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Diplomatic negotiation : essence and evolution

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Preface

This dissertation is a study on international diplomatic negotiation processes and their context. Diplomatic negotiation processes are vital instruments in international relations between countries and in international organizations. In article 33.1 of Chapter VI of the Charter of the United Nations, concerning the 'Pacific Settlement of Disputes', negotiation is mentioned as the first instrument of seven methods to be used in cases of conflict: 'The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice' (<https://treaties.un.org/doc/publication>). Furthermore, in its 83rd plenary meeting on 8 December 1998, the United Nations General Assembly adopted Resolution 53/101 on 'Principles and Guidelines for International Negotiations' (www.refworld.org/docid/3b00f5254a.html). In the preamble, it stresses 'the important role constructive and effective negotiations can play in attaining the purposes of the Charter by contributing to the management of international relations'. The resolution provides principles and guidelines, hoping that these will 'contribute to enhancing the predictability of negotiating parties, reducing uncertainty and promoting an atmosphere of trust at negotiations'. In its second operative paragraph, it 'Affirms the importance of conducting negotiations in accordance with international law in a manner compatible with and conducive to the achievement of the stated objective of negotiations'.

The name 'diplomatic' is perhaps not completely accurate – inter-state or 'inter-nation' might be more precise – but it seems to make good sense to use 'diplomatic' as the term commonly understood for international negotiations in the public sector, playing a pivotal role in peaceful conflict resolution. After all, it had already been said in 1716 (Callières, 1983: 70) that 'States reap so many advantages from continual negotiations, when they are managed with prudence, that it is not possible to believe it, where one does not know it by experience'. This doctoral thesis will use the term *international negotiation* in the sense of *diplomatic negotiation* – that is, inter-state negotiation processes between sovereign states in and outside international organizations, being tied to the intra-state processes in which the national positions are determined. As the term 'international negotiation' is the most common terminology to be used by those who deal with diplomatic negotiation processes, the two terms will be used interchangeably. This thesis defines diplomatic negotiation as an *exchange of concessions and compensations in a framework of international order accepted by sovereign entities*. Such a peaceful process will only be successful if there is enough common ground between the adversaries. Effective diplomatic negotiators will diagnose – and if needed create – this common space.

This dissertation has been written in the tradition of Clingendael Institute's PIN program, and after two decades at the International Institute of Applied Systems Analysis (IIASA) in Laxenburg. According to the PIN tradition, there is no one-way street on negotiation. There are, of course, books – often originating in North America – that are a great help

to those who want to negotiate successfully. Indeed, these books are a useful tool for the international negotiator, but they are one-sided as they tend to explain negotiation through inclusive models, thereby excluding other approaches. This is not a problem in itself, but they are not very helpful in academia. According to members of the PIN group (and this was also my own view long before entering this circle), negotiation is multi-faceted, situational and contextual. An effective strategy can be disastrous under different circumstances. There is not one truth, and even if we find certain trends to be true, there are always exceptions. As a trainer in international negotiation processes, I often use the 'water metaphor' that I once found by chance in trying to explain the fluidity of negotiation and the need to channel it in a certain direction: without a glass, water cannot be drunk and used effectively; spilling it over my hand is of no help. (As a side note, the glass is there for the water and not the other way around.) International institutions, themselves created through the process of inter-state negotiation, serve the process whereby we need to solve problems by peaceful means as an alternative to warfare. Without the riverbed, the water will not reach its end stage – the sea – in an effective way.

This line of reasoning has many consequences and poses difficult questions to those who study international negotiation processes. After all, if negotiation is determined by its own fluidity and environment, how can we understand it? Even more so, how do we gain a better insight by applying academic techniques, norms and values? We expect 'negotiationologists' – those who want to understand negotiation through an academic lens – to tell us about the processes and their structures in a scientific way, as objectively as possible, but they themselves are the subject of their environment. Academics are influenced by their own background and experience just as much as practitioners. As a constituent part of their culture, academics will – often unconsciously – be biased. The approach of an American or European, African or Asian academic will be different, and even these categories are not homogeneous. As in any social science, there is the problem of objective measurement and although, for example, game theory did contribute enormously to the understanding of negotiation as such, it cannot explain all facets of the process and the structure. The nucleus of negotiation cannot be grabbed in a quantitative way, only in a qualitative manner, but the latter approach is open to subjective influences. The 'solution' is therefore to look at negotiation processes from many different angles, hoping to gain some grip on this phenomenon without becoming too subjective and therefore non-academic. We need the academic approach to get a systematic understanding of the issue. It is the only viable tool that we have, but it is far from perfect under the circumstances of processes being influenced by zillions of variables, including those of human nature.

International negotiation can be part of any social science, but in this thesis it is an integral element of the political science-oriented study of international relations. It is only in recent decades that the discipline of international relations really matured and that academics noticed that negotiation might be part and parcel of this branch of the social sciences. Notwithstanding the fact that thousands of books and articles have been devoted during these decades to international negotiation processes and their impact on international relations and thereby on diplomacy, not only in the world of today but also in bygone centuries, this should not come as a surprise. Negotiation has been the most important tool of diplomacy, and diplomacy itself has been a subject of non-academic

study for a long time, but systematic attention to international negotiation processes only started to surface in the last 50 years, with a sprint during the last two decades. The focus of international relations as an academic field has been on war, and only rather lately on peaceful conflict resolution. As far as negotiation as a tool in conflict resolution is concerned, this lack of interest can be explained by the relative inadequacy of negotiation processes in managing conflicts and crises. Being unprotected by strong international regimes and institutions, negotiation was a feeble tool, often overshadowed by the use of force instead of words. With the growth of international regimes, negotiation became an increasingly viable tool in international relations and slowly gained the academic attention that it deserves. After all, if negotiation works well, it is a much more cost-effective instrument than warfare. Furthermore, as war becomes more costly, there is an even greater need to facilitate negotiation processes as its alternative.

In the Netherlands, the study of international negotiation – let alone diplomatic negotiation – is an undervalued academic field of research and training in international relations, notwithstanding the valuable work of the Dutch scholars I met before, during and after the first PIN-conference at IIASA 1989. This work hopes to add to the body of knowledge collected by these scholars in providing a better understanding and higher appreciation of international/diplomatic negotiation processes as a constituent part of the study of international relations. For diplomats and civil servants, just to remain in the public domain, negotiation is the way to go from conflict to conflict settlement: to merge diverging interests into a common solution in the interests of all parties involved. This is, of course, an ideal-type approach to the negotiation process and this dissertation will illustrate the obstacles and limitations that will often undermine the effectiveness of the negotiation process, to the detriment of the parties involved. Worse, conditions might not create the ripeness needed for the process to start, or to come to any kind of closure. A change of context will thus often be a prerequisite for meaningful international and national negotiation. The question of how to change the context in such a way that negotiability will be created is not an issue that this thesis seeks to address, although some attention will be paid to it. The process of negotiation is already complex enough to be tackled, and this will be done from different angles. This is a question of choice, as the number of approaches is as numerous as the perceptions about the definition, nature and the essence of the negotiation processes between sovereign states and in international organizations. Nevertheless, this treatise hopes to spark interest and deepen insight in inter-state negotiation and its value for the global community. It attempts to show the contours of international negotiation as a construction supporting international relations and the processes within them – a socio-political construct with many architects, and indeed a structure of its own within international reality.

This study is titled 'Diplomatic Negotiation: Essence and Evolution', as it claims to be a monograph on the peaceful management of common and opposing interests and values of sovereign states through the process of give and take. *The dissertation aims to enhance understanding of the significance and the evolution of negotiation as a tool in international relations.* The focus is on the conditions that account for the effectiveness of diplomatic negotiation. What are the obstacles and limitations, on the one hand, and what are the opportunities and factors conducive to its success, on the other? As for the research method being employed in this study, the tool that was used may be labelled

multifaceted qualitative analysis: approaching and discussing diplomatic negotiation from different angles and by looking at cases in different centuries on the basis of a wide body of cross-national literature, discussions in conferences and in the Processes of International Negotiation Program in the last fifteen years, as well as experiences in training and lecturing university students and negotiation practitioners on four continents during the past 30 years.

Apart from the introduction and conclusion, the study consists of two parts, one with four and one with six chapters. The first part is on the body of diplomatic negotiation, labelled as its 'nature'. The second part is about how diplomatic negotiation processes have been handled during the past 400 years, labelled as its 'conduct'. The reason for titling this doctoral dissertation as 'Essence and Evolution' instead of 'Nature and Conduct' arises from the fact that the notion of evolution is dealt with in the first part of the thesis, while not all cases are evolutionary. The last case, on simulation, discusses the process of negotiation as a mirror of reality, but it is not about the development of diplomatic negotiation over the centuries. Furthermore, each of the historical cases has a different angle, and thereby analyzes both the aspects of essence and evolution. Part II on 'conduct' starts with the Peace of Westphalia as the most important diplomatic conference in history, and continues to discuss the most relevant conferences in each of the following centuries, or at least a selection of them, showing their significance for their time and age. By studying these conferences, it is hoped to clarify the role of regimes in the evolution of diplomatic negotiation, as this dissertation sees regimes and their different modes as a basic reason for its growing effectiveness and importance. Part I on 'nature' discusses the most important phenomena in diplomatic negotiation, which will return in Part II of this study.

The difference between this study and the existing literature is its combination of broad contextual and comparative approaches to topics through time, focusing on the diplomatic dimension of international negotiation processes. The treatise sees negotiation as a situational phenomenon and therefore avoids 'modelling' it, as no model can encapsulate all psychological, procedural and positional factors determining the flow and the outcome of diplomatic negotiation processes. Negotiation is as old as mankind, but this study wants to clarify why this method of conflict management and resolution became more valuable over the centuries. The basic proposition of this thesis is that substantial negotiation processes between sovereign states can only be really effective if distrust can be compensated by control through international regimes. Trust has always been a problem in negotiation. Although people can create trust between them, states need guarantees for the implementation of the contracts between them, otherwise negotiation would be a flat instrument in international relations. Diplomacy is in need of negotiation as an instrument to substantiate its own effectiveness.

This dissertation is hence a collection of papers interconnected in such a way that some kind of edifice can be presented to the reader, not just an ensemble of unrelated buildings. Two-thirds of the content of this dissertation was published and peer reviewed before 2012, but all of these texts have been thoroughly updated and revised, with some partially rewritten or completely restructured. Most of chapters II, III, IV, VI and VII, as well as substantial parts of chapters I, V, X and XI, were published before this study was started in 2012. Most of chapters VIII, IX and XII, as well as substantial parts of chapters I,

V, X and XI, were written specifically for this dissertation. They have in the meantime been pre-published in an abridged and restructured mode. A detailed account of the sources and the underlying publications can be found in the footnote at the start of each chapter, with full reference to the Bibliography.

Chapter I introduces the phenomenon of international negotiation, of which diplomatic negotiation is part and parcel. The chapter studies the architecture of international negotiations and provides an overview of approaches by some of the important scholars in the field. As already mentioned, the first part of this dissertation – on ‘The Nature of Diplomatic Negotiation’ – analyzes important aspects of the negotiation processes between states, be they outside or inside international organizations. The focus on states has been chosen because of their predominance in international relations, notwithstanding the role played by other actors like supranational, intergovernmental and public and private non-governmental organizations that do not have sovereignty. As John Odell observes, ‘Negotiation between states remains one of the most central recurring processes of international relations’ (Odell, 2009: 273). Likewise, Alisher Faizullaev holds that ‘states remain the main actors of international diplomacy. States, not organizations or individuals, establish diplomatic relations’ (Faizullaev, 2014: 279). This dissertation deals with the problem of what one might describe as ‘organized international anarchy’: cooperation between almost completely independent entities in an interdependent world, which distinguishes diplomatic negotiation from other negotiation processes. The notion of ‘organized international anarchy’ is quite similar to the concept of ‘international society’ as elaborated by Hedley Bull in his seminal book *The Anarchical Society: A Study of World Order in World Politics* (Bull, 1977). In Bull’s view, diplomatic negotiation is one of the institutions creating a modicum of order in the states’ system. Furthermore, in view of its focus on diplomatic negotiation rather than on other forms of negotiation, it suited this study well that states were actually already on the international scene at the time of the negotiations in Westphalia, as demonstrated in the first case study. The Treaty – or rather the Treaties – of Westphalia can be regarded as a kind of proto-regional regime, but not as the birth of the first international organization, which appeared only in the twentieth century (Meerts, 2014c). Chapter II gives a short overview of the development of diplomatic negotiation over the centuries and its character. Chapter III looks at the connection between the process of diplomatic negotiation and its context. Chapter IV deals with entrapment as a special kind of process that is heavily influenced by contextual issues. Chapter V analyzes the connection and disconnection between diplomatic negotiation and warfare, which are two sides of the same coin, being the main – but very different – tools of conflict management and resolution.

As stated above, the second part of this thesis, ‘The Conduct of Diplomatic Negotiation’, consists of case studies of diplomatic negotiation. The cases will be studied from different perspectives. Chapter VI, on the seventeenth century, looks at the Münster negotiations as a process dealing with the past and structuring the future in a predominantly positive way. Chapter VII studies the behaviour of diplomatic negotiators during the Utrecht Peace Negotiations in the early eighteenth century. It compares their behaviour with negotiation behaviour 40 years earlier, as well as with the behaviour of diplomatic negotiators 300 years later. Chapter VIII asks questions about the effect of including and excluding parties and people from the negotiation process during the Vienna Peace Conference in the early

nineteenth century. Chapter IX studies the impact of the reputation and the ego of the diplomatic and the political negotiators on six negotiation processes around and during warm and cold wars in the twentieth century: at the end of the First World War; before and after the Second World War; and during the Cold War. Chapter X observes the European Union as a negotiation process within a relatively strong framework, constituting the most solid context for diplomatic negotiation in human history so far. Chapter XI does not look at the historical, but instead the simulated dimension of diplomatic negotiation. After the chapters on the conduct of diplomatic negotiation, chapter XII draws final conclusions from the preceding chapters.

The pictures on the cover (de Vries and Hunter, 1963: 86–89) are by Dr Erich Salomon (whose father came from Berlin and mother from Rotterdam), a mechanic/lawyer/journalist with great insight into people, politics and history, who invented his own technical means allowing him to take clandestine pictures. Both photographs were taken at the end of the Lausanne Conference on German First World War reparations in 1932. They have been chosen as showing the intensity of diplomatic negotiation and 'picture' in a way the content of this dissertation. The negotiators were unaware of the presence of Dr Salomon, who can be regarded as the father of the candid camera. French Prime Minister Briand called him '*le roi des indiscrets*' and another minister remarked that '(nowadays) conferences can be held without ministers, but not without Dr Salomon' (de Vries and Hunter, 1963: 223 and v). The photographs figured in the main lecture hall of Clingendael Institute and inspired participants from the course for top-level defence management to simulate it: they had a picture made – of themselves – posing as Belgian, Italian, German, French and British diplomatic negotiators.