests, contemplating potential opportunities for "value creation," knowing and improving one's alternatives, and establishing ambitious but realistic goals). The NTC's lead negotiation trainer believes that the negotiation preparation he teaches decreases the need to be heavy-handed or forceful. "[Y]ou can have a guy that goes in, is real smooth and understands the IOP [integrated operational picture], and understands what he can offer, and you have a very successful hour or 30 minutes. Or he goes in too heavy-handed, hasn't thought through his outcome, and is demanding information on who is planning an IED, and that's a different outcome." Interview with Major Jonathan Velishka, *supra* note 171, at 20. However, as discussed elsewhere, preparation alone does not accomplish this.

246. Appendix E of the U.S. Army's *Field Manual for Stability Operations and Support Operations* provides a framework for preparing for and conducting negotiations that affirms the recommendations contained in this study, including the need to focus on underlying interests. SASO Field Manual, *supra* note 2, app. at E-0 to -5. This doctrinal document instructs soldiers preparing to negotiate to focus on the interests of the parties and the relationships involved, to consider alternative approaches to the negotiation, to prevent incidents that destroy dialogue, and to be attuned to cultural differences. It provides an eight-step procedure to follow when negotiating that mirrors fundamental principles of negotiation literature discussed and recommended in this paper. *See id*. This appendix should be disseminated more broadly and utilized as a resource by officers and NCO's preparing to deploy to Iraq.

the NTC focuses, however, on power, substance and what commitments have and have not been made. While this is necessary, the current training seems to assume that a thorough preparation on the substance of the issues involved in the negotiation will translate into effective execution. Analysis of the negotiations discussed in the interviews, in addition to a substantial body of negotiation literature, suggests otherwise. Training should include discussion of the practical benefits of focusing in negotiations on interests and cooperative tactics, instead of exclusively on power and competitive tactics.

A brief description of how the negotiation will likely cycle between interests and power, and the proven benefits, in many circumstances but not all, of directing the negotiation toward interests would complement the NTC's current methods. Finally, the training should include a description of the benefit of combining power and interests foci – managing the tension between competitive and cooperative impulses to claim and create value – in negotiations with civilian counterparts. This approach recognizes the pervasiveness of power as a significant element in military-civilian SSTR negotiations, while balancing it with the significant benefits of an interest-based approach.

B. *Teach Proven Negotiation Skills and Techniques*

The U.S. military's pre-deployment training should include emphasis on proven negotiation techniques such as listening, asking questions, redirecting discussions away from power-based or adversarial communications, and avoiding reciprocation of threats – with explanations of how such techniques will benefit them as negotiators and improve their chances of achieving their intended outcomes. This training should include scenario-based practice in listening, asking questions, identifying a counterpart's interests, and exploring options in a way that is appropriate for the context of the mission and does not appear to diminish the soldier's negotiating strength. These techniques are essential for effective negotiation.

Among other reasons discussed elsewhere in this paper, these techniques are important because a military negotiator who uses them effectively can prevent the negotiation from being hijacked by his civilian counterpart, who may want to initiate a conflict spiral as a low-power tactic to exercise influence.[247] A capability that avoids

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The principles and procedures it recommends should also be integrated into pre-deployment negotiation training, and all NTC and other CTC trainers should read and understand its recommendations.

247. *See* Zartman & Rubin, *Power and Practice*, *supra* note 96, at 15-16.

this trap would strengthen – not weaken – U.S. military negotiators, but it requires a conscious effort to avoid reciprocating when their counterpart makes power threats or extreme demands. Such an effort is not a natural response, but through training, it can be a part of the military negotiator's toolbox.

C. *Train Soldiers to be Aware of their Perceptions & Biases*

Given the complex cross-cultural environment defined by the presence of military force and power, U.S. military negotiators would benefit from exposure to and training in the role of cognitive and social bias in negotiation. Military-civilian SSTR interactions are ripe environments for such cognitive biases as selective attention, belief perseverance, representativeness and availability heuristics, the base-rate fallacy, attributional bias, self-serving bias, and negotiator overconfidence, among others.[248] Some degree of understanding of these psychological processes should assist military negotiators in avoiding the worst pitfalls of such cognitive errors if they are made aware of what these biases are, how they are generated, and what effect they have on decision making and negotiation. For instance, the SSTR environment increases the risks that both soldiers and civilians will mistakenly attribute ill-will, deceit, or bad motives.[249] Cultivating a critical self-awareness toward cultural stereotypes, capacity for nationally-derived and organizationally-derived biases, and one's own ethnocentrism is critically important in the complex SSTR environment in which U.S. officers are operating.[250]

D. *Expand Negotiation Training to NCO's and Junior Officers*

Leaders at all levels, including non-commissioned officers, junior officers serving as platoon leaders, and company commanders should be trained to negotiate effectively in SSTR environments. The nature

248. For an overview of these biases and their relevance to international negotiations, see Christer Jönsson, *Cognitive Theory*, *in* INTERNATIONAL NEGOTIATION: ANALYSIS, APPROACHES, ISSUES, *supra* note 17, at 270. For discussion of how perceptions shape negotiators' behavior and how psychological, cultural and emotional forces can distort decisionmaking, see Zartman & Rubin, *Symmetry and Asymmetry*, *supra* note 66, at 271-90; MNOOKIN ET AL., *supra* note 41, at 156-72. Sebenius and Avruch both discuss these biases in the context of international, cross-cultural negotiations. *See* Sebenius, *supra* note 44; Avruch, *supra* note 48.

249. *See* Rubinstein, *supra* note 42, at 35.

250. "Shed your ethnocentrism. It's a barrier." Interview with EH, *supra* note 22, at 16. *See also* Avruch, *supra* note 48, at 406 (asserting the importance of recognizing one's own ethnocentrism).

of the missions that units are conducting in Iraq mean that the lowest level leaders on the ground come into frequent contact with local leaders and often enter into negotiations. They need to be as prepared to negotiate with their counterparts in the local population as higher-level leaders such as battalion and brigade commanders are to negotiate with important sheiks and governors. Negotiation training at the NTC focuses, however, on commanders and their staffs, primarily at the brigade and battalion level. It does not include NCO's and junior leaders who are frequently engaged in negotiations.[251] Expanding negotiation training to include all leaders who are likely to conduct a substantial amount of negotiation while deployed to an SSTR operation would strengthen each unit's capability while executing its mission.[252]

E. *Dedicate More Time to Negotiation Training*

The time the Army spends training its soldiers to negotiate to prepare them for their deployment should be significantly higher to allow for training in the techniques, methods, and theory described in the above recommendations. This conclusion does not ignore the military's need to prepare its troops for the challenging and dangerous security situation they face in Iraq. Nevertheless, given the important role in Iraq of non-kinetic activities such as negotiations, the time spent training soldiers to negotiate with Iraqi civilian leaders should be commensurate with the amount of time, relative to kinetic activities, that they will spend negotiating. In the worst case, poorly executed negotiations may actually do harm to the U.S. military's SSTR mission in Iraq by embittering Iraqis and turning previously neutral civilians into enemies, creating more disputes than existed before the negotiation, and failing to solve the problems that were originally the subject of the negotiation. At their best, U.S. military negotiators achieve their own objectives while meeting the interests of their Iraqi counterparts, build stronger working relationships with Iraqi leaders, and engender good will among the Iraqi population. In

251. *See* Interview with Major Jonathan Velishka, *supra* note 170, at 20-21. The NTC trainers recognize that the junior leaders are the ones spending the most time on the ground, but they do not provide training, instead relying on those young officers' own preparation, including knowing their unit's objectives, understanding their area and its local dynamics. "[I]t's all about homework . . . . [Junior leaders] are the ones that need to not be complacent in their preparation." *Id.*

252. *Cf.* Watson, *supra* note 2, at 3, 8; SASO Field Manual, *supra* note 2, app. at E-0 (emphasizing that leaders at all levels may become involved in negotiations).

between, negotiations may have less extreme effects, but mildly productive outcomes and neutral effects on Iraqi sentiment are not optimal.

With thousands of negotiations being conducted by U.S. soldiers in Iraq, the aggregate effect of negotiations that damage the reputation of the U.S. military or do not achieve the soldier's intended outcomes – or, alternatively, of those that strengthen it – may have an impact on the ability of the U.S. military to efficiently accomplish its mission there. More time spent preparing the military's leaders – from squad leader to flag officer – for the negotiating they will inevitably and actually do while deployed to Iraq is critical for the U.S. military's mission success.[253]

The Army's field manual for stability and support operations acknowledges that negotiation training is essential for officers serving in SSTR operations and that pre-deployment training is the "preferred approach." It suggests that officers take a three to five day course introducing basic concepts and applying them in a series of exercises.[254] Yet the NTC's pre-deployment training is two to three hours long, and none of the officers interviewed for this study had been provided any other negotiation training, except for a civil affairs officer whose civil affairs course includes four days of negotiation education.

Adopting the recommendations discussed above will require more training, as well as more practice and evaluation, all of which requires more time than is currently spent training soldiers to negotiate. Research into negotiators as learners suggests that a superior way for negotiators to learn from their experiences is to practice comparing the structures of different cases or situations instead

253. This is consistent with the Army's own recognition of the importance of training soldiers for the challenges they will face in SSTR operations. *See* U.S. Army Ctr. for Army Lessons Learned, On Point: The United States Army in Operation Iraqi Freedom (2004); SASO Field Manual, *supra* note 2; Crane & Terrell, *supra* note 139; Mockaitis, *supra* note 228; John W. Jandora, *Center of Gravity and Asymmetric Conflict: Factoring in Culture*, 39 Joint Forces Q. 78, 83 (2005) (suggesting that inclusion of cultural courses in training is important but insufficient and that the joint military community should include related subjects in training to maximize effectiveness of instructional time); Douglas V. Johnson II, *Introduction*, *in* Warriors in Peace Operations, *supra* note 228 (noting the dependence on junior leaders in such operations).

254. *See* SASO Field Manual, *supra* note 2, app. at E-5; Ctr. for Tech. & Nat'l Security Policy, *supra* note 2, at 87-89 (criticizing the U.S. military's training for continuing to focus exclusively on the warfighting mission, which leaves little time to acquire negotiation skills for the SSTR-like missions that follow).

of analyzing just one case at a time.[255] This requires time to conduct more than one negotiation simulation, so that the commanders, staff officers, and junior leaders can learn from multiple cases and situations. Officers who are likely to be involved in or conducting negotiations in SSTR operations should be provided negotiation education and training lasting two or more days. Those at the military's pre-deployment training centers who conduct negotiation training should themselves have a foundation in negotiation through a course at one of the military's schools or a civilian institution, to the extent they may not already have one.

IV. Conclusion

This paper has provided an analysis of negotiations in SSTR operations between U.S. military officers and local civilian or military leaders, using Iraq as a virtual laboratory. Based on the experiences of officers recently redeployed to the United States, I focused my analysis on three elements of negotiation that exercise particular force on military-civilian negotiations in SSTR operations. Context, cultural difference, and power influence substantially and in unique ways the conduct of such negotiations and suggest several lessons for practice. In their own ways, culture and power are each dependent on numerous factors that can alter their relative influence on the negotiators' conduct.

The officers' interviews demonstrate the thoughtfulness with which many officers approached their negotiations with civilians. Most were not trained or prepared for them, but during their time in Iraq, they adapted and learned. Many already knew or learned effective lessons in Iraq; some seemed to learn the wrong lessons, diminishing their negotiating effectiveness. These lessons reflect the conclusions of the negotiation literature, suggesting that, despite the unique context of SSTR, negotiation theory could be successfully applied in training to prepare soldiers before they deploy, instead of hoping they learn the right lessons along the way. For this reason, I offered several recommendations from negotiation theory that, based on the interviews, may be particularly relevant and helpful for effective negotiation in this challenging and complex environment.

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255. *See* Leigh Thompson, et al., *Avoiding Missed Opportunities in Managerial Life: Analogical Training More Powerful Than Individual Case Training*, 82 Org. Behav. & Hum. Decision Processes 60-75 (2000). This "analogical learning" approach seems particularly appropriate for the situational training exercises at the NTC.

These recommendations would be helpful if integrated into the military's pre-deployment training for SSTR operations. The U.S. Army National Training Center's new negotiation training is an important development. The new training reflects a recognition at the military's premier combat training facility of the role that civil-military relations, including negotiation, play in the complex mission of stabilizing, securing, transitioning, and reconstructing a country following conflict. I concluded that the current training is essential but not sufficient for successful negotiation in SSTR operations. As a result, I provided several recommendations that are consistent with, and would enhance and complement, the current offering at the NTC, U.S. military training centers, and units' own pre-deployment training.

In Iraq and Afghanistan, U.S. officers and NCO's have negotiated many thousands of times with civilian leaders while pursuing tactical and operational objectives that affect the strategic import of the U.S. missions in those countries. The aggregate success or failure of these negotiations has an impact – sometimes immediate, more often over time – on the success or failure of the entire mission. For this reason, the practice of negotiating with local leaders should be given more attention by the U.S. Army and Marine Corps. Transformation of the U.S. military requires adaptation to the types of operations it may continue to be called upon to perform. Negotiation is more likely than ever to play a significant part of military operations overseas. As it does, negotiation training, education, and research will become more important for the U.S. Army and Marines. This paper provides a point from which these organizations and the academic community may work together to improve military-civilian negotiating and, in the process, promote more tactical and operational, if not also strategic, success in the increasingly complex and dangerous missions the U.S. military is asked to undertake.