

Theory and Practice: Negotiations¹

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In international politics, negotiation consists of discussion between officially designated representatives designed to achieve the formal agreement of their governments to a way forward on an issue that has come up in their relations. Although it is not necessarily the activity to which diplomats devote most of their time, negotiation remains - as stressed in the first lecture - the most important function of the world diplomatic system as a whole.

Students of negotiations divide them into three main stages, the last two sometimes being lumped together under the sub-head 'around-the-table' talks because they tend to be more formal and stylised than the first. These stages are:

1. Prenegotiations
2. Formula stage
3. Details stage

In this text, the focus will be on the characteristic tasks of each stage, how they are pursued (also discussed in the following lecture), and the difficulties they confront. However, *three cautions* must at once be registered:

- The concept of sequential stages of negotiation is an analytical construct. In reality, not only do the stages usually overlap but sometimes the difficulties of a particular stage are so acute that 'back-tracking' (return to an earlier stage) is unavoidable.



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- The notion of three-stage negotiations has developed principally out of analysis of talks on issues where the stakes are high, typically between recently or still warring parties. In negotiations between friendly states on matters of relatively low importance the prenegotiations stage will usually present few problems and may barely be noticeable at all.
- The prenegotiations stage of a *multilateral* negotiation may well be far more formal than that of a bilateral one.

In general, the following discussion assumes high stakes, bilateral negotiations.

Prenegotiations

Prenegotiation ('talks about talks' or 'preliminaries') is the whole range of activity conducted prior to the first stage of formal substantive, or 'around-the-table', negotiation. If serious and not just designed by one party to buy time, it is - in addition to breaking the ice in personal relations - directed at achieving agreement on three matters:

1. The need to negotiate
2. The agenda
3. How the talks should be conducted ('procedure')

AGREEING THE NEED TO NEGOTIATE

It is an unusual situation in which the parties to a conflict are:

- *equally* convinced that a stalemate exists; or, even if they are, that they are
- *equally* prepared to acknowledge that negotiation is the only way forward - suing for peace, after all, is readily interpreted as a sign of weakness.

It is not surprising, therefore, that achieving agreement on the need for negotiations is often a complicated and delicate matter and may well take years, especially when core values are believed to be at stake.

Accepting a stalemate may be difficult because any party to whom suspicion of weakness attaches may feel a need to raise the temperature of the conflict while simultaneously putting out feelers for negotiations. This has been very obvious in North Korea's behaviour in recent times. Third parties may be calling instead for 'gestures of goodwill' but stepping up the pressure will safeguard the balance of power and offer protection against domestic hard-liners. Conversely, a party believing (perhaps wrongly) that the other side's need for a negotiated settlement is greater than its own, might insist on 'preconditions'; that is, publicly granted concessions as a condition of its entry into substantive talks. (This was the *initial* position of the 'Syrian National Coalition' in regard to President Bashar al-Assad: it insisted he step down as a condition of its agreement to participate in 'Geneva II' in January 2014). In the Arab-Israeli conflict it took four wars (five including the War of Attrition, 1967-70) before Egypt and Israel accepted in the mid-1970s that they were in a stalemate.

If a stalemate is accepted, the parties next have to acknowledge the possibility that a negotiated settlement may be better than the status quo (things as they are). This is perhaps the true beginning of prenegotiations. By means of direct or indirect contacts, and propaganda directed at allies and domestic constituencies, this generally means conveying three messages:

1. that the parties have common as well as conflicting interests;
2. that in the absence of a settlement, damaging consequences for both sides will be inescapable;
3. that there is a possible solution - a vague 'formula' or 'framework for a settlement' may be hinted at.

None of this occurs in a political vacuum, and agreement on the need to negotiate is most likely to be successful when the following conditions obtain:

1. *When leaders have a record of hostility to the other side.* This may sound odd but those who have been 'hardliners' in the past have the greatest protection against the charge that their willingness to negotiate is prompted by secret sympathies for the enemy or a weak grasp of national or ideological priorities; such leaders are also the best placed to keep under control those of their followers who remain hard-liners. In the context of their recent rapprochement with Washington, the Castro brothers in Cuba are a perfect example.
2. *When leaders are domestically secure.* This provides them with the confidence that they can survive charges of weakness or 'betrayal' that may be made despite any hard-line reputation. In representative democracies this argues for imaginative diplomacy with hostile states in the 'honeymoon period' after elections, which is what many expected from Barak Obama in 2009 (hence the Nobel Peace Prize), although in the event he made little headway with Iran and, as the presidential election approached in November 2012, had to proceed even more cautiously in order to deflect the charge of the Republican challenger Mitt Romney that he was being too conciliatory towards Tehran. In Iran itself the prospect of serious bilateral negotiations with the Obama administration was initially undermined by divided leadership but then dramatically revived with the election in June 2013 on the first ballot - with far more votes than any rival on a high turnout - of the reformist cleric Hassan Rouhani as Iran's new president. (Interestingly, though, following the interim nuclear deal between the P5+1 and Iran in November 2013, it was claimed by Associated Press that 'preliminary and secret talks' were held between the US and Iran in Oman and other locations commencing three months before Rouhani was elected, which was why it was so easy to move quickly to a successful conclusion afterwards. The AP report was officially confirmed both in Washington and Iran, although in reality these prenegotiations started even earlier.)
3. *Finally, agreement on the need to negotiate is also most likely to be successful when incidents that cause bad feeling, such as exchanges of fire along a ceasefire line or a major terrorist incident, are avoided.* This is particularly important in prenegotiations, when exit costs are low, because they put pressure on leaders to increase their demands, and also provide a pretext to

avoid or break off initial contacts. A tragic example is provided by the terrorist attacks on Mumbai on 26 November 2008, which were blamed by India on groups operating in Pakistan and brought talks on improving relations between the weak governments of the two countries to a tense halt.

AGREEING THE AGENDA

Next it is necessary to consider what will be discussed and the order in which items will be taken: the agenda. This often creates more difficulties than might be imagined. Why agenda *content* might be controversial:

1. The *language* of an agenda might indicate that one party has already conceded a vital point. This is why, at the end of the 1980s, there was an argument between the opposition FMLN and the El Salvador government over the wording of the armed forces item on their proposed agenda. Wishing to abolish the existing armed forces, the former wanted this called 'the future' of the armed forces, while the latter argued instead for 'modernization'.
2. The *breadth* of an agenda might be so great as to alarm one party at the uses to which negotiating on it might be put by its rival, both as a vehicle for its propaganda and for securing linkages. This is why the US resisted the suggestion of Saddam Hussein that the Palestinian question as well as Iraqi occupation of Kuwait should be on the agenda of their talks in late 1990 and early 1991. Had this proposal been accepted, Washington would not only have fuelled Saddam's implausible campaign to present himself as the sword of Palestine but also conceded the principle that his aggression entitled him to some reward - thereby compromising utterly the American policy of trying to persuade Israel to maintain a low profile in the crisis.
3. A *vague* agenda may enable embarrassing subjects to be brought up and so may in effect be almost as bad for one party as a more precisely defined broad agenda.

Why might the *order* in which agenda items be taken be controversial?

A party to a negotiation usually wants the items of most importance to it, and on which it is anxious to *receive* concessions, to be taken first. This is because:

1. the side that gets early concessions creates an impression of strength and has less difficulty in retaining the confidence of its supporters, while
2. the other side may feel the need to be particularly generous on these first agenda items if it is to have any hope of being repaid later, even though this is not guaranteed

A major problem in the Syria-Israel talks that foundered in early 2000 was the Syrian demand - rejected by Israel - that the return of the Golan Heights should be settled before any other matters could be considered.

The significance of agenda order is reduced if the grant of early concessions is made

conditional on receipt of later ones. However, agreement on this cannot obscure the fact that the early conceiver is willing in principle to make these concessions, or entirely erase the image of weakness created.

AGREEING PROCEDURE

Here there are four main questions to resolve: format, venue, level and composition of delegations, and timing.

Format

Will negotiations be direct (face-to-face) or indirect? If indirect, what role will be required of the intermediary and who will it be? If multilateral, will the talks be conducted in parallel bilateral discussions, a multilateral conference, or some combination of both? And so on.

Choice of format is influenced, among other things, by the view of the parties as to which will suit their own interests best. Weaker states generally prefer to negotiate with more powerful ones in a multilateral forum governed by procedural rules. This maximises their chances of forming coalitions with like-minded and similarly vulnerable parties, while the ability of the bigger states to throw their weight around is hindered by the rules because they do not usually like to be seen abusing them.

In early 2009 questions of this sort were very much alive in discussions of the method by which the US might 'engage' Iran and North Korea, where the American preference appeared to be bilateral talks under the 'umbrella' of a multilateral framework of regional players (P5+1 in connection with Iran). It is now clear, as noted above, that this paid off in the negotiations concluded with Iran at Geneva in November 2013.

Venue

The venue of negotiation is important for the following reasons:

1. A weak state agreeing to negotiate on the home ground of a rival will thereby find its weakness advertised. Where power is more evenly balanced, alternatives are often the subject of discussion in prenegotiations; the usual ones are neutral ground, meeting 'halfway', and alternating home venues - rotating them if there are more than two parties. Vienna was a particularly popular venue for East-West talks during the Cold War because it was *both* the capital of permanently neutral Austria *and* roughly equidistant between Moscow and the capitals of the European members of NATO.
2. A particular venue may also assist in making a propaganda point. For example, Israel has generally wanted talks with the Arabs to take place in the Middle East in order to emphasise that it is a legitimate member of the region rather than a temporary foreign implant.
3. Practical considerations are often important as well and it is generally for these reasons, as well as reasons of prestige, that states prefer their rivals to come to them. This facilitates control by a host state of its own delegation, eavesdropping on the visitors, and the general choreography of the

negotiation. If the venue has to be remote, it is an advantage if it is in a country where there is the back-up of a sizeable embassy. Some venues are also better favoured in regard to air services, conference (incl. translation) facilities, hotels, entertainment, security - and climate.

4. On the other hand, in friendlier relationships and where embassies rather than special envoys are given greater responsibility for a negotiation, a state may well prefer to play away rather than play at home. After all, this makes its own embassy the key intermediary between the two MFAs, which gives it greater assurance that its messages to the foreign government are delivered quickly and securely to the right people and are not distorted en route. This may be reinforced by a long established tradition. For example, the British government has almost always been keen to see the vast majority of Anglo-Turkish agreements negotiated and signed in Ankara rather than London.

I have discussed at length other points bearing on the question of venue in embassy-led negotiations (for example the reputation of individual ambassadors) in the essay 'Home or Away' in my *Counter-Revolution in Diplomacy* collection.

Delegations

The *size* of delegations is not normally controversial, unless a state proposes to send one that is so small that it implies lack of seriousness of purpose or so large that difficult problems of accommodation and security are raised.

Level and composition of delegations (including who exactly is to be the lead negotiator) is, however, another matter. An issue in prenegotiations may be whether talks should be held at ministerial or merely official level, the former implying higher priority and more rapid progress. One answer to this problem is mixed delegations (including those in which ministers participate for short periods), which seem increasingly common. Agreement on the level of a delegation does not necessarily settle the problem of composition. There was, for example, a terrific wrangle over Arab representation when the US was trying to get Arab-Israeli talks launched in 1977. This was because Israeli acceptance of separate Palestinian representation would have meant acceptance of a separate Palestinian identity - and thus, in principle, a Palestinian state. Resolutely hostile to this, the Israelis wanted the 'so-called Palestinians' to be part of a Jordanian delegation, since it was a widely held view in Israel that the Palestinians were 'really' Jordanians.

In view of all of the matters that have to be resolved in prenegotiations, especially when rivalry is intense and the stakes high, it may be thought surprising that states ever get round to substantive negotiations at all. That they do is testimony not only to the remorseless logic of circumstance but to the fact that diplomacy is a professionalised activity.

Timing

The final procedural question is timing. When should the negotiations commence? The possibility that favourable circumstances are unlikely to last forever argues for a prompt start, but pressing for this may suggest weakness. Other commitments on the part of key negotiators have to be considered as well, practical arrangements made, and time allowed for the preparation of briefing papers ('steering briefs') and for

appropriate consultations. The more parties are involved and the more sensitive the issues at stake, the longer all of this is likely to take.

The Formula Stage

When parties finally get 'around the table' their first priority is usually to agree the *broad principles* of a settlement. These are commonly given such names as 'guidelines', a 'set of ideas', a 'framework for agreement', or simply a 'formula'. An ideal formula promises:

1. solutions to all major points at issue
2. a rough balance of gain ('everyone is a winner')
3. the possibility of improvement at the details stage

For example: The 'high-level agreements' on Cyprus of 1977 and 1979. These provided for a deal in which the Greeks would surrender the unitary constitution of the island state in favour of a federal one (it would remain bi-communal) in return for surrender by the Turks of some of the territory seized when their forces landed on the island in 1974 - federalism for land.

Box 1. Linkage

Some formulas are based on 'linkage' or 'negotiating on a broad front'; that is, the trading of concessions in unrelated, or only remotely connected, issue areas. This approach can help to break an impasse by increasing the scope for imaginative solutions. However, it is offensive to those who believe that issues should be treated on their merits. Thus many members of the OAU (now African Union) were enraged when it became clear in the 1980s that the Americans and the South Africans were insisting on Cuba's departure from Angola as the price for South Africa's withdrawal from Namibia. Cuban troops were in Angola at the invitation of the recognised government, it was argued, whereas the occupation of Namibia was illegal and South Africa was obliged to get out anyway. It was 'wrong' to link these issues.

The nettle of general principle may be grasped immediately but in difficult cases it may be better to approach it with caution, or 'step-by-step'. The idea here is that only relatively uncontroversial issues should be tackled to begin with, benchmarks for progress established, and - in the process - trust built up. Only at this point should a deal on the more fundamental issues be attempted. A classic example is the Middle East diplomacy of US secretary of state Henry Kissinger in the years following the Yom Kippur War of October 1973.

The step-by-step approach, however, is not without its problems:

1. it can mislead by suggesting a relative lack of concern over the bigger questions
2. it carries the danger of surrendering too much for just one item
3. above all, it takes time - and the diplomatic moment may be lost.

The Details Stage

The final stage of a negotiation involves fleshing out the formula - agreeing the details - and is often the most difficult stage of all. Why?

1. Complexity: For example, in the Angola/Namibia negotiations in 1988 it was one thing to agree that Cuban troops should withdraw from Angola in return for a South African evacuation of Namibia (the formula). However, it was quite another to agree on *precisely* when the Cuban withdrawal would commence and by what time it should be completed; whether it would be front-loaded, end-loaded, or consist of a uniform stream; whether it would begin in the south, or elsewhere; and so on. And this was just the Cuban bit of the jig-saw! To take another good example from a subject on which I was working a few years ago, it took only about three weeks after Pearl Harbour in December 1941 for the Americans and the Japanese to agree the formula for an agreement on the exchange of their diplomats and other nationals (*simultaneous* exchange in Lisbon under Portuguese guarantee, with priority to officials) but months to sort out the immensely complicated details; above all, who should be on the passenger lists of the exchange ships.
2. Larger teams of negotiators, including specialists: These are often required in the details stage, which generates greater scope for disagreement *within* the negotiating teams.
3. Need to define terms: It is at this point that careful thought has to be given to the definition of terms and this can be problematical. This is because some definitions serve the interests of some parties better than others. Arguments of this sort dogged US-Soviet arms control negotiations for years.
4. Withdrawal of ministers and senior officials on completion of the formula stage: This might cause delays because of the need for more reference back for guidance, and might cause further difficulties since leaders tend to revert to a more hard line on returning home. This is precisely what happened after the Camp David formulas had been agreed in the rarified atmosphere of the American presidential retreat in September 1978.
5. More suspicion: There tends to be more suspicion in the details stage since its complexity may present opportunities for the balance of advantage in the formula to be manipulated in ways not easy to detect.
6. The moment of truth: Finally, what often makes the details stage the toughest of all is the simple fact that it is the last stage: *the moment of truth*. What is agreed here has to be acted on, so if the negotiators get it wrong they will suffer - charges of 'appeasement', 'betrayal', and 'surrender' will probably be flung at them. When the details stage is concluded, it may mean soldiers surrendering positions in defence of which they have lost brothers, settlers giving up land in which they have sunk roots, exporters losing prized markets, workers losing their livelihoods, or - as was feared by many in Hong Kong during Britain's negotiations with China over the return of this colony to Chinese sovereignty - citizens losing long-cherished rights. Magnanimity is

thus generally at a discount in the details stage.

NEGOTIATING STRATEGIES

Detailed agreements are negotiated in one or other of two ways, or - more usually - some combination of both:

1. Compromise on *individual issues*; for example, splitting the difference between the opening demands of the parties on the timetable for a troop withdrawal.
2. Conceding on one issue in return for satisfaction on a *separate but related one* (in principle the same as linkage). This works best when each party is able to acquire from the other something worth more to it than what it has had to surrender in return.

Should negotiators be accommodating or tough? Each has advantages and disadvantages, and - since the circumstances of different negotiations vary enormously - generalisation in this area is risky. Nevertheless, at the price of inviting the charge of banality, the following might be suggested:

1. Extremes of flexibility and rigidity are both inconsistent with the logic of negotiation.
2. Since negotiation involves concessions by both sides, experienced practitioners usually say it is best to make them in one fell swoop, thereby avoiding the impression given by a steady drip of small concessions that there are always more for the asking. This does not mean, of course, that big concessions should be made at the *beginning* of negotiations! This mistake was made by Turkey during the Mosul negotiations with Britain in 1926, when it astonished the chief British negotiator by surrendering at the outset the former Ottoman province to the then British-mandated territory of Iraq, when only months before they had been threatening to go to war over it. This had the momentary advantage for the Turks of generating goodwill and catching the British off-balance but it left them with little with which to barter and they ended up with a payment of a mere £500,000 for the province when secret British documents reveal that they could have had £1,000,000 (see my *British Diplomacy in Turkey*, pp. 146-51).
3. If the incremental surrender of points is nevertheless unavoidable, the impression of weakness may be reduced by exploitation of various tactical expedients, e.g. (a) making concessions contingent on a final 'package deal', (b) periodically suspending the talks in order to remind the other party that too much pressure might lead to their collapse, and (c) raising the question of the formula again.
4. A tough attitude in negotiations is most appropriate to parties who are confident that they can walk away without major damage to their position.

Conclusion

Negotiation is thus generally a lengthy and laborious process, proceeding through prenegotiations, formula, and details phases. In each stage there is a risk of breakdown, although this is probably most acute in the first, where the exit costs are low, and in the last chiefly because this is the negotiators' moment of truth. The momentum of the negotiations may thus falter even if there is a determination to make them a success. How diplomatic momentum might be sustained is thus a serious question, and for this reason is the subject of the next Lecture.

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