

Secret Diplomacy and the “Dirty Hand” Problem

Written by Corneliu Bjola

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CORNELIU BJOLA, MAY 2 2014

The classical “dirty hand” problem in political theory, which involves the choice between two morally challenging “evils”, sums up well the ethical puzzle of secret diplomacy: the lesser evil choice (the practice of deception) remains morally disagreeable even if it is judged to be politically necessary for avoiding a greater evil (e.g., potential military conflict). Arguably, “dirty hand” decisions are much easier to make when the distinction between the two “evils” is clear-cut. However, such clarity of purpose is rarely available in practice. On the one hand, secret diplomacy, which I refer here as the method of conducting international negotiations without public scrutiny, may generate unwarranted suspicion and distrust between nations, or it can undermine domestic orders by undercutting public confidence in political leaders. It can also make negotiators overestimate what they can implement amid domestic opposition once the agreement enters the public domain. This argument has been often mentioned as an explanation for the failure of the 1993 Oslo agreement between Israelis and Palestinians. At the same time, secret diplomacy can create a conducive environment for constructive talks by insulating foreign policy makers against grandstanding and by granting them a minimum level of security, informality and autonomy. It also offers parties a much needed space for “saving face” in front of domestic constituencies or international partners. Protracted relations of enmity such as that between the US and Iran or Israel and its Arab neighbors require, for instance, significant political capital to break on both sides, which political leaders might not be willing to entertain unless the benefits are clear and tangible.

This brings us to the question of whether the “dirty hand” dilemma of secret diplomacy can be solved and if yes, under what conditions? The conventional instinct in the literature is to address this issue with a consequentialist statement: the end ought to justify the means! Diplomats should err on the side of secrecy and deception in a directly proportional measure to the importance of the outcome, such as the likelihood of achieving a negotiation breakthrough or of transforming endemic relations of hostility between actors (Gilboa 2000: 279). Kissinger claimed, for instance, that the secret, not the public channel of negotiations was instrumental in advancing the peace talks between the United States and North Vietnam between 1970-1972 (Kissinger 1994: 684). The consequentialist argument is fairly appealing, especially from a practitioner point of view. One would be hard pressed to find a diplomat who would not prefer to temporarily sacrifice diplomatic transparency in order to reach a long-lasting resolution of the Israeli-Palestinian conflict, to convince North Korea to give up to its nuclear weapons program, or to assist India and Pakistan to overcome their half a century old dispute over Kashmir. At the same time, the focus on the outcome exposes the consequentialist account to a major criticism: it offers no in-built limitations for secret diplomacy, as if everything would be permitted, provided that a negotiation breakthrough would be reasonably within reach. The issue is further problematized by the uncertainty of the outcome. The negotiation of the Oslo Accord did yield a breakthrough, but it was short-lived. Kissinger’s secret negotiations with the North Vietnamese arguably helped put an end to the war, but on terms quite opposed to those envisaged by the US when it signed the peace agreement.

By arguing the moral worth of social actions does not depend upon them promoting the best overall outcome (Haji 2002), deontological approaches avoid the normative predicament of consequentialist models. Their main argument is that certain restrictions are applicable to social actions, even when the latter’s consequences may appear to lead to a better state of affairs (Scheffler 1994). Deontic anchors involve rules that command moral respect by virtue of their own nature, such as the prohibition of murder or of taking away someone’s liberty without a proper judicial process. From a deontological perspective, the resort to secret diplomacy would be constrained by the extent to which it would violate some important moral duties defined independently of the consequences of actors’ conduct. For

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example, Kant’s categorical imperative would prescribe diplomats to engage only in acts they would like to see sanctioned as universal law (Kant 1785; 1998). Habermas’ discourse ethics would require them to adopt the position of all affected parties in assessing whether and how to engage in secret diplomacy (Habermas 1993 ; 1990: 65). At the same time, the deontological argument faces a major paradox: if the value of an action is so important to generate a deontological requirement, then why is the value not equally important to justify a violation of the deontic rule if such a violation would protect the relevant value (Shafer-Landau 2007: 522)? For example, what if by engaging in secret diplomacy, diplomats would help reduce the need for resorting to secret talks? The situation between Israel and PLO, or between the US and the Taliban, is the case in point. The whole purpose of having secret negotiations between these parties is to create conditions that would allow them to engage each other more openly. By subjecting social conduct to absolute moral rules, deontological approaches therefore lose sight of the context within which the action unfolds.

Instead of relying on rigid moral standards, either of a consequentialist or deontological nature, which can hardly capture the complexities and nuances of the diplomatic landscape, we should instead try to make sense of the ethical boundaries of secret diplomacy in its particular context of application [for a pragmatic take on this argument, see (Bjola 2013)]. I suggest that a four-point test could provide useful guidance about when secret diplomacy is the right option to pursue. First, one needs to carefully assess the nature and likelihood of the “greater evil”. For example, how serious is the risk of military escalation between parties if the diplomatic relations between them continue to degrade? Due to its high political and moral costs, secret diplomacy should never be used carelessly, as the “lazy” diplomat’s tool of convenience, but it has to be informed by a careful analysis showing that, short of secret negotiations, the relationship between parties could degrade to the point of military conflict, or if they are already experiencing the latter, that prospects of peace would further slip away. For example, the growing risk of military confrontation between Russia and Ukraine would make a good case in favor of secret diplomacy, especially since, for different reasons, neither party is currently willing to engage in public negotiations with each other. Second, secret diplomacy should not be conducted with an open agenda, but must be guided by clearly defined understandings of the lines not to be crossed in that particular context. For example, it would have been contra-productive for the US to engage in secret talks with Iran without carefully considering the reactions of its close allies in the region.

Third, the feasibility of alternative diplomatic channels for unlocking the negotiation stalemate needs to be properly reviewed. Negotiations concluded under public scrutiny enjoy greater legitimacy and, hence, they stand a much better chance of successful implementation. However, when the public channel is blocked, back channels could help break obstructions and put public negotiations back on the right track. For example, given the overall ineffectiveness of the ASEAN-China framework in managing the rising tensions in the South China Sea thus far, back-channel negotiations between China and its regional rivals could prove effective in resetting the agenda of public negotiations. Last but not least, proper considerations must be also given to whether the method chosen for conducting secret diplomacy in a given context could make the situation worse. Poorly handled issues concerning the scope, venue, timing and level of representation could prove fatal to the overall negotiation process. For example, secret negotiations between US and the Taliban would unlikely work if they were to take place on dates close to September 11, or if they would involve the participation of delegates deemed too controversial by each side.

To conclude, the “dirty hand” problem in secret diplomacy cannot be completely solved, but it can be reasonably mitigated if the context of the case is being carefully taken into account. Secret talks could help parties build a minimum level of trust between them, which in turn might keep the momentum going necessary for normalizing the diplomatic relations between them.

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