

A VIEW FROM THE EAST: A FRESH LOOK AT INTER-CULTURAL  
NEGOTIATIONS AND DISPUTE RESOLUTION BASED ON THE INDIA-  
UNITED STATES NUCLEAR NEGOTIATIONS

*PRELIMINARY DRAFT – PLEASE DO NOT CITE WITHOUT AUTHOR’S PERMISSION*

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*“There should be zeal to learn about new culture. There should be an honest non-judgmental approach to learning the new culture. Take it this way. A new culture will only adopt you if you are willing to accept that culture without inhibitions”<sup>2</sup>.*

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<sup>2</sup> TING-TOOMEY & CHANG, UNDERSTANDING INTERCULTURAL COMMUNICATION (2007)

#### ABSTRACT:

This article makes a case that national culture plays a significant role towards the successful outcome of cross-cultural nuclear negotiations. Using example of nuclear negotiation between United States and India, the article tries to analyze the impact of culture in three ways: context, communication and strategy. Unearthing the multitude of hidden cultural interests, the article proposes a three-step approach in answering how our identity, national culture and religion play a key role towards negotiating outcome.

#### I. INTRODUCTION:

This article argues that a three-step approach is required for an effective cross-cultural dispute resolution. At an outset, the approach includes an awareness and understanding of one's own cultural beliefs and a knowledge of a negotiation party's cultural attributes, step-by-step awareness of the sub-cultural negotiation process, without over-utilizing 'cultural stereotypes' and effectively employing cross-cultural questions by developing an important platform of understanding for the negotiating party's outcome orientation.

Section II of the article defined the term culture, while section III provides background to the Indo-United States negotiations. Sections IV, V and VI take a further look at the impact of culture in communication, culture in context and culture in strategy. Overall the paper will review and in part rely on the well-established cross-cultural theories of both American (Edward T. Hall, Gary R. Weaver, Geert Hofstede), and Asian (Min Zhou, Goh Bee Chen, Joo-Seng Tan and Sri Aurobindo) scholars. How can one engage in effective dispute resolution with cross-cultural parties without employing traditional stereotypical assumptions (for example, all Indians are Collectivist, High Context and Polychromatic, while all Americans are Individualist, Low Context and Monochromatic)? In answering, the article proposes the cross-cultural approach, which includes a set of cross-cultural questions.

#### II. DEFINING CULTURE

Culture has multiple definitions. Culture is defined as a set of norms, values, beliefs, and ways of life of a particular group of people. Culture is also defined as texts, artifacts, and performances produced by a variety of artists, and entertainers, and cultural crafts workers<sup>3</sup>. Anthropologists define culture differently than legal scholars<sup>4</sup>. In short, the

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<sup>3</sup> See GOH BEE CHEN, *NEGOTIATING WITH THE CHINESE*, p. 18 (1996) (defining culture as the habits of our ways); MICHAEL DENNING, *THE CULTURAL FRONT: THE LABORING OF AMERICAN CULTURE IN THE TWENTIETH CENTURY* (1996), xviii (defining culture as an industry); SRI AUROBINDO, *THE FOUNDATIONS OF INDIAN CULTURE* (1968) 45 (asserting different ways of seeing a culture: one is the with an eye of sympathy and intuition and a close appreciative self-identification and second is the eye of the discerning and dispassionate critic who tries to see things as it is in its intention and actuality and finally there is the eye of the hostile critic, who provides a strong judgment on other cultures)

<sup>4</sup> Anthropologists have defined culture more broadly to include literature, art, architecture and housing, cuisine, traditional dress, gender, courtship and marriage, festivals and leisure activities, music and dance, and social customs and lifestyles. See CAROL E. HENDERSON, *CULTURE AND CUSTOMS OF INDIA*, xiii (2002). Also see Rebecca Golbert, *An Anthropologist's Approach to Mediation*, 11 *Cardozo J. Conflict Resol.* 81

definition contains three components that connect almost all different definitions of culture: “1) a patterned way of thought or behavior 2) of a group, 3) that is based on certain values.”<sup>5</sup> The practices may include traditions, belief systems, and in some instances, religion<sup>6</sup>. Culture is also part of us that we all carry with us all the time, without necessarily being aware of it. Culture is deep rooted. Like an iceberg, culture shapes how we look on the surface without disclosing what is beneath the surface layer<sup>7</sup>. Furthermore, culture is not monolithic in any society and changes over time.<sup>8</sup> In this article, my best efforts are not to view national cultures through a stereotypical lens but a lens based upon in-depth study and analysis.

### A. *Culture and Nuclear Negotiations*

Culture is often unrecognized factor in nuclear negotiations. Recent scholarly writing on United States and nuclear proliferation treaty, international nuclear negotiations, and cold war do not prominently recognize the cultural differences while addressing nuclear negotiations<sup>9</sup>. That fact coupled with the limited law review literature on dispute resolution and international nuclear negotiations provides a unique perspective to the present research<sup>10</sup>. It also tells us that the field of cross-cultural dispute resolution still has a long road to travel. Although there has been progress since Ruth Benedict, an anthropologist wrote one of the first books on the subject Culture<sup>11</sup>.

This article argues that a pure interest based approach as described by ‘Getting to yes<sup>12</sup>,’ is insufficient when applied to cross-cultural dispute resolution. In recent years western scholars have argued that interest based approach is applicable to cross-cultural negotiations, especially, if the interests are defined as culturally motivated interests<sup>13</sup>.

<sup>5</sup> *Supra* note 5, see CHEN. ALSO SEE OSCAR G. CHASE, LAW, CULTURE AND RITUAL-DISPUTING SYSTEMS IN CROSS-CULTURAL CONTEXT (2005) 1-14.

<sup>6</sup> See WILLIAMS, *supra* note 4, at 392. Speaking of the closeness of immigrants to their religion, the author adds “it reflects the power inherent in religion to provide a transcendent foundation for personal and group identity in the midst of the enormous transitions that migration entails”

<sup>7</sup> Ilhyung Lee, *Culturally –Based Copyright Systems? : The U.S. and Korea in Conflict*. 79 Wash. U. L.Q. 1103 (2000); in geographically large countries like India and the United States, regional variations including race, age, religion and caste may warn us against generalizations.

<sup>8</sup> *Id.*

<sup>9</sup> See RUDOLF AVENHAUS, CONTAINING THE ATOM: INTERNATIONAL NEGOTIATIONS ON NUCLEAR SECURITY AND SAFETY, JOSEPH LEVITT, PEARSON AND CANADA’S ROLE IN NUCLEAR DISARMAMENT AND ARMS CONTROL NEGOTIATION. SEE ALSO NUCLEAR PROLIFERATION AFTER THE COLD WAR (WOODROW WILSON CENTER SPECIAL STUDIES).

<sup>10</sup> With a few exceptions, for example, see Carlos De Vera, *Arbitrating Harmony: Med-Arb and the Confluence of Culture and Rule of Law in the Resolution of International Commercial Disputes in China*, 18 Colum J. Asian L. 149. Also see Bernadette Meyler, *The Limits of Group Rights: Religious Institutions and Religious Minorities International Law*, 22 St. John’s J. Legal Comment 535. Both take the new route of exploring culture and religion in international dispute resolution.

<sup>11</sup> RUTH BENEDICT, PATTERNS OF CULTURE (1934). The dominant attitudes, values and beliefs that shape and motivate behavior of the parties to cross-cultural conflict provide us mediators with an exceptional opportunity. The opportunity is to analyze and understand a conflict from newer perspectives. Also see Golbert, *supra* note 6.

<sup>12</sup> ROGER FISHER, WILLIAM URY, BRUCE PATTON, GETTING TO YES (1991)

<sup>13</sup> See John Barkai, *Cultural Dimension Interests, The Dance of Negotiation, And Weather Forecasting: A Perspective On Cross-Cultural Negotiation and Dispute Resolution*, 8 Pepp. Disp. Resol. L.J. 403 at 403

Professor Abramson has rightly substituted the word, “interests” for “cultural interests”<sup>14</sup>. However, when the thought patterns of the parties to mediation are different, the mediator needs to take extra time and provide extra effort to understand the importance of not only the issues presented at table but also the symbolism of conflict resolution itself. For instance, in the three-step approach that this article proposes, a negotiator or mediator should follow a culturally sensitive approach towards preparation, presentation and outcome. She should not begin with the stereotypical assumptions<sup>15</sup> and she should consider studying non-verbal communication of the culture she is least aware of. As proposed later in this article, non-verbal communication together with values and thought patterns play a large impact on cross-cultural negotiations.

### B. Culture and Thought Patterns

#### RELATION BETWEEN CULTURE AND SOCIETY

LEGAL CULTURE	SOCIETY DRIVEN CULTURE
NEWER DEMOCRACIES	OLDER DEMOCRACIES
HIGHLY LAW GOVERNED	CUSTOMS, TRADITIONS GOVERNED
INDIVIDUALIST; HIGHER INDIVIDUAL ACCOUNTABILITY	COLLECTIVIST; HIGHER GROUP ACCOUNTABILITY
LOW CONTEXT; INFORMATION SHARING IS ABUNDANT	HIGH CONTEXT; WORDS HAVE LESS VALUE THAN BODY LANGUAGE
MONOCHRONIC; TIME IS MONEY	POLYCHRONIC; TIME HAS AN INBUILT HEALING POWER
POWER IS EQUALLY DISTRIBUTED	POWER IS BESTOWED BY SOCIETY

Learning about effective cross-cultural negotiation between India and United States requires understanding of the eastern and western way of thinking. People from different cultures think and process situations differently. Such difference impacts the negotiations right from the beginning (opening statement) to the end (agreement writing) of a negotiation or mediation. What makes the work of a cross-cultural dispute resolver difficult is that cultural differences are deep rooted as they are ‘below the surface’<sup>16</sup> and may not be easily identifiable at an onset to negotiation.

<sup>14</sup> See Harold Abramson, *Selecting Mediators and Representing Clients in Cross-Cultural Disputes*, 7 Cardozo J. Conflict. Resol. 253

<sup>15</sup> See the approach as provided on page 28 for further discussion on the three-step approach.

<sup>16</sup> The term “below the surface” may itself have different connotations in different cultures. For example, below the surface in United States may mean something that shouldn’t be disclosed as described in a passage in a New York Times Article: “But scores of secret American cables from recent years, obtained by Wiki Leaks and made available to several news organizations, show that beneath the public efforts at warmer ties, the United States harbors a dim view of the post-Soviet Kremlin and its leadership, and little hope that Russia will become more democratic or reliable.” Discussing American view of Russian leadership in December 2010. Available at [http://www.nytimes.com/2010/12/02/world/europe/02wikileaks-russia.html?\\_r=1&hp](http://www.nytimes.com/2010/12/02/world/europe/02wikileaks-russia.html?_r=1&hp) (Last visited December 1, 2010). However, in eastern wisdom, “below the surface” may just mean belief system that a party holding such belief herself may not be aware of.

As Nisbett points out, “East Asian thinks holistically drawn from perceptual field as a whole and to relations among objects and events within that field. Westerners rely more on categories and on formal logic.”<sup>17</sup> Westerners like to think in categories. As a result, there is a usual attempt to put cross-cultural differences in to categories, like; some cultures are collectivist-others are individualist etc<sup>18</sup>. However, by just learning or even perfecting such cultural dimensions, one should not proudly walk in to a cross-cultural negotiation since these dimensions are categories that mainly western scholars have chiseled to understand cross-cultural differences. Such dimensions in it-self are not absolute. Creator of many of such cultural dimensions, Professor Geert Hofstede agrees that such dimensions do not exist but they can only serve<sup>19</sup>. In other words, they are merely tools to be used to gauge cultural differences.

In a South Asian’s mind, cultural dimensions<sup>20</sup> can be all connected under a single construct<sup>21</sup>. Using such categories to understand cultural difference is understandable, however, one should be aware that culture’s influence on any given negotiation might depend upon variety of factors that cannot be easily segregated<sup>22</sup>. In a study, recent immigrants to United States commonly indicate that they are more religiously active in the United States than they were in India or Pakistan<sup>23</sup>. In addition, over reliance on cultural dimensions can create cross-cultural blunders. Professor Richard Nisbett explains how people from different parts of the world think differently<sup>24</sup>. In *Geography of Thought*, he studies ancient philosophy of eastern and western worlds, the social origins of mind, and the early development of children in both eastern and western cultures among others. In conclusion, he finds profound differences between westerners and easterners in about every study he and his colleges undertook.

Importantly, based upon series of studies, Nisbett finds that Easterners and Westerners behave in ways that were qualitatively distinct. For example, he finds: 1.) Americans on average had hard time detecting changes in the background of scenes, whereas Japanese had hard time with changes in objects in the foreground. 2.) Americans in general failed to recognize the role of situations constraints on a speaker’s behavior

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<sup>17</sup> RICHARD NISBETT, THE GEOGRAPHY OF THOUGHT-HOW ASIANS AND WESTERNERS THINK DIFFERENTLY AND WHY. 191 (2003)

<sup>18</sup> See page 21.

<sup>19</sup> “Dimensions do not exist - but they can serve. Geert stresses that dimensions of cultures do not exist in a tangible sense. They are constructs. A construct is "not directly accessible to observation but inferable from verbal statements and other behaviors and useful in predicting still other observable and measurable verbal and nonverbal behavior" (Teresa Levitin, 1973). Culture itself is a construct, so are values. It makes no sense asking how many dimensions of culture there are. This is like asking how many types of cloud exist - it is a matter of definition, and practical significance should be the criterion.” Available at <http://www.geerthofstede.nl/research--vsm.aspx> (last visited November 29, 2010)

<sup>20</sup> For example, Low Context/High Context, Individualist/Collectivist, Polychronic/Monochronic, High Power Distant/Low Power Distant.

<sup>21</sup> *Supra* note 20, NISBETT

<sup>22</sup> For example, in negotiations between U.S. Soldiers and Iraqi civilian leaders, other factors like power, constituency demands, potential to apply force, history, politics, psychology, personality among others played roles according to the American soldiers on ground. See David M. Tressler, *The Soldier and the Sheik: Lessons from Negotiating in Iraq*, 13 HARV. NEGOT. L. REV. 67, 85

<sup>23</sup> ASIAN AMERICAN PSYCHOLOGY: SCIENCE OF LIVES IN CONTEXT, 292 (2002)

<sup>24</sup> *Supra* note 17, pp. xiv-xxiii.

whereas Koreans were able to. 3.) When confronted with two apparently contradictory propositions, Americans tended to polarize their beliefs whereas Chinese moved toward equal acceptance of the two propositions.

And lastly, when shown a thing, Japanese are twice as likely to regard it as a substance than as an object and Americans are twice as likely to regard it as an object than a substance<sup>25</sup>.

### III. NUCLEAR NEGOTIATIONS

The subject of nuclear negotiations attracts the inner most feelings of people, reflecting their inner behavior.<sup>26</sup> In foreign relations, historical context in which parties approach an issue is immensely important<sup>27</sup>. For example, nuclear deal with U.S. for India is an exercise of building face over India's neighbors<sup>28</sup>. The Asian neighbors, India and China have cultural similarities when it comes to the concept of "saving face". As Pye puts it:

*The heavy use of shame as a social control mechanism from the time of early childhood tends to cause feelings of dependency and anxieties about self-esteem, which naturally produces self-consciousness about most social relationships. As a result, a great deal can be gained by helping the Chinese to win face and great deal will be lost by any affront or slight, no matter how unintended<sup>29</sup>.*

The first Indian Prime Minister Pundit Jawaharlal Nehru famously said, "What India is today is due to thousands of years of its history"<sup>30</sup>. History, as Nehru claimed, provides us with some very valuable clues as to a person's belief system and hence provides us with valuable understanding of a person's perspective. The following section looks at the history of the conflict.

#### A. *The Indo-U.S. Conflict*

To understand the true context of any inter-state nuclear negotiation, it is a must to know the historical context in which the parties approach the nuclear negotiations<sup>31</sup>. The

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<sup>25</sup> Id., 191-192

<sup>26</sup> See generally, RAMINDER KAUR, EXPLOSIVE NARRATIVES: THE ARTICULATION OF 'NUCLEAR KNOWLEDGE' IN MUMBAI IN NEGOTIATING LOCAL KNOWLEDGE POWER AND IDENTITY IN DEVELOPMENT IN JOHAN POTTIER, ALAN BICKER & PAUL SILLITOE (EDS), NEGOTIATING LOCAL KNOWLEDGE, ASA VOLUME, LONDON: PLUTO, 2003

<sup>27</sup> See RUDOLF AVENHAUS *supra* note 10.

<sup>28</sup> The Consequences of Nuclear Conflict between India and Pakistan: NRDC's nuclear experts think about the unthinkable, using state-of-the-art nuclear war simulation software to assess the crisis in South Asia. Available at <http://www.nrdc.org/nuclear/southasia.asp> (Visited December 4, 2010)

<sup>29</sup> LUCIAN PYE, CHINESE NEGOTIATING STYLE: COMMERCIAL APPROACHES AND CULTURAL PRINCIPLES (1992) 37

<sup>30</sup> JAWAHARLAL NEHRU : THE ESSENTIAL WRITINGS OF JAWAHARLAL NEHRU (Edited by S. Gopal and Uma Iyengar) (July 2003, Oxford University Press)

<sup>31</sup> BERNARD MAYER, THE DYNAMICS OF CONFLICT RESOLUTION-A PRACTITIONER'S GUIDE 84-85 (2000), "In understanding cultural approaches to conflict, it is important to understand both the general historical context

nuclear issue between the United States and India has a deep-rooted history of underlying conflict. Since nuclear negotiation is a step of implementing nuclear policies of the state, historical contexts of state polities, especially foreign relations, sets the stage for diplomatic talks. In a given nuclear negotiation, nuclear policies are brainstormed, debated and analyzed on the basis of social-political and economical relations with the other country<sup>32</sup>. This segment will focus of the socio-political relations between India and United States. As in the history of most cultures, there are key events that have come to symbolize as being historical, find below the summary of such historical events between United States and India.<sup>33</sup>

In 1947, India got independence with a division in to Republic of India (with Hindu majority) and Pakistan (with Muslim majority). In 1954, due to Nehru's Non-Alignment Policy, the United States allied with Pakistan to support western security interests<sup>34</sup>. The first Prime Minister of India judged *non-alignment* as a basic issue over which the India-U.S. understanding got confounded. Nuclear issue at presents includes further developments including the controversial Comprehensive Test Ban Treaty (CTBT) and United Nations Nuclear Non-Proliferation Treaty. In 1962 India and China went to war and United States gave economic assistance and support to India, to prevent India succumbing to communism and soviet influence. In 1965, during India and Pakistan war, being frustrated, the United States suspended military transfers to both India and Pakistan. In 1971, the intertwining of the United States-Soviet, Chinese-Soviet, and Indian-Pakistani conflicts dragged India-United States relations to the all-time low<sup>35</sup>. The same year, while Washington initiated a new relationship with Beijing, New Delhi signed a friendship treaty with Moscow to counteract U.S and Chinese influence in South Asia<sup>36</sup>

The personal rapport between the former Indian Prime Minister Indira Gandhi and the United States President Ronald Reagan<sup>37</sup>, established during a series of meetings in the

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in which conflict has been handled and the key events that form the common cultural memory or experience of conflict”.

<sup>32</sup> A number of socio-cultural characteristics formed the background for India's foreign policy during the reign of Pundit Nehru and the trend continued afterwards. See YAACOV Y.I VERTZBERGER, MISREPRESENTATION IN FOREIGN POLICYMAKING, 206 (1984)

<sup>33</sup> For a further analysis of post 1947 India-U.S. conflict escalation, see W. NORMAN BROWN, THE UNITED STATES AND INDIA AND PAKISTAN (1963). Also see VERTZBERGER *id* at 205-208

<sup>34</sup> Prime Minister Pundit Jawaharlal Nehru was the first Prime Minister of the Republic of India. He realized that in modern politics, there is “no alternative to peaceful co-existence than ‘co-destruction’”. See K.R. NARAYAN, INDIAN AND AMERICA ESSAYS IN UNDERSTANDING (1984) 8.

<sup>35</sup> See BROWN, *supra* note 33, at 360-66

<sup>36</sup> Americans tended to be preoccupied with Soviet “heavyweight” land based missile force, which were perceived as giving the Soviets a first-strike capability as a result of the large number of multiple warheads that these missiles might be capable of delivering against “hardened” military targets in the United States. This perceived threat was growing with the Americans and thereafter India's friendship treaty with Moscow send wrong signals to the United States of America. See P. TERRENCE HOPMANN, ARMS CONTROL AND ARMS REDUCTION IN INTERNATIONAL NEGOTIATIONS 270-271 (Victor A. Kremenyuk eds. 1991) (see for detailed reasons and further analysis for armed and nuclear negotiations.)

<sup>37</sup> The Reagan administration reassessed its policy toward India and decided to expand areas of cooperation, particularly in the economic and scientific realms, as a means of counteracting Soviet influence in the region. See NARAYANAN *supra* note 9, at 8-9.

early 1980s, enabled the two countries gradually to begin improving bilateral relations<sup>38</sup>. In 1989, India successfully launched ‘Agni intermediate-range ballistic missile’. The United States asked India to refrain from developing a ballistic missile capability by adhering to the restrictions of the Missile Technology Control Regime (“MTCR”). India rejected these appeals on the grounds that it had a right to develop such technology and that the Treaty on the Non-Proliferation of Nuclear Weapons and the United States-sponsored MTCR discriminated against non-nuclear states<sup>39</sup>. High-level visits to India in early 1995 portended greater stability in India-United States relations<sup>40</sup>. The then Secretary of Defense William J. Perry visited New Delhi to sign a landmark agreement on military cooperation that was seen by some local observers as a convergence in India-United States security perceptions after nearly fifty years of divergent viewpoints.

On May 11, 1998, India tested its first nuclear weapon, followed by Pakistan on May 28, 1998<sup>41</sup>. United States and Japan reacted with immediate economic and military sanctions. All the major world players including G8 leaders heavily condemned the nuclear testing by India and Pakistan and asked both India and Pakistan to sign the CTBT and not to continue the dangerous phase of arms race in South Asia. Thereafter, the United States primary concern was to persuade India to join the nuclear weapons nonproliferation regime. United States itself wants to continue its stand on ratification of the treaty, which it claims to be in its national interests.<sup>42</sup> After seven years of failed attempts, in May, 2005, the United States President G.W. Bush and Indian Prime Minister Manmohan Singh issued

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<sup>38</sup> In the 1980s, the Indian and U S governments had divergent views on a wide range of international issues, including Afghanistan, Cambodia, the Middle East, and Central America. Serious differences also remained over United States policy toward Pakistan and the issue of nuclear proliferation

<sup>39</sup> With the end of the Cold War and the emergence of India's more outward-looking economic policies, the United States became increasingly important for India. In the mid-1990s, the United States was India's largest trading partner and a major source of technology and investment. Some Indian observers, however, felt that the United States had a "negative agenda" concerning India with respect to human rights, the nuclear program, and the pace of economic reforms. Moreover, world should have progressed towards global non-proliferation, but with the advent of nuclear race in southeast Asia, concerns regarding CTBT got reinitiated. See Angelique R. Kuchta, *A Closer Look: The U.S. Senate's Failure to Ratify the Comprehensive Test Ban Treaty*, 19 Dick. J. Int'l L. 333 (2005) [Hereinafter CTBT]; also see Vijay Lalla, *The effectiveness of the Comprehensive Test Ban Treaty on Nuclear Weapons Proliferation: A review of Nuclear Non-Proliferation Treaties and the Impact of the Indian and Pakistani Nuclear Tests on the Non-Proliferation Regime*, 8 Cardozo J. Int'l and Comp. L. 103, 104 (2000) (for further discussion on CTBT and non-proliferation regime)

<sup>40</sup> In 1995, 178 countries agreed to permanently extend the United Nations Nuclear Non-Proliferation Treaty. Three years after the NPT was extended, on May 11, 1998, India tested its first nuclear weapon, and two days later followed with several more tests that sent shock waves throughout the world. “Both India and Pakistan indicated during talks with the U.S. that they would sign the treaty after the U.S. takes the lead and ratifies the CTBT” see KUCHTA *supra* note 14, at 346, India and Pakistan commit to Join CTBT by 1999 (Coalition to Reduce Nuclear Dangers, Washington, D.C.), Sept. 30, 1998. (Vol. 2 at 1). See Erik A. Cornellier, *In the Zone: Why The United States Sign The Protocol To The Southeast Asia Nuclear-Weapon-Free Zone*, 12 Pac. Rim L. & Pol’y J. 233.

<sup>41</sup> <http://www.cdi.org/issues/testing/pak1.html> (last visited: February 27, 2011)

<sup>42</sup> One of the requirements to be a diplomat is to have an ability to defend national interests with good factual and rhetorical statements. See Kuchta *supra* note 14, at 110, “Both India and Pakistan indicated during talks with the United States that they would sign the treaty after the United States takes the lead and ratifies the CTBT. The two countries were under enormous pressure from the major world leaders, especially from the U.S.”; also see Colonel Charles J. Dunlap, *Taming Shiva: Applying International Law to Nuclear Operations*, 42 A.F. L. Rev. 157, 161 (1997) (for further discussion on United States negotiation interests)



a joint statement signifying successful negotiations on economic cooperation, nuclear cooperation and other fields. Why did the nuclear negotiations between India and United States fail till 2005? The next phase of this article looks at the cultural aspects of India-United States Nuclear Negotiations.

### III. CULTURE AS CONTEXT

*If we are right in suggesting that our conceptual system is largely metaphorical, then the way we think, what we experience, and what we do every day is very much matter of metaphor<sup>43</sup>.*

#### A. Defining Culture From Nuclear Negotiations Perspective

Broadly, Culture can be divided in to three categories: National Culture, a culture that focuses upon National attributes<sup>44</sup>, Organizational Culture, a culture that focuses upon how an organization functions<sup>45</sup>, and Personal Culture, a culture which focuses upon an individual's belief systems and identities that are different from both national and organizational culture. Personal Culture also includes sub-cultures, which generally includes regional differences, gender, race, education, and life-style<sup>46</sup>.

For the purposes of simplification, this paper will focus on national culture. National Culture does not represent culture of an entire nation. Professor Lee warns for such generalization and adds, "Culture is not monolithic in any society and changes over time"<sup>47</sup> and provides three components of culture, "1) a patterned way of thought or behavior of 2) a group 3) that is based on certain values."<sup>48</sup> The views or beliefs of people would be covered by the concept of values. Culture is the air we breathe in. Usually people living by it do not realize the importance of culture. For example, from nuclear negotiations

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<sup>43</sup> MARTIN J. GANNON & RAJNANDINI PILLAI, UNDERSTANDING GLOBAL CULTURES METAPHORICAL JOURNEYS THROUGH 29 NATIONAL, CLUSTERS OF NATIONS, CONTINENTS, AND DIVERSITY, xv (SAGE, 2010.)

<sup>44</sup> Henderson believes that there are compelling reasons for Americans to obtain some levels of concrete knowledge about Asia. "It is one of the world's richest reservoirs of culture and an ever-evolving museum of human heritage". See HENDERSON, *Supra* note 5, at xi.

<sup>45</sup> A good example is that of legal culture. Lawyer's function is a different organizational culture than non-lawyers. Julie Macfarlane in her new book writes about The Norms of Legal Negotiations, "when lawyers negotiate, they consciously or unconsciously use their dominant values and beliefs to navigate their way through the process" and continues to assert that such beliefs drives lawyers choice of strategy and behavior, often at unconscious level. See JULIE MACFARLANE, THE NEW LAWYER: HOW SETTLEMENT IS TRANSFORMING THE PRACTICE OF LAW (2009) 75. Another example is of the culture of European Union. For a very detailed analysis see ALEXANDER SOMEK, INDIVIDUALISM AN ESSAY ON THE AUTHORITY OF THE EUROPEAN UNION, Oxford (2008) (1-32)

<sup>46</sup> There are other ways in which both cross-cultural and mediation scholars have described such cultural categories. For example, Moore describes the distinction as "The Cultural context-professional, educational, ethnic, gender, and national" CHRISTOPHER MOORE, THE MEDIATION PROCESS PRACTICAL STRATEGIES FOR RESOLVING CONFLICT (SECOND EDITION) P. 211.

<sup>47</sup> Ilhyung Lee, *Culturally –Based Copyright Systems? : The U.S. and Korea in Conflict*. 79 Wash. U. L.Q. 1103 (2000); In bigger democracies like India and the United States, regional variations including race, age, religion and caste may warn us against generalizations.

<sup>48</sup> *Id*

perspective, in India, without realization, the term *nuclear* is considered synonymous for *swadeshi*<sup>49</sup>

Like a person's belief and value system represents her culture, similarly, understanding of proper context has represents the complexity of nuclear negotiations<sup>50</sup>. Contextual significance multiplies when the parties background are strikingly dissimilar. Professor Traindis observed, "Diversity is a socially constructed phenomenon. Consequently, what appears as an issue in one culture may not appear as an issue in another culture"<sup>51</sup>. Undoubtedly, most countries approach the negotiation process with a very rich historical context. In the negotiations between India and United States, religion and religion based approach provides an introduction to the context of nuclear negotiations.

Section B discusses religion, whereas C discusses trust and power as other contextual factors that forms pattern of behavior.<sup>52</sup>

### *B Religion: From Indian Perspective*

Religion provides for a major part of culture and in India-United States nuclear negotiations, religion strongly defined culture<sup>53</sup>. Religion and language provides biggest segregation among people in India, a land, where Buddhism, Hinduism, Jainism, and Sikhism took birth<sup>54</sup>. This section discusses how religion impacts India's negotiation strategies.

Nehru observed that India as a country cannot be taken out of context, what India is today it due to its thousands of years of history<sup>55</sup>. A number of aspects of Hindu culture and society are particularly pertinent to note. First, "Culture had a hand in the intense emotional involvement of all concerned, an involvement that did not permit concessions and that reinforced the conviction that concessions, in general, involved not only territory but the

<sup>49</sup> A notion that has fuelled the development of nationalism since the early twentieth century, See KAUR, *supra* note 28, at 52

<sup>50</sup> See generally GANNON & PILLAI, *supra* note 43

<sup>51</sup> See HARRY C. TRANDIS, THE IMPORTANCE OF CONTEXTS IN STUDIES OF DIVERSITY IN DIVERSITY IN WORK TEAMS 225 (Susan E. Jackson & Marian N. Ruderman eds. 1996)

<sup>52</sup> "There is a human dimension to the negotiation game that should not be ignored" See STARKEY *supra* note 5, at 4.

<sup>53</sup> Religious influence to Indian culture has been well studied and a common conclusion is that religion heavily motivated Indian culture. "It is interesting to note that Hinduism having the largest followers in India has influenced Indian culture". Gannon, *supra* note 43, (Cyclical Hindu Philosophy, India: The Dance of the Shiva) at 475. Gannon notes:

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

<sup>54</sup> See generally Gannon, *supra* note 43 (India: A Kaleidoscope of Religions and Cultural Celebrations)

<sup>55</sup> "India today is the outcome not only of the immediate past, but also of thousands of years of the long history of our country. Layer upon layer of thought, experience and action have conditioned us and made us what we are today." JAWAHARLAL NEHRU, INDIA TODAY AND TOMORROW IN NEHRU, INDIA AND THE WORLD, 2 (J. et. al, 1962)

deepest essence of nationhood as well.”<sup>56</sup> Second, Indian people are deeply effected by their religious believes<sup>57</sup> and third, the belief in the concept of creator and destroyer under Hinduism has influenced the decisions a normal Hindu makes on daily basis<sup>58</sup>. Such application applied to diplomatic negotiations because majority of Indian diplomats are religious and Hindu by religion<sup>59</sup>. As a result of the inclination to emphasize universal being, to which all individuals and particulars are subordinated, most Hindus concentrate on the idea of the unity of all things<sup>60</sup>.

Hinduism is not merely a religion but a way of life and it moulds and determines social patterns and infiltrates in to every aspect of life<sup>61</sup>. For most Indians, religion has factored in a way of living. More importantly it has factored in to the way of thinking of people. Unity of all things reflects thought process, which has an impact on how Indian negotiators negotiate. As section 1 of this paper discusses, easterners and westerners behave in ways that were qualitatively distinct because their though processes are different<sup>62</sup>.

In addition, the issue of nuclear power has immense emotional attachment for many Indian citizens. For example during the first display of idols in a festivity immediately following India’s 1998 nuclear bomb testing, fake models of nuclear weapons were kept on stage with idols of God<sup>63</sup>. Such practice reflects the complexity of Indian culture, which includes prideness (demonstration of fake nuclear weapons) yet humbleness by giving the credit of the success of becoming a nuclear state to God (by doing idol worship). The culture can also depict certain religious fervor, “In case of India, popular conceptualizations of nuclear knowledge are often intertwined with moral, religious, nationalist or *swaraj* (self reliance or independent) discourses”<sup>64</sup> Moreover, India, as an independent, young and resurrected nation is highly sensitive to threats against national

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<sup>56</sup> VERTZBERGER *supra* note 7, at 207.

<sup>57</sup> HAJIME NAKAMURA, WAYS OF THINKING OF EASTERN PEOPLES: INDIA-CHINA-TIBET-JAPAN, 62, 67 (1964)

<sup>58</sup> *Id.* at 67

<sup>59</sup> In-person interview with Mr. RT, Chief Indian Administrative Services Officer, and New Delhi (December 26, 2009) (Discussing the failures of Indian administrative service officers in understanding their own culture the names of the interviewees have been made anonymous for their job protection The names and the transcripts are on file with the author)

<sup>60</sup> *Id.*

<sup>61</sup> The foreign policy of India got deeply effected at the time Nehru was Prime Minister, “...Mr. Nehru was born a Hindu, he had his sacred thread ceremony performed in the Hindu way, he lived a Hindu, died a Hindu, and was cremated according to Hindu rites” VERTZBERGER, *supra* note 7, at 207.

<sup>62</sup> See Nisbett, *supra* note 19, “Americans on average found it harder to detect changes in the background of scenes and Japanese found it harder to detect changes in objects in the foreground. Americans in general failed to recognize the role of situational constraints on a speaker’s behavior whereas Koreans were able to.”

<sup>63</sup> RAMINDER KAUR, EXPLOSIVE NARRATIVES: THE ARTICULATION OF ‘NUCLEAR KNOWLEDGE’ IN MUMBAI IN NEGOTIATING LOCAL KNOWLEDGE POWER AND IDENTITY IN DEVELOPMENT 51 (Eds. Johan Potter, Alan Bicker and Paul Sillitoe, 2003). With the festivity, a recorded speech was played which emphasized on long struggle of Indians for freedom, importance of development and power among others. See *id* at 59-60 (for full text of the speech)

<sup>64</sup> See Kaur *id* at 54. Such an ideology can be especially attached to Hindutava, whose project likens technology to toughness. She further observes, “Hindu chauvinists point to the need to protect India through the deterrent of nuclear weapons, since the subcontinent has for centuries been either threatened or invaded by foreigners. Nuclear strength is equated with a louder voice in global affairs” at 55.

symbols such as territory<sup>65</sup>. These facts coupled with the nature of recent historical developments, have made nuclear negotiations a highly emotional and serious process for Indian diplomats.

### *C. Religion: Understanding from Western Perspective*

Did American negotiators understand the depth of connection between religion and nuclear power in the failed India-U.S. nuclear negotiations? Empathizing with a nation's sentiments effectively provides understanding to the nation's motivation behind a negotiation<sup>66</sup>. Proper recognition of such sentiments before the initiation of negotiation and at the negotiation table has propensity to change the course of negotiation.

As established above, eastern civilizations and especially Indian, have deep rooted connections with religious beliefs<sup>67</sup>. It surrounds people's thinking all the time. First lesson for Western negotiators in this situation is that when U.S. negotiates with India, U.S. can't negotiate with India's religious beliefs because such beliefs are most likely non-negotiable. Religious beliefs are also below the surface. Similarly, 2005 negotiation success can be attributed towards change in demands from the west<sup>68</sup>.

People have strong tendency to underestimate just how powerful social situations can be. By taking the example of the unfortunate massacre at Columbine High School, Professor Elliot Aronson claims that most people will explain an unpleasant behavior by attaching a label to the perpetrator (crazy, sadistic), thereby people try to exclude such unpleasant behavior from behavior of nice people.<sup>69</sup> The underlying analysis of Aronson is about judgment. Western negotiators must train themselves to understand the impact of religious beliefs on negotiations with acceptance to reciprocate respect from them<sup>70</sup>.

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<sup>65</sup> See VERTZBERGER *supra* note 7, at 206. "...when Nehru adopted a certain territorial policy, he became bound to it by his national feelings; national territory had become part and parcel of his concept of self-determination."

<sup>66</sup> See Kim Do-tae, *U.S. -North Korea Nuclear Talks: Pyongyang's Changing Attitude and U.S. Choice*, East Asian Review Vol. 16, No. 1, 3-20 (2004)

<sup>67</sup> The concept of Karma, or a Hindu's desires for positive outcome of daily activities lead scholars to discuss the importance of astrology in Indian political life. See Gannon, *supra* note 40, at 477

<sup>68</sup> The gesture of lifting sanctions and showing more flexibility towards India's response to CTBT came out to be two good reasons, for the successful Next Steps in Strategic Partnership (NSSP). The U.S. Government website provides the following summary of the events from 1999 till 2005:

In late September 2001, President Bush lifted sanctions imposed under the terms of the 1994 Nuclear Proliferation Prevention Act following India's nuclear tests in May 1998. The nonproliferation dialogue initiated after the 1998 nuclear tests has bridged many of the gaps in understanding between the countries. In a meeting between President Bush and Prime Minister Vajpayee in November 2001, the two leaders expressed a strong interest in transforming the U.S.-India bilateral relationship. High-level meetings and concrete cooperation between the two countries increased during 2002 and 2003. In January 2004, the U.S. and India launched the Next Steps in Strategic Partnership (NSSP), which was both a milestone in the transformation of the bilateral relationship and a blueprint for its further progress" at <http://www.state.gov/r/pa/ei/bgn/3454.htm> (visited March 10, 2011)

<sup>69</sup> ELLIOT ARONSON, *NOBODY LEFT TO HATE, TEACHING COMPASSION AFTER COLUMBINE* (2001) 32-33.

<sup>70</sup> I don't mean acceptance of other person's religious beliefs but having an awareness that other's beliefs are legitimate from their world-view that

Recently a professor of law and dean of a school from India gave a talk in U.S and said, “many of us don’t have a choice as to religion, as we are born in to some religion”, which portrays a perception among Indians that most Americans (if not all) should be following a religion or another<sup>71</sup> since most Indians are born in to a religion<sup>72</sup>. Is the American society and more importantly are American negotiators impacted by strong religious beliefs? Studies have shown that Americans are more likely to apply formal logic when reasoning about everyday events, whereas easterners are more willing to entertain apparently contradictory propositions, as it is helpful in getting at truth<sup>73</sup>.

In eastern societies, religion infiltrates in to people’s lives at multiple levels. For example, in Indian traditional marriages, a couple is supposed to be married for life and the idea of availability of divorce as an option to resolve a conflict is non-existent<sup>74</sup>. Marriage as a concept is pious to most Indian women and their faith in *karma* and religion plays a significant role to consider their husbands as life-long partners<sup>75</sup>. Such level of religious involvement in daily lives of people provides for important awareness for negotiators of both India and United States.

#### D. Trust and Power:

Although negotiators’ individual personalities and negotiation tactics play a role in negotiations<sup>76</sup>, trust and power, plays larger role in cross-cultural negotiations<sup>77</sup>. At a macro level, nuclear negotiations at bi-lateral or multi-lateral level takes a form of power control. Arms control negotiations are different from other negotiations because they involve high politics, the most vital national interests and as best said, “...survival is at stake, they are complex, they usually carry deep consequences for many states and even for non-participants”<sup>78</sup>.

In Indian saying, once a trust is broken it is always broken; it’s the concept of continuity<sup>79</sup>. It’s a patterned way of Indians reaction to a critical situation<sup>80</sup>. Hindu political culture works the same way<sup>81</sup>. It is further supported by the Hindu concept of time, which is static<sup>82</sup>. During the 1990’s U.S.-North Korea nuclear negotiations, U.S. had

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<sup>71</sup> Professor Daljit Singh, Lecture for the class of Law and Religion at Willamette University on October 21, 2010.

<sup>72</sup> Supreme Court of India questioned the existence of Atheists in India

<sup>73</sup> See Nisbett, *supra* note 21, at xix.

<sup>74</sup> ANSHU MALHOTRA, GENDER, CASTE, AND RELIGIOUS IDENTITIES, (Oxford, 2002), at 82: “While her father advises Rupo (a widow) to practice asceticism in this life-time so that she could release herself from the cycle of births and deaths, she herself prefers to pray to God for a longer association with her husband in the next birth. She obviously knows her womanly religion better than her father”

<sup>75</sup> See MARRIAGES IN INDIAN SOCIETY (Ed. Dr. Prakash Mehta, 2005)

<sup>76</sup> See Michael W. Morris & Michele J. Gelfand, Cultural Differences and Cognitive Dynamics: Expanding the Cognitive Perspective on Negotiation, In THE HANDBOOK OF NEGOTIATION AND CULTURE 45 (Michele J. Gelfand & Jeanne M. Brett eds. 2004)

<sup>77</sup> See RT, *Supra* note 59.

<sup>78</sup> See Hopmann *supra* note 11, at 271.

<sup>79</sup> See I. Narain, *Indian Quest for Security and the Philosophical Postulates of the Political System: An analysis in the Context of Nehru’s Approach* Indian Journal of Political Science 32, 263 (1971)

<sup>80</sup> *Id*

<sup>81</sup> A. Nandy, *The Culture of Indian Politics*, Journal of Asian Studies 30, 57-80 (1970)

<sup>82</sup> It sheds light on the tendency to cling as far as possible to the existing conceptual system-namely to a static set of images unlinked to the passing of time and flow of events, as the essence of things change but little. See VERTXBERGER, *supra* note 32, at 207.

to face disadvantageous negotiation conditions. Major reasons were the hard-line stand taken by the Clinton administration, high expectations at the settlement of Korean peninsula issue and the fact that U.S. lacked an effective coordinator who could build trust in the negotiations with North Korea and ensure smooth process.

India did nuclear tests as a step to gain power<sup>83</sup> and stability<sup>84</sup>. In some ways, this goal has been met as the government enjoyed ‘domestic political popularity’ after the tests that it has not been seen in a very long time.<sup>85</sup> From the United States perspective, bilateral nuclear negotiations are taken with high importance<sup>86</sup>. Maintaining the status of world power<sup>87</sup> in arms race and imposing restrictions on other states creates a complex situation for the United States negotiators<sup>88</sup>. For the United States policy makers and the negotiators the kind of pressure is very different<sup>89</sup>. It is considered less emotional and more as a tactic. “In mustering public support for national security policy, national security managers find it necessary alternately to frighten, flatter, excite, or calm, the American people. They have developed the theater of crises into a high art.”<sup>90</sup>

But at the same time even in America, a strong *national will* is acknowledged to be a crucial element of national power, an important chip in the game of nations<sup>91</sup>. History has shown the United States has used power as diplomatic tools in negotiations even with close

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<sup>83</sup> (“...”) India thought of nuclear capability as a currency of power similar to the power of China had obtained by “going nuclear in 1964”; Helen Cousineau, *The Nuclear Non-Proliferation Regime: A U.S Policy Agenda*, 12 B.U. Int’l L.L. 407 (1994).

<sup>84</sup> See VERTXBERGER, *supra* note 32, at 130

It was more to cause deterrence for immediate neighbors (China and Pakistan),

<sup>85</sup> *Id* (emphasis supplied)

<sup>86</sup> “While the United States has negotiated bilaterally on proliferation issues with Third World countries in the past, the negotiations usually result in blackmail, with the United States making key concessions in return for dubious pledges” Michael Dutra, *Strategic Myopia: The United States, Cruise Missiles, And The Missile Technology Control Regime* 14 J. Transnat’l L. & Pol’y 37 (2004)

<sup>87</sup> “And we’re making pretty good progress. If al Qaeda were a board of directors, the chairman and vice chairman might still be out there, but the middle management is gone. That’s not to say that they’re not encouraging others to step forward. They are. But we’re on the hunt, and we’ll stay on the hunt. And it’s essential that the country not yields, and lead. ‘The world looks at us, and if we show any weakness whatsoever, there will be weakness in the world.’ And as I just told you, in order to win this war against these people, there has to be solid cooperation in the world.” (Emphasis added) April 21, 2004

President Outlines Path for Lasting Prosperity in Wednesday Speech Remarks by the President at the Newspaper Association of America Annual Convention Omni Shoreham Hotel Washington, D.C. assessed at <http://www.whitehouse.gov/news/releases/2004/04/20040421-5.html> (last visited 12/10/2007)

<sup>88</sup> See *id*, The U.S.- North Korea nuclear negotiations resulting in the 1994 Agreed Framework and the concessions granted after North Korea launched a medium-range ballistic missile in 1998 are illustrative as to why the United States should not deal bilaterally with potential proliferators.

<sup>89</sup> “Though the world of national security is an elite preserve, it is evident that those who make foreign policy decisions always have an eye on the public reactions” RICHARD J. BARNET, *HOW THE GOVERNMENT USES THE PRESS TO MANIPULATE PUBLIC OPINION IN CONFLICT IN AMERICAN FOREIGN POLICY- THE ISSUES DEBATED* 145 (Don L. Mansfield & Gary J. Buckley eds. 1985)

<sup>90</sup> *Id*.

<sup>91</sup> See RICHARD J. BARNET, *THE MANIPULATION OF PUBLIC OPINION, IN THE ROOTS OF WAR* 2-4 (1972)

allies<sup>92</sup>. The question arises, are these not just views or beliefs of public? How do they have impact on negotiations? Do they constitute a part of definition of ‘culture’?<sup>93</sup>

Section III made an attempt to connect the role of Religion, Trust and Power and there are more ways to identify the patterned way of thought or behavior. The following section specifically deals with such constructs that identify patterns and attributes that distinguish one group of negotiators from another.

#### IV. CULTURE AS COMMUNICATION

Effective communication represents society at its best<sup>94</sup>. Negotiations are one mechanism by which social groups cope with conflict, especially when such negotiations cross cultural divides or national borders<sup>95</sup>. Intercultural negotiation includes intercultural and intra-cultural communication. In cross-cultural negotiations communication could play a significant role towards the resolution of the dispute<sup>96</sup>.

The identification of characteristics in this section may amount to stereotyping<sup>97</sup>. Stereotyping in it-self is not bad<sup>98</sup>. Moreover, provides the need to establish a starting point of positive interaction, i.e. knowledge in to other’s worldview. The following graph provides for three steps: preparation, observation and negotiation goals. The goals of a cross-cultural negotiator are to master all three levels. Like the previous section (culture as context: religion, trust and power), this section deals with step one of the following model.

##### IMPACT OF CULTURE ON NUCLEAR NEGOTIATIONS



##### STEP ONE: BEFORE NEGOTIATION

###### PREPARATION

CONSCIOUS OF ONE’S OWN CULTURE

KNOWLEDGE OF OTHERS CULTURE

(PART I)

(PART II)

HIGH CONTEXT OR LOW CONTEXT?  
VALUES

UNDERSTANDING OF RELIGION &

<sup>92</sup> “...although the U.S. actions in the Security Council were regarded as cavalier, the French on the other hand seem not to have fully realized that President Bush considered it in the U.S. vital national interest to threaten to go to war with Iraq” CHARLES COGAN, FRENCH NEGOTIATING BEHAVIOR DEALING WITH LA GRANDE NATION, 211 (2003)

<sup>93</sup> “... nuclear knowledge is deemed alien to the Indian landscape, even though Indian nationalists see the development of nuclear technology as part of the *swadeshi* discourse” KAUR, *supra* note 28, at 55

<sup>94</sup> However other forms of interaction are conceived even earlier than communication takes place between the parties. I am thankful for Professor IH Lee for this insight among several others. Observed at the U.S.- Korea Negotiations Exercise, organized by University of Missouri- Columbia School of Law on Saturday, October 29, 2005. *Also See* PUAL M. LISNEK, A LAWYER’S GUIDE TO EFFECTIVE NEGOTIATION AND MEDIATION § 1.12 (1992), for non-verbal aspects of cultural communication. For example, “the Japanese find the word ‘no’ to be offensive; Germans are confused if their hand is shaken more than once in greeting”

<sup>95</sup> Roderick M. Kramer, The “Dark Side” of Social Context THE ROLE OF INTERGROUP PRANOIA IN INTERGROUP NEGOTIATIONS IN THE HANDBOOK OF NEGOTIATION AND CULTURE 219 (Michele J. Gelfand & Jeanne M. Brett eds. Stanford University Press 2004)

<sup>96</sup> Colin P. Silverthorne, *Organizational Psychology in Cross Cultural Perspective* 227, (New York University Press 2005). It is said that “it serves four different but equally important functions: control, motivation, emotional expression, and information” See *id* at 217 (emphasis added)

<sup>97</sup> To characterize a person on the basis of his/her culture See WILLIAM B. GUDYKUNST & STELLA TING-TOOMEY, CULTURE AND INTERPERSONAL COMMUNICATION, 136-137 (1988) (discusses the various theories of stereotyping, its advantages and disadvantages.)

<sup>98</sup> See LISNEK *supra* note 46, at 1.10, Knowledge about characteristics provide a means for a negotiator to begin a negotiation and to monitor the interaction for the propriety of her own conduct. See *infra* note 35, “in addition to pure collectivism there are also many intermediate types, as well as types with both individualist and collectivist attributes” at 52.

### A. *Culture as Communication: Individualism v. Collectivism*

Step one of the approach provides for consciousness of one's own culture and knowledge of others culture. Did the cultural dimension of Individualism and collectivism played a role at the negotiating table? First, a negotiator must not follow the artificial constructs of labeling all people under a culture as "one"<sup>99</sup>. Second, a negotiator is to be aware that national culture could comprise of caste structure<sup>100</sup>, class structure<sup>101</sup>, gender, hierarchical (professionally, age, and social status), religious affiliation, and regional affiliation<sup>102</sup>.

Take example of a highly popular Indian matrimonial website shaadi.com (*shaadi* = marriage)<sup>103</sup>, which claims to have over a million members. The website contains variety of categories on which the customer can do a partner search<sup>104</sup>. A visitor to the website can start a matrimonial search based upon linguistic ability: select from a pre-prepared list: Bengali, Gujarati, Hindi, Kannada, Malayalam, Marathi, Marwari, Punjabi, Sindhi, Tamil, Telugu, Urdu. Or a search could be based on age (18-70), religion (Hindu, Muslim, Christian, Sikh, Parsi, Jain, Buddhist, Jewish, Non-Religious, Spiritual and other<sup>105</sup>), mother tongue, caste and country of origin<sup>106</sup>.

Playing the role of modern matchmakers, such web-tools are still responding to the deep-rooted cultural prejudice or bias towards regional religions and castes.

In contrast, there are no similar "matrimonial" services in the U.S.<sup>107</sup>. A west based dating website; match.com, which comes closest to shaadi.com objectives, allows users to conduct a search based upon gender and age (18-121), appearance, interests, lifestyle, background values, and get to know me<sup>108</sup>. Religion, caste or mother tongue has no place

<sup>99</sup> How can 1.3 billion people have an identical culture? Within national culture, regional culture, like education level, economic level, profession, religious affiliation etc. may play a significant role towards shaping someone's culture.

<sup>100</sup> For following of caste system in India see Mehta, *supra* note 78.

<sup>101</sup> Does the rich have more power than the poor? Class difference certainly brings more connections or "powerful" connections among the elite and can play a huge role in cultural upbringing regardless of which country the person belongs to.

<sup>102</sup> See Manuri Chaki-Sircar and Parbati K. Sircar. *Indian Dance: Classical Unity and Regional Variation*, INDIA: CULTURAL PATTERNS AND PROCESSES (Allen G. Noble and Ashok K. Dutt Eds. 1982). For example, a person living in New Delhi's Connaught Place will be less dependant of society than one living in Chahal village of Punjab State of north west India and hence can be more individualist than the villager who have to work in unison with the value of the village.

<sup>103</sup> See <http://www.shaadi.com/> (last visited December 4, 2010)

<sup>104</sup> For a person who creates a profile on the website. Creating a profile is free of charge. Usually, a future bride or groom, or their parents, or their siblings and other relative's set up such profiles.

<sup>105</sup> Since the religious availability if not alphabetical, I am assuming it is either based upon number or popularity.

<sup>106</sup> You can choose from a list of countries: India, USA, U.K, U.A.E., Canada, Australia, Pakistan, Saudi Arabia, Kuwait and South Africa. Except India, other countries have NRI's (Non Resident Indians) who are still considered Indians.

<sup>107</sup> A Google search of "matrimony" in United States as of December 2, 2010 provides no result of a western based "matrimony" website

<sup>108</sup> See [http://www.match.com/en-usSee/landing/10659\\_eh/10659\\_eh.html?TrackingID=523521&BannerID=696247&gclid=CI2\\_teWp1aUCFRBNgwodxleyjg](http://www.match.com/en-usSee/landing/10659_eh/10659_eh.html?TrackingID=523521&BannerID=696247&gclid=CI2_teWp1aUCFRBNgwodxleyjg) (visited December 5, 2010)



whereas the inclusion of interests of lifestyle and values provides for an individual choice for the western world.

Geert H. Hofstede provided various constructs while studying cross-cultural differences<sup>109</sup>. One such construct is that of individualism and collectivism. It addresses the ‘relationship between the individual and the group’<sup>110</sup>. In collectivist cultures norms are more important determinants of social behavior. In individualistic cultures it is attributes. Based on such attributes, America ranks high on the Hofstede individualism index<sup>111</sup> whereas India is in the middle.

Generally, Americans see their own culture as very individualistic and this individualism is interpreted as a major contributor to the greatness of the United States<sup>112</sup>. Whereas, according to the dominant way of thinking in India, the nature of the individual is dependent on the universal through which the individual is dependent or is supported and inferred<sup>113</sup>. Such cultural distance between India and U.S. is more likely to produce negative affective states prior to negotiation than cultural closeness for a number of reasons. First, perceived dissimilarities produces lack of attraction, which is likely to produce negative affect<sup>114</sup>. Second, in such stark cultural differences, it is harder for individuals to find a common frame of reference and can make one’s belief stronger that the other individual does not belong to one’s in-group<sup>115</sup>.

Cultural distance affects negotiators sense of control, almost as much as negotiating in ambiguous, difficult and hence unpredictable situations<sup>116</sup>. Similarly, while walking in to the cross-cultural negotiations, negotiators may have an expectation that opportunities for rewarding interaction are limited, which in return affect the outcome of the negotiation as it may lower trust at the onset of the negotiation<sup>117</sup>. Individualism and collectivism hence provide an important paradigm for cross-cultural negotiations.

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<sup>109</sup> HARRY C. TRIANDIS, CHRISTOPHER MCCUSKER & C. HARRY HUI, MULTIMETHOD PROBES OF INDIVIDUALISM AND COLLECTIVISM IN THE CONFLICT AND CULTURE READER 52 (Pat K. Chew Eds. 2001)

<sup>110</sup> Ilhung Lee, *In Re Culture: The Cross-Cultural Negotiations Course in the Law School Curriculum* 20 Ohio St. J. on Disp. Resol. 375, 401 (2005)

<sup>111</sup> In the Hofstede country Individualism index (IDV) India was placed on number 21 out of 39 countries with 48 actual IDV, *See* Hofstede, G. CULTURAL CONSEQUENCES: INTERNATIONAL DIFFERENCES IN WORK-RELATED VALUES 219 (Sage Publishing 1980).

<sup>112</sup> *Id* at 220, The Americans possesses a biased view that individualism is good and collectivism is bad.

“In collectivist cultures this detachment is minimal; people think of themselves as parts of their collectives and in most situations subordinate their personal goals to those of their collectives. People's social behavior is a consequence of norms, duties, and obligations. They do not give up relationships unless the relationship becomes extraordinarily costly. Such cultures are most stable. There is little change in social relationships. People do not leave their collectives; they live and die within them. When they get married, they link with another collective, and personal emotions are much less important than obligations and duties, so divorce is also rare. Children are brought up to be good members of the collective.” HARRY C. TRIANDIS, INDIVIDUALISM & COLLECTIVISM vii (1995)

<sup>113</sup> *See* NAKAMURA *supra* note 24, at 61 (language dialects were used to reason this deduction)

<sup>114</sup> Rajesh Kumar, Culture and Emotions in Intercultural Negotiations An Overview, *See* Gelfand & Brett, *supra* note 71, 95-112. Also *see* H.C. Triandis, INTERPERSONAL BEHAVIOR (Monterey, CA, 1977)

<sup>115</sup> *Id*

<sup>116</sup> H.T. Reis, A.A. Collins, and E. Berscheid, *The Relationship Context of Human Behavior and Development*, Psychological Bulletin, 126, 860 (2000)

<sup>117</sup> J.M. George, G. R. Jones, and J.A. Gonzales, *The Role of Affect in Cross-Cultural Negotiations*, Journal of International Business Studies, 29, 752. (1998)

### B. Individualism and Collectivism and the cultural language

Study of languages provides another important tool for understanding individualist/collectivist paradigm. Indians are inclined to neglect the individuality can be noticed in many usage of Indian languages. Sanskrit, the classical Indian language has no single pronoun to represent ‘the same’, ‘identical’. So to express ‘the same’ an indeclinable ‘*eva*’ (only, just), which express only emphasis, is added after the demonstrative pronoun ‘*tad*,’ so that ‘*tad eva*’ is after all a general term of singular object<sup>118</sup> Similarly, language of the Sikhs, Punjabi uses greetings of *Waheguru Ji Ka Khalsa, Waheguru Ji Ki Fateh*, which in totality, means the God belongs to all, thereby we are all connected and such unity shall win. The tone of the greeting is always optimistic, where more emphasis is provided to Khalsa (the pure) and Fateh (success or win). An non-english speaker can read “help yourself” and “good for you” as highly individualist statements. English is also a non-hierarchical language, where unlike Hindi or Punjabi, a “you” will be used towards elders and youngsters alike. Singh twins, famous England artists in an interview said,

“So in Western art, it doesn't matter if anyone else understands the work, as it is about the individual artist and what they are feeling. This was certainly the view when we were studying art at university [from the mid-1980s until 1991 first at University College, Chester, later Manchester]. We were constantly being told that to be individual was healthy, that we had to be more different from each other, be influenced by different Western artists from each other, but that didn't seem valid to us. From the point of view of Sikh, Indian or even Asian philosophy, the community comes first and the individual is second.”<sup>119</sup>

### C. Culture as Communication: High Context v. Low Context

In cross-cultural negotiations, the construct of high context and low context provides rich information about what may impact negotiation communications. Proper communication demands the words to be understood in proper context.<sup>120</sup>

A high context culture is one in which information about procedure is rarely communicated<sup>121</sup> and in the high context culture system what is not said is sometimes more important than what is said. In contrast, in the low context culture words represent truth and power.”<sup>122</sup>

Between India and U.S., India is a high context culture, while United States is low context. How does that make a difference at nuclear negotiations? Professor Dasgupta says,

<sup>118</sup> *Id.*

<sup>119</sup> <http://www.independent.co.uk/arts-entertainment/art/features/seeing-as-one-why-has-the-british-establishment-never-quite-accepted-the-singh-twins-1654135.html>. Western contemporary art is all about the individual, the inner self," reflects Amrit, the more talkative of the two, as the three of us perch at the end of the long studio table where their latest painting – based on events in Palestine and looking at the impact of politics on everyday lives – lies half-finished. "

<sup>120</sup> CARLEY H. DODD, CULTURAL DIFFERENCES IN INFORMATION PROCESSING IN CROSS CULTURAL NEGOTIATION AND DISPUTE RESOLUTION READINGS AND CASES, 27 (Grant R. Ackerman, ed., University publishing Solutions (2003)

<sup>121</sup> *Id.*, in such a culture, context plays a major role.

<sup>122</sup> *Supra* note 40, at 47

“Indians are more likely to assume a non-confrontational, indirect attitude towards conflict. There is predominance of words over action. The gap between what is done in reality and the stated principles of the policymaker were not taken too seriously”<sup>123</sup> Whereas Americans tend to approach conflict directly and aggressively<sup>124</sup>.

Even the sense of duty and rights towards work and towards personal relations differs in extreme in both cultures<sup>125</sup>. An Indian gets offended very easily, if not given due respect to his or her position. This may lead to a complete lack of communication and motivation on the part of the Indians.<sup>126</sup> These are some attributes assigned to Indians and Americans in general. Studies have shown that these have specific impact on the course of cross-cultural negotiation. In the low context cultures (U.S.), research has found that “individuals are better able to separate the conflict issue from the person involved in the conflict”<sup>127</sup>. While in high context culture (India) this may not be right, for example in a tense situation such as a national security threat, (Indian-China war) the situation under discussions during a negotiation was aggravated by Hindu habit of secretiveness, even when the subject matter did not warrant it, such secretiveness often prevented the effective flow and distribution of information outward to the relevant bodies<sup>128</sup>.

Therefore, while dealing with nuclear issue, which associates directly with security of country, the scope for ignorance for negotiators decreases and the magnitude of importance increases<sup>129</sup>. Such understanding in the style of communication further helps the situation.

### *C. Culture as Communication: Power Distance and Universalism-Particularism*

As Professor Hofstede points out: “Indians rank high in power distance, which means they perceive great power distance, however, Indian manager tends to underplay the

<sup>123</sup> S. DASGUPTA, HINDU ETHOS AND THE CHALLENGE OF CHANGE 211 (1972) (emphasis added)

<sup>124</sup> See BENDICT, *supra* note 13. Also see JEANNE M BRETT, NEGOTIATING GLOBALLY HOW TO NEGOTIATE DEALS, RESOLVE DISPUTES, AND MAKE DECISIONS ACROSS CULTURAL BOUNDARIES, 2005, 20-23

<sup>125</sup> For example in India, the senior engineer feels he must stay close to his parents and that New York is simply too far, even if he get paid 25 times more than his present job. He would not want to leave his father. If his father were dying, it would be the ‘engineer’s duty’ to be at his bedside and facilitate his passage to the other state. Under similar conditions in the United States, it is more likely that the parent would be placed in a nursing home. The parent and his son have their own lives and are independent entities. See TRANDIS *supra* note 20, at 3.

<sup>126</sup> One needs to take the time to get to know them as individuals in order to develop professional trust. Indians are very good hosts and will therefore, invite you to their homes and indulge in personal talk often. All this is very much a part of business. One is expected to accept the invitation gracefully; see Paul Herbig, Hofstede and Negotiations, at <http://www.geocities.com/Athens/Delphi/9158/paper19.html> (10/15/2008)

<sup>127</sup> STELLA TING-TOOMEY, TOWARD A THEORY OF CONFLICT AND CULTURE IN THE CONFLICT AND CULTURE READER 46 (Pat K. Chew ed., 2001) It was further noted that “LCC individuals can fight and scream at one another over a task-oriented point and yet be able to remain friends afterwards’ whereas in the HCC system the instrumental issue is closely tied with the person that originated the issue.”

<sup>128</sup> See DASGUPTA *supra* note 66, at 212. See also VERTZBERGER *supra* note 7, at 207-211

<sup>129</sup> India being a high context culture, “aggressiveness can be interpreted as a sign of disrespect. An Indian gets offended very easily, if not given due respect to his/her position, this may lead to a complete lack of communication and motivation on the part of the Indians.” Paul Herbig, Hofstede and Negotiations, at <http://www.geocities.com/Athens/Delphi/9158/paper19.html> (last visited 11/12/2007) Moreover, “one needs to take the time to get to know them as individuals in order to develop professional trust. Indians are very good hosts and will therefore, invite you to their homes and indulge in personal talk often. All this is very much a part of business. One is expected to accept the invitation gracefully” *id*

use of power and instead prefers to utilize a consultative approach to managing employees.”<sup>130</sup> Due to existence of caste system in the society, Indians are status conscious. They often associate high status with high authority. In India, social hierarchy is deep rooted: that concepts of purity and pollution, dharma and karma legitimized the social hierarchy<sup>131</sup>.

Eastern and Indian method of thinking puts more stress on the underlying features or essence of the individual than on the particular surfaces qualities of the self. Such emphasis makes them more inclined to stress more on the relational meaning of a thing than its fundamental uniqueness. This difference will lead to misunderstanding. For example in the 1971 negotiations between India and China, India failed because the leaders from Indian side failed to understand in depth the Maoist Ideology<sup>132</sup>.

In the U.S., individualistic ideology, where all are equal and expect to be treated equally is routinely practiced. However, both *dharma* and *karma* teaches Indians (and many easterners) to practice power-distance. In such cultures, power is bestowed by society (usually based upon positions, age and wisdom.) In recent times, many Indian delegates have raised strong concerns on being subjected to extra screening at U.S. Airports<sup>133</sup> and some even suggested a tit for tat policy against American diplomats<sup>134</sup> Such delegates are bestowed respect and power by society and hence society outcries if such delegates are not treated accordingly.

A reflection of power distance is visible in the 2005 thanks speech by Indian Prime Minister Singh”<sup>135</sup> In Hindu culture, which again controls the majority of Indian politics, the submission to authority is often accompanied by willingness to not admit mistakes<sup>136</sup>.

On the other hand, as the United States has grown more and more powerful economically and militarily, it has been increasingly able to develop and enforce upon the world its own rules. Seven out of eight most Universalist countries are protestant and stable democracies, whereas countries with Hindu majority are more particularist<sup>137</sup>. This implies

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<sup>130</sup> *Id.* (Hader, p.12)

<sup>131</sup> See Henderson, *supra* note 5, at 31.

<sup>132</sup> See NAKAMURA *supra* note 24, at 61

<sup>133</sup> <http://travel.usatoday.com/flights/post/2010/12/india-diplomat-gets-humiliating-pat-down-at-mississippi-airport-/134197/5?csp=outbrain&csp=obnetwork> (visited December 21, 2010)

<sup>134</sup> <http://www.rediff.com/news/slide-show/slide-show-1-tit-for-tat-should-india-pat-down-us-diplomats/20101214.htm> (visited December 21, 2010)

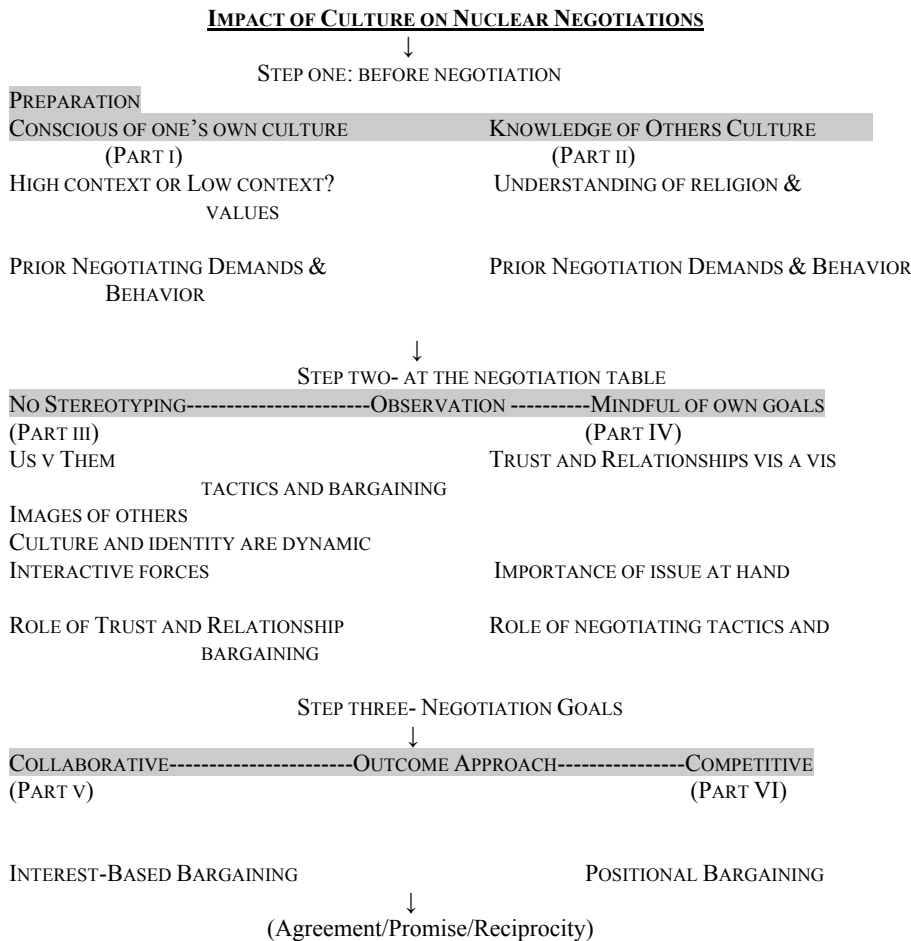
<sup>135</sup> See [http://www.indianembassy.org/press\\_release/2005/July/24.htm](http://www.indianembassy.org/press_release/2005/July/24.htm) (last visited 12/5/2006), in the speech after issuing joint statement, Indian P.M. referred to United States of America as a ‘Great Nation’ for seven times. The thanks was for the toast offered by President Bush, Mr. Singh responded. “...In the recent past, our communications has been better and clearer - Mr. President, a great deal of this credit must go to you

<sup>136</sup> See N.C. CHAUDHURY, *DICHOTOMY IN HINDU LIFE AND ITS IMPACT ON INDIA'S EXTERNAL RELATIONS*, QUEST, 45: 9-16 (1965)

<sup>137</sup> CHARLES M. HAMPDEN-TURNER & FONS TROMPERNAARS, *BUILDING CROSS-CULTURAL COMPETENCE* 15-

that in a cross-cultural negotiation, participants from both sides can be talking about the same issue but perceive the consequences in opposite manner<sup>138</sup>.

#### IV CULTURE IN STRATEGY



Step two of the approach is about strategy in a cross-cultural negotiation. Unfortunately not much has been said on the impact of culture on India and the United States nuclear negotiations.<sup>139</sup> Bilateral nuclear negotiations deal with high politics; the stakes are high for both the participants and even for non-participants<sup>140</sup>. A wrong approach adopted or a wrong step could lead to crises.

Previously, the article emphasized on the style and constructs of negotiation. This part provides analysis of these styles and constructs to propose effective strategy and tactics to be followed during negotiation. "Style guides and controls the interior dynamics of

<sup>138</sup> This may further lead them to hurt each other feelings by treating an important issue as per the other party as unimportant.

<sup>139</sup> For literature on United States and Korea Nuclear Negotiations see; Han Yong Sup, *Northeast Asia's Nuclear Situation in the 21<sup>st</sup> Century and the North Korean Nuclear Issue*, East Asian Review Vol. 16, No. 1, 19-39 (2004); Kim Keun-sik, *The North Korean Nuclear Crises and Inter-Korean Relations*, East Asian Review Vol. 16, No. 1, 21-36 (2004) and Kim Do-tae *supra* note 34, at 3-20

<sup>140</sup> See BRIGID STARKEY, *supra* note 5, 85-87 (2005)

interaction while tactics structure the disclosure of information”<sup>141</sup>. In the diagram, a step-by-step approach of a nuclear negotiation is portrayed. It contains six different parts, which identifies the role of culture at each stage. I propose that awareness of the various steps involved herein can change the course of negotiation.

*A Consciousness of one’s culture and our Worldview:*

Consciousness of one’s own culture comes through critical thinking, awareness and practice. Awareness begins with one’s own culture. Negotiator awareness of his or her own belief system, value patterns and traditions will lead of awareness of bias and judgment within self. Second step is to control such judgment, if it arises and to not let that judgment affect your negotiating behavior in a negative manner. For example, as discussed in section I of this article, one can view another person’s culture in three ways, with attraction (I love New York culture and traditions) with rationality (New York culture is different than my culture) or with condemnation (I hate New York culture)<sup>142</sup>. A major part of cross-cultural study is to become aware of various prejudices, norms, values one has acquired or one has adopted from family values. This serves two purposes. It provides better understanding for ones actions and beliefs and expectations.<sup>143</sup> And second it gives a reason to appreciate the opposite parties interests. For example acknowledgement by an Indian of the Indian belief that time would resolve India’s political and military problems, which stems from the Hindu belief that time in itself was a problem-solving mechanism<sup>144</sup>, can lead to an interest based negotiation on the issue of the length of the contract.

As underlying as it may seems, our worldviews and our belief systems impacts us. Studies in cognitive and biological psychology provide us with more knowledge<sup>145</sup>. Understanding nuclear moves and setting up a framework for better nuclear negotiations may to say the least save an unnecessary war or even the future of one country or civilization.

*B Knowledge and Lens of other’s culture:*

How should one look at opponent’s culture with the eye of a neutral & empathy and not with the eye of disapproval? One can view parts of a culture with sympathy and another

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<sup>141</sup> LISNEK *supra* note 46, at 4-1.

<sup>142</sup> There can obviously be overlapping in these three categories, For example, a person can love some aspects of Indian Culture, whereas denounce or hate other aspects. For the purposes of simplification, I am not including such overlapping in my present argument.

<sup>143</sup> For example in 1995, India’s expectations were to gain military support from the United States but was not aware (or pretended to be unaware) of strong belief they themselves were acting under was that ‘time has an inbuilt healing power’ whereas the United States was still suspicious of India’s dual policy structure Another example is the role that ‘Hindutava ideology’ played on their unsuccessful nuclear negotiations, it could be the fact that Indians give more than needed importance to the national security and the Kashmir problem has deeply influenced their foreign policies since partition.

<sup>144</sup> See Dasgupta *supra* note 66, at 213

<sup>145</sup> See RICK HANSON AND RICHARD MENDIU, THE PRACTICAL NEUROSCIENCE OF BUDHA’S BRAIN (2009)

with disapproval. For an instance, one can appreciate India's attraction towards its history and traditions; yet discount the traditions of sati or resistance against widow remarriage.

While writing about Europe's culture of superiority, Sri Aurobindo writes,

The modern European civilization, which has invaded Asia and which all violent attacks on Indian ideals represent, is the effective form of this materialistic culture. India, true to her spiritual motive, has never shared in the physical attacks of Asia upon Europe; her methods had always been an infiltration of the world with her ideas, such as we today see again in progress<sup>146</sup>.

This step is related to gathering information to create a basis of useful knowledge about other's culture before he/she enters into the process of negotiation with the other negotiator. As noted by Rubin and Sander, when they dealt with the problem of expectation and perceptions as they call it "self-fulfilling prophecy" that "perhaps the best way to combat such expectations is to go out of one's way to acquire information as one can beforehand about the way people in other cultures view the kind of problem under consideration."<sup>147</sup> It is also about looking below the surface of what we readily observe<sup>148</sup>, "[a]bove the surface we find behaviors, artifacts and institutions. Just below the surface we find norms, beliefs, values and attitudes. A sensitive observer can "uncover" these and become more knowledgeable about a culture."<sup>149</sup> For example, based on past negotiations, an Indian diplomat may approach towards different attitude of Americans as being threatening and power seeking<sup>150</sup>.

Similarly, American negotiators could have failed to understand the Hindutava ideology and the impact it has on Indian decisions, and instead misunderstood Indian bargaining tactics as being based upon Kashmir, Pakistan and hence pro-Soviet. A common pattern for Indian negotiators (India-China, India-Japan) is that a dual process of rejection and adoption was possible, whereas for China and the United States this approach is considered hypocritical and fraud<sup>151</sup>

The inclination of most Indians to subordinate individuality and particularity to the universal appears in many spheres of India's cultural life<sup>152</sup> The underlying idea that

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<sup>146</sup> <http://www.aurobindo.net/> (last visited February 20, 2011)

<sup>147</sup> See JEFFREY Z. RUBIN AND FRANK E. SANDER, *CULTURE, NEGOTIATION, AND THE EYE OF THE BEHOLDER*, IN *THE CONFLICT AND CULTURE READER* 15 (Pat K. Chew, ed., New York University Press 2001)

<sup>148</sup> Sanford Budick observed the importance of knowledge when he said,

"...Assuming that knowing another-or getting to know another-is a significant part of what is called thinking, can we retrieve a picture of the joining together of our attempts to know and be known be another? See Sanford Budick, *Cross Cultural, Chiasmus, and the Manifold of Mind* in "The Translatability of cultures figurations of the Space Between" 224 (Eds. Sanford Budick and Wolfgang Iser, 1996)

<sup>149</sup> See DOCHERTY, *supra* note 20, at 712

<sup>150</sup> *Id.*, Belonging to individualistic society might have failed to value strong Indian beliefs in strong words, time and space.

<sup>151</sup> See VERTZBERGER *supra* note 7, at 207-209

<sup>152</sup> Nakamura gave three reasons for the same; particular details of local geography and criminology have been neglected in India. Second ethical and religious texts a little attention or criticism is given to individual feelings or desires. Thirdly, in art and essays, more description is given as to the concept of beauty in general and not to the master- pieces of art in India in specific. See NAKAMURA *supra* note 24, at 65

motivates this minimizing of the individual, as a concretely perceived being, is the Indian tendency to think that all particular beings perceived by the senses are only illusions because only the universal is real<sup>153</sup>.

The understanding of these concepts<sup>154</sup> further enlightens us with the wide complexity of framework within which the negotiators conduct negotiations. Regarding nuclear negotiations the collectivist belief of people of India supports a public oriented and concerned foreign policy<sup>155</sup> and hence the negotiations<sup>156</sup>, whereas the situation is very different in America<sup>157</sup>. Knowledge of such tendencies on both east and west will lead to fruitful negotiations.

### *C. Categories of Culture: Generalizations and Cultural Stereotypes:*

An important element of the three-step approach is step two. Step two deals with two elements: no stereotyping and mindfulness. Regardless of how serious an attempt one makes in not labeling a class or a group of people as one, the reality is stereotyping based upon culture is very common<sup>158</sup>. Many American's have a strong image of what is Arab or French culture. One video surface online and we make a strong impression of what "their" army must look like. They do the same to us<sup>159</sup>. One unarmed drone attack and majority of Pakistan civilians make the same impressions of what Americans are like<sup>160</sup>.

Too often, people are put in to categories that they don't belong to. For one reason, it is easier to do so, and for second, people tend to generalize. A good example is of Asian American's. Before 1970's Asian American were given same identity as other minorities in United States. Through psychological research and data analysis, scientists and psychologists found that culture has a strong effect on behaviors of Asian American's<sup>161</sup>. It became clearer that popular universal theories about culture, that all cultures are the same are based on false premises.

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<sup>153</sup> In other words, the subsumptive judgment is simply a logical step from an illusory particular to a more real universal

<sup>154</sup> But individual characteristics may come in to play some times, for example even though negotiator is belonging to India but he/she can belong to low context culture and may even have individualist personality traits. See for example Brendan McSweeney, Hofstede's Model of National Culture Differences and Their Consequences: A triumph of faith-A failure of analysis at <http://geert-hofstede.international-business-center.com/mcsweeney.shtml> (10/3/2005)

<sup>155</sup> "...in the realm of public culture, where nuclear knowledge about nuclear power is creatively portrayed in relation to ethical and socio-political concerns, the local Hindu culture effects the subsequent national policies"

<sup>156</sup> "The initiatives that had been taken were in the larger interest of the country and I am confident of getting the support of the Indian public opinion and the political parties for these initiatives." Joint Statement, Prime Minister of India. Assessed at [http://www.indianembassy.org/press\\_release/2005/July/24.htm](http://www.indianembassy.org/press_release/2005/July/24.htm) (last visited 12/5/2008)

<sup>157</sup> See BARNET *supra* note 40, at 147

<sup>158</sup> Generally, see C. NEIL MACRAE, STEREOTYPES AND STEREOTYPING (1996)

<sup>159</sup> See DAVID BERREBY, US AND THEM: UNDERSTANDING YOUR TRIBAL MIND (2005)

<sup>160</sup> My approach to this subject is sensitive, and I try my best to not generalize from any cultural perspective in my cross-cultural negotiation courses. A few well-studied general patterns of national cultures should be used for teaching purposes.

<sup>161</sup> ASIAN AMERICAN PSYCHOLOGY, (Ed. Gordon Nagayama Hall and Sumie Okazaki) xii.



Culture has been part of dispute resolution mechanisms. Some countries have created exceptions to Constitutional Law, while creating ‘Customary Rights’<sup>162</sup>. Customary rights are rights that are allowed to practice due to legitimacy provided by time. Defining a culture is one step. Discovering the culture is second. People carry more than one culture. For example, a Sikh may carry Indian as a predominant culture and Punjabi *sabeachar* (regional affiliation) as a secondary culture.<sup>163</sup> Discovery is often not easy since the definition itself is prone to change, or in other words, is subjective.

Heterogeneity is found not only between different national cultures (like American, Chinese, and British) but also within a particular subgroup. For example heterogeneity may be found within Jat-Sikh caste of Sikh religion living in Punjab, India<sup>164</sup>.

Although it is considered view that stereotyping has several apparent benefits. For example, first, it allows the perceiver to reduce a world of enormous cognitive complexity into terms of black versus white, good versus evil, friend versus enemy-thereby making it easier to code the things and people one sees. Second, armed with stereotypes, it becomes far easier to communicate in shorthand fashion with others who we suspect share our views<sup>165</sup>.

But it is also a known fact that stereotypes rob both perceiver and victim of a sense of underlying individuality. Moreover when once preconceived notions are in place, there is little that the object of stereotyping can do to undo or reverse these prejudices. Further, stereotyping proceeds on assumption that “(“...”) all persons are fundamentally the same when it comes to reasoning, emotionality, needs, and desires.”<sup>166</sup>

Stereotyping would only be positive and useful if used only for the purpose of gaining starting knowledge in a negotiation<sup>167</sup> and it would be negative if fetched to extreme generalizations<sup>168</sup>. Here positive stereotyping would include being aware of individualistic characteristic of Americans, high context conversation context of Indians that there is preponderance of words over action.

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<sup>162</sup> Article 13 of the Constitution of India provides for Fundamental Rights and reads: “a) “law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law”. <http://lawmin.nic.in/coi/coiason29july08.pdf> (Last visited March 15, 2011)

<sup>163</sup> A mediator may define my culture as a Sikh or Indian, however, I can completely understand if I only want to be identified as Punjabi and not as an Indian. If we are dealing primarily with local American cultural groups, we further can’t be sure if the person who looks Asian by facial feature would want to be identified as an American, an Asian American or as an Asian living in America. This definitional focus is a serious issue, since, a minority person, let’s say in this case, a Korean Law Student, who is a second generation American and who has less or no connection to Korea. The student can be affected by Korean heritage even though he/she has never visited Korea.

<sup>164</sup> We inherit culture at an early age. One of my students recently wrote a paper, “I am not a ABCD”. ABCD stands for American Born Confused Desi, a term used by Indian nationals for Indians living in America, which essentially labels American born Indians as culturally confused and ignorant.

<sup>165</sup> Jeffrey Z. Rubin and Frank E. Sander, *Culture, Negotiation, and the Eye of the Beholder*, in *The Conflict and Culture Reader* (Pat K. Chew, ed., 2001)

<sup>166</sup> See DOCHETRY; *supra* note 20, at 713.

<sup>167</sup> See *infra* note 38 and accompanied text

<sup>168</sup> Generally Stereotypes of National And Ethnic Cultures Do Not Apply To Individual Negotiators Who Are Members of That National Or Ethnic Group. See James K. Sebenius, *Caveats for Cross-Border Negotiators*, 18 *Negot. J.* 121 (2002)

*D Mindfulness:*

‘Mindful’ means “to be aware of one’s position and to be aware of the moment<sup>169</sup>. It can be done by “using introspection and self-observation to discern how our habits of attention and unnamed assumptions shape who we are, what we see, how we relate. In this way become conscious of ourselves apart from the usual bounds of time, image and habit.”<sup>170</sup> For the purposes of present discussion, ‘cultural fluency’ means “to engage others with a spirit of inquiry, learning about the ways our and their perceptions differ rather than seeing only the familiar picture that shows us the world as we would like to be”<sup>171</sup> The more open and respectful disputants are about the different approaches other have to conflict, and to nuclear issue in particular, the more successful they will be in dealing with cross cultural nuclear talks<sup>172</sup>

A negotiator should be mindful of any ethnocentric belief. Dalai Lama rightly concluded the importance of mindfulness by saying; I learned to be mindful that Buddhism is not the best religion<sup>173</sup>.

*V Conclusion: Characteristics of a cross-cultural negotiating:*

Harold Nicolson divides modern diplomacy theories into two categories (1) The ‘warrior’ or ‘heroic’ theory<sup>174</sup>, which regards diplomacy as another war resorting to another means and ‘mercantile’ or the ‘shopkeeper’ theory, which regards it: as playing the role of helper for peaceful commence”<sup>175</sup> Over the nuclear issue, both the United States and India have shown difference in approach, whereas United States follows mercantile or shopkeeper, for example the negotiations between U.S and India in 1995, or the second U.S.- North Korea nuclear negotiations in 2002<sup>176</sup>, the United States assumed the role of

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<sup>169</sup> Without making judgment of how the other person is but at the same time being aware of his/her surroundings. It is defined as “paying attention in a particular way: on purpose, in the present moment and nonjudgmental” Jon Kabat Zinn, Zinder V. Segel, Mark G. Williams & John D. Teasdale (2002)

<sup>170</sup> MICHELLE LEBARON, BRIDGING CULTURAL CONFLICTS A NEW APPROACH FOR A CHANGING WORLD, 84 (2003)

<sup>171</sup> *Id* at 85 LeBaron finds out five ways in which knowing can be obtained:

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

<sup>172</sup> See *supra* note 6, at 87, it was further noted that, “sometimes people handle cultural differences best by ignoring them and reaching out on a simple person to person basis...” he warns that Mr. Bernard warns us that an overemphasis on cultural differences, particularly on the part of someone from a dominant culture, can be patronizing and controlling. Of course the ideal is for conflict participants to synthesize these two approaches, to be sensitive and respectful of cultural differences and to relate to each other as individuals, not as simple carriers of particular cultural patterns.”

<sup>173</sup> DALAI LAMA, ETHICS FOR THE NEW MILLENNIUM (2000)

<sup>174</sup> In this theory diplomacy is treated like military tactics. See Song Jong-hwan, *North Korean Negotiating Behavior: A Cultural Approach*, *East Asian Review*, Vol. 15, No. 2, Summer 2003, p.94, the merchant theory is based on the belief that compromising with enemies is, in general better than complete defeat.

<sup>175</sup> Song Jong-hwan, *North Korean Negotiating Behavior: A Cultural Approach*, *East Asian Review*, Vol. 15, No. 2, 94 (2003)

<sup>176</sup> See Do tae, *supra* note 34, at 4-6 and see Park Jong-chul, *Pyongyang-Washington Conflict Structure*, *Unification Policy Review*, Vol. 12, No.1 127 (2003)

helper<sup>177</sup>. Where as like Korea, India follows warrior or heroic theory<sup>178</sup>. The local Indian sentiment, that U.S. is hypocrite<sup>179</sup> by having lead the world in nuclear power<sup>180</sup>, the decision of the U.S. Senate, not to ratify the CTBT, have a major impact on “how other nuclear rogue states such as Korea, Iran and Iraq will decide on the CTBT.”<sup>181</sup> It was considered as a power issue by India<sup>182</sup> Secondly, it is seen as a ‘double diplomacy’ stands by the U.S., increases the tension between India and Pakistan. For example by providing armed supply to Pakistan on one side, U.S. actions supported the speculation that US is helping Pakistan over the military support.<sup>183</sup> Hence the Indians like the Koreans have considered this power tactics by the United States as a tactic of double standard.<sup>184</sup> Low context players “... will probably be more likely to engage in the hard bargaining rational strategies of factual-inductive style or axiomatic-deductive style in handling conflicts; high context players will probably be more likely to use the soft bargaining strategies of affective-intuitive style in managing various conflict episodes.”<sup>185</sup>

Hence for the U.S. diplomats, it is important to understand that in India, the term *nuclear* is considered synonymous for *swadeshi*<sup>186</sup> although at the same time it must be considered that it is not the knowledge of the term but the sentiment. For example, Kaur noted “... nuclear knowledge is deemed alien to the Indian landscape, even though Indian nationalists see the development of nuclear technology as part of the *swadeshi* discourse”<sup>187</sup>.

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<sup>177</sup> For example in the case of North Korea the “ political culture is believed to be factor in the militant negotiating style of the North Korean delegates. It differs markedly from South Korea’s style, despite a variety of other similarities such a national history, language, Confucian influence, and Japanese colonialism. What follows will examine the impact of political culture on the characteristics of the North Korea’s negotiation style” Do tae *supra* note 34, at 91

<sup>178</sup> Because both the countries have double-edged objectives, one is to obtain security assurances for the regime and economic assistance from the U.S., leading to a genuine negotiations and an agreement. The other purpose was to maintain nuclear capability through a nuclear freeze, rather than complete dismantling. See Do Tae; *supra* note 34, at 7, in case of India another objective is to gain legitimacy over genuine security threats.

<sup>179</sup> KUCHTA notes that India’s concerns are more stringent and apprehensive. It stipulates that the nuclear powers particularly the “Big Five”, should work toward full nuclear disarmament to make India more equal and secure in the world community. *Supra* note 14, at 345-346; Indian Foreign Minister Jaswant Singh, Article Submitted to Foreign Affairs. Quoted in “India’s nuclear doctrine: A Pakistani perspective,” Foreign Minister of Pakistan read at Foreign relations in Washington, D.C., available at [http://www.pak.gov.pk/personal/main/india\\_doctrine.htm](http://www.pak.gov.pk/personal/main/india_doctrine.htm) (last modified Sept/Oct 1998)

<sup>180</sup> *Id* (Kuchta)

<sup>181</sup> *Id* at 346

<sup>182</sup> It is noted that [i] t is unlikely that India will sign the CTBT until the U.S. ratifies it. India and Pakistan, by wide agreement, are not now under as much pressure to sign the treaty, even though experts believe that the tensions between these two countries have made their region a potential ground for nuclear conflict. See *id.* (Kuchta) at 333, 359 (2001)

<sup>183</sup> The argument is if the US has started a war against ‘global’ terrorism then, it should be concerned about the supplies that reach such organizations.

<sup>184</sup> “In India, the increased visibility of nuclear power is exemplified by National Republic Day parades of Agni ballistic missile warheads.” See Kaur, *supra* note 28, at 54; Itty Abraham, *India’s Nuclear Fantasies: Costs and Ethics Prisoners of the Nuclear Dream* 502 (Eds. M V Ramana & C Rammanohar Reddy; Orient Longman 2003)

<sup>185</sup> See Stella Ting-Toomey, *supra* note 69, at 5

<sup>186</sup> A notion that has fuelled the development of nationalism since the early twentieth century, *supra* note 61, at 52

<sup>187</sup> *Id*

Awareness of the different cultures that come to conference table and appreciating them can make a big difference in the outcome of negotiation.<sup>188</sup> With the increase in nuclear race around the world, studying impact of culture on such negotiations becomes critical. While most of the literature on arms race and on negotiation has devoted relatively little attention to the aspects of negotiation process<sup>189</sup> such process may help in creating a statement or even overcoming impasses.

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<sup>188</sup> Negotiations on the CTBT covered political and technical aspects at the high degree of specialization. In order to cope institutionally with this challenge, the negotiation forum and its participating governments were bound to dispatch representatives of different professional cultures to the conference table. Moreover Kaur, in her work on 'Nuclear Knowledge' observed; "this chapter considers the nuclear issue largely from the viewpoint of non-scientists and non-politicians, that is, from the more local perspectives of Mumbai residents who are just as affected by India's decision to enter the nuclear arms race as are nuclear experts and government representatives." Kaur, *supra* not 28, at 53

<sup>189</sup> P. TERRENCE HOFMANN, ARMS CONTROL AND ARMS REDUCTION IN INTERNATIONAL NEGOTIATION 270 (Victor A. Kremenjuk eds. 1991)