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Challenges to Diplomatic Negotiation

As modern technology makes war more costly, negotiations within and outside diplomatic conferences are becoming increasingly important. This PIN Policy Brief analyses the nature and evolution of diplomatic negotiation and the challenges to its effectiveness. It argues that negotiations are vulnerable, unless they are protected by procedural frameworks, comprising rules and conventions, such as those adopted in conference diplomacy conducted by organisations such as the United Nations. This policy brief also raises questions about the future role of diplomatic negotiation processes in a globalising world in which diplomats are losing their traditional predominance in international relations. It concludes with several recommendations for enhancing the effectiveness, and thereby the significance, of diplomatic negotiation in the future.

1 Introduction

This PIN Policy Brief defines diplomatic negotiation as an 'exchange of concessions and compensations in a framework of international order accepted by sovereign entities'.¹ It is limited to negotiations between states. The focus of this paper is on political and diplomatic negotiation processes. International negotiations in general also encompass negotiations between people, companies and non-governmental institutions across borders, but this dimension is outside the scope of this policy brief.

Bilateral diplomatic negotiations are relatively simple as far as structural complexity is concerned, but they can be difficult to handle if the positions of the parties are very polarised. These negotiations might be in need of third parties acting as facilitators or mediators. Multilateral diplomatic negotiations are much more complex and this complexity will have positive and negative effects on the process of give and take between the representatives of the parties involved.² One positive effect is the inclusion of stakeholders – that is, those countries and other concerned parties such as intergovernmental and non-governmental organisations – that have an interest in

1 Meerts, P.W. *Diplomatic Negotiation, Essence and Evolution*. The Hague: Clingendael Institute, 2015: www.clingendael.nl/publications.

2 Crump, L. and Zartman, I.W. 'Multilateral Negotiation and the Management of Complexity', *International Negotiation*, 8, 2003.

the issue and negotiation process at hand. Including the relevant actors will enhance the probability that the negotiated outcomes will be implemented. The negative side of inclusion, however, is the ability of spoilers among the stakeholders to prevent an outcome that is undesirable to them, or to weaken the final agreement in such a way that it will be harmless to their interests and thereby ineffective to the collective interests. Bosnia is an example of this. All of the parties were involved in the negotiation process and the effect has been a backward-looking outcome – that is, putting an end to the war, but safeguarding all the major interest of the parties and thereby creating a rather unworkable state administration.

Most multilateral negotiations nowadays are part of a long-term ongoing negotiation process, often in the framework of an intergovernmental organisation such as the United Nations. Structured and with a history of precedents as well as a perspective of the future, these conferences form relatively stable structures that allow for more or less successful outcomes by protecting the processes.³ The example of the European Union as an intergovernmental and supranational organisation shows how important this is for effective decision-making. However, such organisations have an interest in being relevant on their own merits. They might thus give priority to their own needs, instead of to those of the community that they represent.

2 Evolution of International Negotiation

It is evident from ancient clay tablets that negotiators in the Middle East some 5,000 years ago were negotiating and exchanging treaties. In those early times, political and diplomatic negotiations were bilateral meetings between absolute rulers or the councils of city-states, which sometimes negotiated directly, but normally

sent their envoys to bargain with the other party. In Renaissance Italy, the city-states not only used special representatives, but also established more or less permanent diplomatic posts in each other's cities. Diplomacy thus became more regulated, and regulations are beneficial for effective negotiation. Diplomacy also slowly but surely became more complex, as more adversaries had to deal with more conflicts between them.

The *Peace of Westphalia* changed the meaning of sovereignty. It was concluded in 1648 through a series of bilateral negotiations in the cities of Münster and Osnabrück, and it declared for the first time that all countries were legally equal. Westphalia is widely seen as the mother of all diplomatic conferences and the beginning of the era of procedural frameworks, because it helped to create more effective negotiation processes as an alternative to warfare.⁴

Two hundred years later, the *Congress of Vienna* (1814–1815) became the first truly multi-party negotiation, although not a fully universal one, as the number of real negotiating parties was kept at five: Russia; Austria; Prussia; Great Britain; and France. Excluded, however, were the other interested countries and parties. They were consulted, but the five did not allow them to be part of the decision-making process.

The *Paris Peace Conference* of 1919 – concluded by the Treaty of Versailles that ended the First World War – became a major event in the history of diplomacy. As with the Vienna conference, representatives of hundreds of sovereignties presented their credentials in Paris, but only five were included in the inner circle: the United States; France; Great Britain; Italy; and Japan. Moreover, the negotiation was *de facto* trilateral, as Japan did not really participate and Italy's role was comparatively weak.

3 Kissinger, H. *World Order*. New York: Penguin Press, 2014.

4 Holsti, K.J. *Peace and War: Armed Conflicts and International Order, 1648–1989*. Cambridge: Cambridge University Press, 1991.

Violence	Complexity
Bureaucracy	Actors

Figure 1 Four challenges to international negotiation

The *League of Nations* (1919–1946) could be regarded as the first full-fledged multilateral negotiation process. It did some good work in resolving territorial questions after the First World War, but in the security field it did not live up to expectations. It was only with the San Francisco Conference in 1945, which created the *United Nations*, that a reasonably effective multilateral diplomatic conference came into existence. Its strong multi-party nucleus, the United Nations Security Council, helped to reduce complexity and enhance efficiency.

3 Challenges: Negative Aspects

There is an endless number of challenges to international negotiation, yet this Policy Brief finds four of them the most salient (see Figure 1). First and foremost, *violence*, because it is the main alternative to peaceful conflict resolution. Second, *complexity*, as it hampers effective management of the negotiation process in conference diplomacy. Third, *bureaucracy*, as it slows down the negotiation process, thereby creating problems of time and timing. Fourth and foremost, the *people*, namely the negotiators with their preferences and peculiarities. These four challenges will be discussed in more detail below.

Violence: Negotiation – as war by peaceful means – is under constant threat of being destroyed by violent actions if parties see them as a more effective instrument in defending their interests. When is a situation ripe for conferencing? The dominant opinion in academia is that ripeness can be expected if stakeholders are in a mutual hurting stalemate, while they can envisage a mutual enticing opportunity, in other

words a peaceful exit strategy. However, if one of the parties prefers war over words, the process of negotiation will be relatively helpless. This is why countries try to establish international frameworks like international organisations, to help them to contain violence and to run negotiation processes protected by rules and regulations. In the last 50 years, two-thirds of conflicts have been decided through international negotiation; one-third was ended by military victory.⁵ This trend is expected to continue in the coming decades.⁶

Complexity: As the world is becoming ever more interdependent, the number of actors around the tables and the number of issues on the table are growing in an exponential way. This enhances the complexity of diplomatic negotiation enormously, both horizontally and vertically: horizontally, because of the relative strength of the countries and the relative weakness of the intergovernmental and non-governmental organisations, so the countries, while pushing for their own interests, will have a centrifugal impact on the negotiation processes, while the organisations try to contain those and guide their members in the direction of outcomes; and vertically, as constituencies are more and more influential, and because the media allows parliaments and populations to be more involved in the negotiation processes through external pressures such as lobbying. Furthermore, modern means of communication will enhance transparency, while negotiators

5 *Human Security Brief: Featuring a Special Report.* Vancouver: Simon Fraser University, 2007.

6 *Conflict Barometer.* Heidelberg: Heidelberg Institute for International Conflict Research, 2012.

often need some kind of secrecy in order to reach outcomes.

Bureaucracy: These international organisations have their own needs as well, and they will push for them even if this is not always in line with the interests of their member states. The European Union is an example of the struggle between the whole and the constituent parts. In order to have successful diplomatic conferences and to cover the main negotiation issues, organisations are growing and thereby their bureaucracy. While negotiations will have to be embedded in order to be successful, this structuring will also enhance loss of effectiveness as a consequence of loss of flexibility. Diplomats try to fight the negative rigidity by negotiating away from the table as much as possible, in corridor work, huddles and informal bilaterals, etc. Nevertheless, structures and procedures are necessary instruments to direct the processes into closure.⁷ While informality is needed at the same time, it might create unnecessary fuzziness and ambiguity, as negotiators will lose oversight and might be less able to control the processes.

People: Negotiation involves humans, which brings all kinds of positive and negative consequences: positive, because politicians and diplomats want to be rewarded for the energy they put into the processes by concluding a fine agreement; negative, because humans can be moody, impatient, egocentric and plain stupid. Mutual empathy will allow for a smooth process if the actors get to understand and perhaps like each other. It will turn sour if their egos are colliding, if they entrap themselves and each other in 'egotiation': a phenomenon in which the defence of the negotiator's reputation might become more important than the interest of her or his country. Politicians, thanks to modern means of communication and travel, can more easily connect with each other and sideline their diplomats, which infringes on the

relative autonomy of diplomacy, threatened already by the growing involvement of non-international civil servants in diplomatic conferences.

4 Challenges: Positive Aspects

Every disadvantage has an advantage. Applying the grid of violence–complexity–bureaucracy–actors to four topical negotiations might enlighten us on its positive role in creating negotiability in diplomatic practice.

In the first case of *Iran*, the existing talks in the 'five plus one' group were at stalemate, notwithstanding the efforts of High Representatives of the European Union. Ripeness for solving the nuclear issue was a consequence of context change, because of: a) the war of Iran and the United States against the Islamic State in Iraq and Syria; b) the interdependence of Iran and the United States in the Middle East; c) Iranian and US leaders, who saw the necessity for cooperation; and d) the strong and effective bureaucracies of Iran, the United States and the International Atomic Energy Agency (IAEA), which were able to work out a substantial agreement.

The second example of *Ukraine* shows us that the interdependence of the four factors did help to forge the Minsk Agreement on a ceasefire in Eastern Ukraine, although the problem of separating the Donbass region from the rest of Ukraine has not been resolved, let alone the annexation of Crimea. The war between the separatists – supported by the Russian Federation – and the Republic of Ukraine mobilised the Germans and the French in successfully mediating a stalemate. They had good reasons to do so: a) the war threatened the stability of post-Cold War Europe; b) it endangered cohesion within the European Union on both security and energy; c) by acting outside the European Union framework, the French and Germans avoided being paralysed by the different interests and visions of the actors within the EU; d) French President Hollande and German Chancellor Merkel took personal responsibility for the process, thus legitimising the talks; and e) they could

⁷ Kaufmann, J. *Conference Diplomacy*. London: Macmillan, 1996 / Walker, R.A. *Multilateral Conferences: Purposeful International Negotiation*. London: Palgrave Macmillan, 2004.

use their own bureaucracies to do the actual bargaining.

The third example is the negotiations with and on *Greece*. The European Union negotiated an agreement with the Greeks because: a) it wanted to avoid internal violence in Greece; b) it wanted to avoid a 'Grexit', as this would damage internal cohesion in the Eurozone, which – by its sheer complexity – could have unforeseen consequences; c) under the immense pressure of the situation, all of the actors realised that an agreement would be better than no agreement; and d) the bureaucracies on the European side and of the International Monetary Fund (IMF) were able to implement the agreement, although the weakness of the Greek bureaucracy has been a stumbling block.

The final example is that of the successful negotiations between the United States and *Cuba* in normalising their diplomatic relationship. In this case, a) the end of the Cold War facilitated the 'rapprochement' between the two countries; b) potentially there is much interdependence between the two neighbours; c) the actors changed over time (US President Barack Obama had no history with Cuba and Raúl Castro could distance himself from his brother); and d) the bureaucracies on both sides are solid enough to ensure successful realisation of the agreement forged by the political leaders.

5 Recommendations and Conclusions

One of the earliest examples of negotiation analysis is *The Art of Negotiating with Sovereign Princes*, by the French diplomat François de Callières.⁸ The pointers that de Callières gave to future Louis XV in his 1716 work are still of value to the conference diplomat of today. After the Second World War, research on negotiation

increased. A range of academics tried to qualify or quantify the processes of international negotiation, both inside and outside diplomatic conferences. The main aim of all these studies is to explain the outcome by the process that unfolded biases. By enhancing understanding of the intricacies of the negotiation process, academia can contribute to successful agreements.

In view of the observations above, and focusing on the role of the diplomat as a negotiator, four recommendations are useful. First, it would be wise to give researchers and trainers more access to real negotiation processes. By studying the flow of these processes and the diplomats' behaviour, valuable material for analysis and thereby for training new practitioners can be obtained. Additionally, these negotiation experts could be used as *process consultants* during actual negotiations, as miscommunication, mismanagement of the proceedings, and bad strategies and tactics are major problems in negotiation. Negotiations often fail because of negotiators' inability to oversee the situation and to understand the real significance of their opponents' internal and external positions.

Second, the diplomatic negotiator might specialise further and become the main *communicator* in the process of merging the interests of countries and organisations into one outcome by which all the parties can abide. This means that the diplomat will have to connect more effectively with other civil servants and representatives who operate in the international arena, instead of focusing so much on diplomatic colleagues, which might breed 'group-think', resulting into becoming too inward-looking. If diplomats do not become more outward-looking, they will make themselves irrelevant in the future.

Third, diplomats will have to manage their political masters and their constituencies, and the media, in a more modern and forthcoming way, which will not be easy. *Public diplomacy* is of the essence here, as the populace back home, and sometimes the politicians as well, have no real understanding of the possibilities and

8 Callières, F. de. *De la manière de négocier avec les souverains*. Paris: M. Brunet, 1983 (English translation).

impossibilities of the negotiation process and thereby might prevent it coming to closure.⁹

Last, and most important, diplomatic negotiation itself will have to be more *efficient*, and this might prove to be the most difficult task of all. It is very much a chicken and egg problem. This can be seen with the ongoing problems in reforming the UN Security Council, the EU's struggle to restructure itself in order to be more effective after enlargement, and the failed attempts to make the Association of South-East Asian Nations (ASEAN) more effective in the face of Chinese moves to claim islands in the South China Sea.

Reforming the conferences themselves is difficult. It involves political will, and political will depends on synergy among the member states' interests, and the (im)balance between cooperation and competition. The world's growing interdependence stresses the need for closer cooperation. In order to cooperate more effectively, international negotiation is still one of the most important instruments in helping to create some world order. This order is not self-evident and eternal. 'Every international order must sooner or later face the impact of two tendencies challenging its cohesion: either a redefinition of legitimacy or a significant shift of the balance of power.'¹⁰ It is up to the processes and the people to manage these changes.

Diplomatic negotiation is a paradox: it is the most legitimate and inclusive mode of international governance and conflict resolution and therefore the most representative; but the multitude of actors limits its effectiveness. The future of the international system depends on the decisions that countries and organisations take concerning, for example, climate change, the global economy, and the internal and external conflicts that abound. Negotiations inside and outside diplomatic conferences are the most effective tool for dealing with the opposing and concurring needs of all the parties involved. Both the number of issues and parties are growing.

Negotiation is as old as human history. Diplomatic negotiation entered the world stage some five millennia ago. Conference diplomacy as a mode of international negotiation has been around for 300 years, yet it established its organisational format only in the last 100 years. It is therefore a relatively recent phenomenon in human history. It is enormously helpful in protecting the vulnerable process of international negotiation from failure. Keeping the negative aspects of the four challenges in check and using their positive potential to further the effectiveness of international negotiation will be the art and science of the political and diplomatic negotiators and their academic supporters.

9 Zartman, I.W. 'New PIN Project 2015: Closure: How Negotiations End'. *PINPoints Magazine*, 41, 2015.

10 Kissinger, *World Order*: p. 365.

About PIN

The Netherlands Institute of International Relations 'Clingendael' is a think tank and diplomatic academy on international affairs. The Processes of International Negotiation (PIN) Program is a Clingendael project. The PIN Program is a non-profit group of scholars and practitioners that encourages and organises research on a broad spectrum of topics related to international negotiation seen as a process. Its objectives include the dissemination of new knowledge about negotiation as widely as possible, and developing networks of scholars and practitioners interested in the subject, for the purpose of improving analysis and practice of negotiation worldwide.

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