Diplomatic negotiation : essence and evolution
Meerts, P.W.

Citation
Meerts, P. W. (2014, November 4). *Diplomatic negotiation : essence and evolution*. Retrieved from https://hdl.handle.net/1887/29596

Cover Page

Universiteit Leiden

The handle http://hdl.handle.net/1887/29596 holds various files of this Leiden University dissertation.

Author: Meerts, Paul Willem
Title: Diplomatic negotiation : essence and evolution
Issue Date: 2014-11-04

PART ONE

The Nature of Diplomatic Negotiation:
General Reflections and Insights

CHAPTER II

Aspects of Diplomatic Negotiation

CHAPTER II: ASPECTS OF DIPLOMATIC NEGOTIATION

As was outlined in chapter I, international negotiations are different from national negotiations in the sense that there is no overarching authority to correct negotiators who fail to reach a conclusion. There is more control in national negotiation, less control in international negotiation, while transnational negotiations such as those in the European Union are a hybrid of the two. International negotiations can be conducted between private and public representatives.

This study labels international negotiations in the public sector as 'diplomatic'. Diplomatic negotiations can be between politicians and their representatives from different states, or between civil servants in international organizations. The first part of this chapter sketches the evolution of the international/diplomatic negotiation process, while the second part deals with the nature of diplomatic negotiation. Understanding its evolution is seen as an important aspect of understanding diplomatic negotiations, actually in understanding the complexities with which they are confronted: 'the vital importance of the past – an awareness of the history of a country or a people – in understanding the complexities of the present' (Kingsley de Silva, 1996: 111).

Diplomatic negotiation is as old as the international system itself. Since the birth of the first sovereign units in China, the Indian subcontinent and the Middle East, the desire to establish official relations has existed. Representatives were sent back and forth to establish international hierarchy and to spy on one another. Yet it was only during the Renaissance that a system was established in which representatives were accredited to another country and stayed there for some time (Berridge, 1995: 32–55). The travelling ambassador made way for the ambassador-in-residence and, as a result, negotiations developed a more structured character. Only as an exception were ambassadors sent who returned to their sovereign directly after negotiations. The resident ambassador became the first-level negotiator, a role that lessened somewhat during the last century with the development of large international conferences and increased ability to communicate between capitals, made possible by advances in transportation and communication. The present-day ambassador will be discussed in the second part of this chapter, while the first part of the chapter will sketch out development towards that position.

THE DEVELOPMENT OF DIPLOMATIC NEGOTIATION

We learn from the Book of Ecclesiastes, 'The thing that hath been, it is *that* which shall be; and that which is done is that which shall be done: and *there* is no new *thing* under the sun' (Ecclesiastes 1:9). Diplomatic negotiation is no exception to this rule. Since at least the middle of the third millennium BCE, the city-states of the ancient Near East maintained friendly relations – or prepared for war – using the paraphernalia of diplomacy. Well-organized bureaucracies, based on the palace and consisting of officials trained in scribal schools, exchanged ambassadors and messengers bearing cuneiform tablets written in Old Babylonian. Calling each other 'brother', kings 'at peace' exchanged gifts, cemented their relationships with dynastic marriages, traded along the major routes, made military alliances, settled boundary disputes, and in general 'gratified each other's desires'. Their relations were regulated by an elaborate system of law, protocol and finance, and they negotiated numerous treaties (Kuhrt, 1998: vol. 1, 40–44; Beckman, 1996).

We know all this from the vast archives that were preserved for millennia in the *tells* – ruined mounds of ancient cities – to be rediscovered from the nineteenth century onwards. The royal archives of Mari, for instance, which consist of over 25,000 baked clay tablets, were found in 1936 by a French expedition. To date, 31 volumes have been translated and published in French, under the auspices of the French Foreign Ministry. Among the voluminous diplomatic correspondence dating to the 1760s BCE is material that sheds light on many features of early international relations, including in great detail the forms, conventions and substance of negotiations. Thanks to the highly informative dispatches of the envoys of King Zimri-Lim of Mari, we can read among many other things blow-by-blow accounts of peace negotiations between Mari and the Babylonian King Hammurabi.

At one point, Zimri-Lim's ambassador, Abu-Machin, presented Hammurabi with the draft text of a peace treaty between the two countries. There followed long negotiations over possession of the town of Hit, which the allied kings had captured from Eshnunna. (Hammurabi did not know it, but Hit was non-negotiable because Zimri-Lim's soothsayers, reading the entrails of two lambs, had ruled on the impermissibility of its concession.)

'Why, despite all his fine words, does Zimri-Lim raise obstacles?', Hammurabi complained. 'My master has never coveted anything that did not belong to him', Ambassador Abu-Machin responded. 'Strike out Hit from the list of undertakings so that I can commit myself', Hammurabi insisted, explaining why he wanted Hit:

> Your country's strength is in its donkeys and wagons, but my country's strength is in its boats. I want this town for its bitumen and oil. For what other reason might I want it? In exchange for Hit, I'll lend a sympathetic ear to whatever Zimri-Lim writes me. On the matter of Hit, I cannot concede (Elgavish, 1998: 66).

This section on 'Development' is based on Cohen and Meerts (2008); on Meerts (2011b); and on Meerts (2013d); as well as partly based on Meerts (1999).

And so a tough negotiation unfolds, with Hammurabi proposing third-party arbitration to break the impasse and Abu-Machin stubbornly resisting. The Mariote ambassador reported: 'I clarified the treaty obligations but he maintained his opposition in the matter of the town of Hit, arguing at length. I still did not agree with him, presenting my arguments in a way that he might find acceptable, wearing him down. Hit is now the last subject under contention' (*ibid.*).

At the final stage of a negotiation, drafts of the treaty were exchanged in the form of a 'small tablet' brought by visiting delegations passing to and fro between the two capitals, and the kings – who never met – pledged themselves to its contents (Charpin, 1988: 144). Even at this very late stage, discussions continued on some point of detail that one of the parties insisted be included (Elgavish, 1998: 71). Final drafts of the treaty in the form of a 'great tablet' were then exchanged. In separate ceremonies at which solemn oaths were sworn to the gods, the kings and accompanying ambassadors each divided an ass and walked between the two halves.

In the Mari tablets, and also the diplomatic correspondence from the famous el-Amarna archive (Moran, 1992; Cohen and Westbrook, 2000), we find thoroughly familiar procedures and ploys – extravagant opening bids, drawn-out middle-games, fallback positions, trade-offs, deadlines, last-minute demands, face-saving compromises, and so on. Arguments were made to morality, legitimacy, love, family piety, vanity, interest, the law and treaty obligations. Intelligence on military and diplomatic matters was assiduously collected, sometimes to be used in the negotiations. Soothsayers and prophets played an important role in the decision-making process.

At one level, negotiations seem to be about the exchange of princesses, gifts, physicians and sacred idols. At another simultaneous level, the issues at stake are finance, trade, the stability and survival of the regime, prestige, interest, the defence of the realm and imperial expansion (Elgavish, 1998: 62–71). By the time of King Solomon's late tenth-century BCE negotiation with Hiram, King of Tyre, for the supply of cedars to build the temple to Yahweh in Jerusalem (1 Kings: 5), the conventions and tactics of diplomatic negotiation had been thoroughly honed for over 1,000 years.

In the 3,000 years that have passed since then, the procedures and substance of negotiations have evolved. On the whole, soothsayers are no longer consulted (although astrologists sometimes are). Sacred oaths and sacrifices do not accompany treaty signings (although such occasions are still surrounded by an aura of solemnity and treaties are held to be sacrosanct in some way). Nevertheless, there is an undeniable family resemblance between the proto-diplomacy of the great kings of eighteenth-century BCE Mesopotamia and the sophisticated diplomacy conducted by the great kings of eighteenth-century CE Europe.

The resemblance partly derives from inherent, structural features of mixed-motive games, where the need to cooperate in situations of rivalry dictates resorting to negotiation – that is, joint decision-making under conditions of interdependent choice. At the same time, comparison of the assumptions, concepts and forms – the ontology – underpinning diplomacy in general and negotiation in particular in the two periods suggests the following proposition: that ancient Near Eastern, cuneiform diplomacy is the linear ancestor of modern diplomacy. Key ideas that are central to our civilization – such as the state, sovereignty, boundaries, diplomatic relations, war, peace, treaties, ratification,

ambassadors, delegations, passports, diplomatic notes, inviolability, and so on – were not invented by the ancient Greeks, let alone by the Italians of Renaissance Italy, but were handed down from Sumer and Akkad.

There can be no denying that the comparative analysis of historical cases has not been given the emphasis that it deserves by students of negotiation. Yet diplomatic negotiation is a fundamental human activity whose origins are lost in the mists of antiquity. Like other great institutions such as writing, governance, banking, medicine, the law and so on, it is enlightening to study its development over time. To date, the historical study of negotiation has largely been the province of historians and philologists, ancient and modern. Both historians and theoreticians have suffered from this cross-disciplinary compartmentalization. Historians of the ancient Near East have sometimes written about diplomacy while failing to grasp that one of the key roles of the diplomat is to negotiate.

As far as the student of negotiation is concerned, the study of historical cases – indeed, of the history of negotiation as such – has several justifications. First, it permits us to identify invariant structural features of negotiation that are more evident when viewed from afar than up close. Second, like students of embryology, observing the embryo helps us grasp the function of otherwise puzzling features of the fully developed organism. Third, if it is accepted that the basic ideas, the ontology of diplomacy and international relations are not continuously being 'socially constructed', it follows that the prospect of them being reinvented in our present brave new world is less likely than some people wishfully claim: again, we return to 'The things that hath been, it is *that* which shall be' (Ecclesiastes 1:9).

Finally, one good reason for studying negotiation with a historical perspective is that by focusing only on the recent past, we overlook most of the evidence on negotiation. Few negotiating specialists study cases from before the First World War, thereby excluding 4,500 years of recorded history. When we study a contemporary case, we invariably have limited access to the archives, can observe only one side of the story, are often biased in a nationalist sense, and are unable to place the episode in the perspective of the *longue durée*. In contrast, historical cases can be researched while drawing on a much richer documentary database. We know how things worked out, plus, frankly, who cares whether Babylon or Mari struck the better deal?

In a special issue on 'The Evolution of International Negotiation Processes', the journal *International Negotiation* (2008: Vol. 13, No. 2) aimed to contribute to amending the lacuna noted above in the literature on negotiation. There have been some direct attempts (Lempereur, 2002; Dupont, 2003; Dupont and Audebert-Lasrochas, 2005; Meerts, 2005b) and indirect attempts (Numelin, 1950; Mattingly, 1955; Hamilton and Langhorne, 1995; Holsti, 1991; and Holsti, 2004) to do this in the past. Articles on different subjects and periods of international relations history were brought together in order to provide insight into inter-state negotiation processes and negotiators then and now. They shed light on the impact of historical context on negotiation strategy and tactics, skills and styles, power and positions, procedures and processes, and outcomes and implementation. Comparisons with contemporary negotiation processes are made as often as possible.

The Problem of Establishing Outcomes

A successful outcome cannot be guaranteed. Mistrust between monarchs, and therefore between states, has through the ages dominated mutual relations (Cohen and Westbrook, 2000). Negotiators were – and not seldom – killed, as this was seen as a signal for the opponent that the negotiator was an unequal partner. The envoy in fact represented his master and was seen as the personification of his monarch. In a way, this is shown in the position of the modern-day ambassador. To kill the representative of the other country was, therefore, a show of power and this behaviour cost some rulers dearly. The Shah of Chwarezm (Persia) showed his contempt for the Mongolian ruler Ghenghiz Khan by killing his entire representation, but the Shah did not survive these policy measures for very long. Apart from the material losses, the Mongol leader also felt that he had lost face, and this outraged him. The news of his envoys' execution, as recorded by Ata-Malik Juvaini, the Persian servant of the Mongol Ilkhans of Persia in the late thirteenth century, 'had such an effect upon the Khan's mind that the control of repose and tranquillity was removed, and the whirlwind of anger cast dust into the eyes of patience and clemency, while fire of wrath flared up with such a flame that it drove the water from his eyes and could be quenched only by the shedding of blood' (Black, 2010: 11).

States in ancient times were looking for means to increase trust in each other by exchanging hostages. The Kaghan of the Khazars – the Turkic tribe in Ukraine that converted to Judaism in the ninth century CE – not only demanded that his Hungarian and Bulgarian vassals come to an agreement with him, but also received hostages of royal decent at his court as a guarantee. A more subtle guarantee for negotiating results was the arranged marriage of children to an instantly conjured-up ally. By marrying the daughter of the Khagan, the emperor of Byzantium acquired more certainty about the intentions of his Khazar allied forces (Meerts, 2004a). All in all, these guarantees were of limited value and, in the given situation, going to war remained, until far into modern times, a more effective method in settling conflicts than inter-state negotiation.

Nevertheless, attempts were made to push back violence by establishing diplomatic networks, especially in Renaissance Italian city-states. In the course of the following centuries, negotiation increased in significance, probably also under the pressure of greater devastation caused by the advancing weapons technology. In the seventeenth century, the use of bilateral negotiations was intensified, which was reflected by the introduction of parallel bilateral negotiations. Whereas negotiations were limited before to discussions between two parties who would meet at a previously arranged location, it now became fashionable to start discussions at one particular meeting point with various representatives of 'states'. The big example is the negotiations of the Peace of Westphalia in Münster and Osnabruck. These were, however, not yet multilateral negotiations (see chapter VI).

Parties continued their bilateral negotiations, in general indirectly through a go-between. In this manner, the strong party had an advantage that could only be annulled in a multilateral framework, but this was at that time out of the question. One of the advantages of multilateral meetings is their repetition, which helps to stabilize relationships and thereby negotiation processes. As it was not yet possible to organize true multilateral talks, some attempts to enhance repetition and thereby stability were already being

made. Berridge notes that Richelieu saw the importance of continuous negotiation as a stabilizer: 'What is immediately impressive about Richelieu's account of the value of *négociation continuelle* (continuous negotiation) is the quite extraordinary emphasis on it' (Berridge *et al.*, 2001: 73). 'Providing the capacity to persuade other states to favourable agreements with eloquence and reason, as well as the ability to observe them closely and so avoid unpleasant surprises, were strong arguments for continuous negotiation' (Berridge *et al.*, 2001: 75).

Negotiators did, however, convene in a multilateral fashion for ceremonial gatherings, but this was no way to negotiate, assembled in the guesthouse of some or other party. It is, incidentally, interesting to note that ceremonial gatherings were significant, however, because the way in which the seating plan was arranged, for example, could show the balance of power. The individual who sat closest to the chairman/negotiator was the most important, which is why, to enhance their status, church monarchs dressed themselves in ecclesiastical robes. For the formal part of the Treaties of Ryswick (now Rijswijk) at the end of the seventeenth century, the negotiators were seated in a circle without a table, otherwise one could not be certain about the goings-on under the table. Heralds made sure that diplomats were led into the ceremonial room at an equal pace, so that one person could not claim precedence above another.

It is important to note that during this time, the negotiation process was also used as a means of warfare, as for instance by Louis XIV. During the expansion of France, Louis XIV was placed against forceful coalitions that he played out through peaceful negotiations, after which he again restarted the struggle until, yet again, a strong opposition developed. The consequence of this strategy is a whole series of void peace treaties.

Only in the nineteenth century were multilateral negotiations introduced as a method to regulate the international power structure, thereby facilitating successful outcomes. The significance of negotiation as an alternative to warfare was on the increase, but the problem of mutual mistrust remained. Effective handling of this phenomenon presented itself at the beginning of the twentieth century with intergovernmental international organizations, as already mentioned, such as the Court of Arbitration (at the end of The Hague Peace Conference), the League of Nations, and the United Nations, etc. The idea to create international organizations to regulate international relations between states and thereby enhance the effectiveness of international negotiation processes was not anything new. Immanuel Kant had already observed that a League of Nations modelled after the agreements forged a necessary condition in societies for international stability: '*dass ein Völkerbund, nach der Idee eines ursprünglichen gesellschaftlichen Vertrages, notwendig sei*' (Kant, 2011: 75) (that there has to be a League of Nations congruent with the original social contracts). It is ironic, however, that the birth of these international bodies, whose aim is to establish a framework for the negotiation process and to provide guarantees for its observance, coincides with the most terrible wars in history.

To put these international negotiation processes into a framework, a great number of international organizations came into being after the Second World War, from regional to universal, and from sector-specific to general. These organizations formed a forum for the peaceful solutions of conflicts and for joint solutions to joint problems. International organizations differ greatly in their degree of institutionalization, ranging from the refined Conference-Secretariat of, for instance, the Group of 77 to the partly sovereign European

Commission. The result of this development is a patchwork of multilateral forums, in which diplomats and civil servants of close to 200 sovereign states negotiate with each other.

Changes over the Centuries

An important difference between international negotiation processes of the past and present is the question of the **relevance** of the bargaining process in conflict management. If warfare and negotiation are seen as alternatives – if both are politics by other means – warfare was the priority tool in inter-state conflict until the twentieth century. This is an interesting paradox, as no other era has seen such massive warfare as the last century. On the other hand, no other period in European history has witnessed such substantial periods of stable peace as the nineteenth century (Kissinger, 1957: 1–3). Throughout the centuries, negotiation became a more relevant tool, although warfare for a long time remained the preferred means to settle problems. In Europe, negotiation gained strength because of four developments.

The first development was **technology**. If anything characterizes human history, it is the change in technological devices. One can question the development of culture, for are we at a higher level than in the past? Perhaps not. One can state that art did not develop into a higher stage, but who is to judge the quality of Rembrandt's work compared to modern and ancient art? One can question the development of the human psyche, of human health, yet are we better off than in the past? Perhaps we can acknowledge that our political systems reached some sort of ripeness. We can definitely prove, however, that technology evolved in a positive way, that it reached a higher standard than in classical times, medieval times, or the Renaissance. Technology influenced warfare in the sense that it created more destructive weaponry than ever. At the same time, technology gave diplomacy the sophisticated tools needed to forge organizations channelling negotiation processes. It contributed to the availability and speed of information facilitating effective negotiation. While technology made warfare an often too dangerous sword to wield, it made negotiation a more effective tool to bridge the gap.

The second development was that of **regime–building**, which will be discussed in chapter III. Regimes, in the form of international agreements stipulating rules and regulations of conduct and – at best – allowing for sanctions against those parties that do not comply with the understandings that have been made, can compensate for lack of trust by imposing control. They provide information about the parties' behaviour and monitor their activities. Regimes can go a step further by establishing international organizations in order to have a more durable and ongoing surveillance of the (mis)behaviour of states. Surely, leaders might trust each other, but why should states set their *raison d'état* aside for something as feeble as trust, which can be turned over from one day to another? Not having any regimes to stabilize negotiation processes and secure the outcome contributed to the idea that bargaining could be – at most – a sideshow in warfare. Trust has always been *the* pre-eminent problem in negotiation. As long as one cannot be sure about the intentions of the other side and its willingness to stick to an agreement, governments have proven to be reluctant to put all their eggs in the basket of negotiation as an alternative to warfare.

Negotiators tried to deal with this problem in different ways. They swore pious oaths and asked all the available gods to bless the treaties that they forged, but as this clearly did not guarantee any solid implementation of any holy pact, negotiators had to think of other ways, such as strengthening relationships, for example, or exchanging hostages, or, as in the seventeenth century, asking guarantors (like France and Sweden in the Peace of Westphalia in 1648) to help implement the treaty. In the eighteenth century, after the (in essence) multi-bilateral Peace of Utrecht (1713), the number of conferences multiplied in an attempt to stop wars ravaging the European continent and to make bargaining the dominant mode in conflict management. In the nineteenth century, starting with the multilateral Vienna Conference (1814–1815), the meetings between heads of states and diplomats became a systemic feature, but ongoing organizational structures were still lacking. This changed in the twentieth century after the devastating First World War (with the Paris Conference and the Peace of Versailles in 1919) and then the Second World War (Conference of San Francisco in 1945), by creating regimes of ever-better quality and strength, not only on a regional, but also on a global level.

Regimes, in transforming negotiations into increasingly rationalized tools, dealt with the problem of **trust** in an effective way. The development of trust is the third remarkable trend in the evolution of inter-state negotiation. Secrecy was a major issue in early European diplomacy, much more than today. Ambassadors had to be versed in publicly representing their monarchs as well as dealing with issues under conditions of complete secrecy. Being able to keep secrets, to be specialized in treason, maintaining a poker-face and the like were the qualities of the effective ambassador-negotiator (Colson, 2008; Berridge, 1999). Distances, time-lags, transportation problems and communication distortions all helped secrecy. There are of course still secrets nowadays in diplomatic negotiation and the WikiLeaks revelations pushed them to the forefront of the public debate (Rosoux, 2013; Meerts, 2013e). Modern authors on negotiation even plea for openness as a means to further the effectiveness and speed of negotiation processes, although it remains unwise to show your trump-cards 'in public'. So-called 'corridor work' (outside the conference room) and 'huddling' (small groups of negotiators talking informally in the conference room during a break in the formal session) are still an essential part of bargaining, also for cultural reasons. Open concession-making can lead to losing face, as negotiators might refuse to give in openly, only in informal sessions.

The fourth evolving element is **power**. The political context is changing. Power is more equally distributed today than in the past, even internationally (Cohen and Meerts, 2008: 155), although it is still more bluntly used in international relations than in national politics, at least in and between democracies. This clearly has to do with the evolution of human history, the development of democracy, creating more diffusion of power, and the protection of minorities and human rights. At the same time, the distribution of power among states has become less volatile, while intergovernmental and non-governmental organizations are on the rise (Van Staden, 1987: 14), helping to stabilize power or to diffuse it.

Non-state groups, including regional and terrorist organizations, are able to undermine the hegemony of the state, because weapons technology has been globalized so much that the state's monopoly of structural advantage is washing away. Nuclear states still hold this prerogative, but even they might be under attack in the future, as nuclear weapons are of

no avail against regional or global insurgencies. Furthermore, the idea that states should not be wiped out just like that, even with the rationale that the stronger state might use nuclear weapons in the future against other major powers, gave minor powers a rightful and legitimate niche in international politics, and therefore in international bargaining. Negotiation is situational and contextual. Major changes in the political context will influence the character and the effectiveness of international negotiation processes.

Can one therefore conclude that negotiation evolved into a more valuable and legitimate instrument in international conflict and international relations than other methodologies, such as, first and foremost, warfare? Indeed, *'Negotiation* becomes the prevailing method in conflict resolution and the prevention of further violent conflicts' (Gasparini, 2013: 77). However, this does not mean – at all – that warfare has lost its significance. And in many cases it is still easier to go to war than to open negotiations. Given the present levels of technology, regime strength, the instruments to compensate for lack of trust and the attempts to respect minor powers, it can indeed be hypothesized that negotiation evolved into one – if not the main – tool in international conflict management and resolution. With disasters and scarcity ahead, the world might well want to learn from the experiences of the past, to be better equipped in dealing with the future.

CHARACTERISTICS OF DIPLOMATIC NEGOTIATION

'Diplomacy is the best means of preserving peace that a society of sovereign states has to offer' (Morgenthau, 1967: 549), where 'negotiators seek to produce a *formula for agreement on the resolution of a problem,* which is then translated into acceptable implementing details', whereby the 'principle of justice' is its basic subject (Zartman, 2003: 33–34). Henry Kissinger sees diplomacy as a negotiation process in a legitimate context: 'Diplomacy in the classic sense [is] the adjustment of differences through negotiations [and it] is possible only in "legitimate" international orders. [Legitimacy] implies the acceptance of the framework of the international order by all major powers' (Kissinger, 1957: 1–2). René Albrecht-Carrié concurs: 'Diplomacy, the art of finding [...] accommodation, is timeless. But in the recent period [...] a narrower definition may be given of diplomacy as the management of relations among sovereign entities through negotiations conducted by the appropriate agents'. He adds that 'sovereignty, by its very nature, means the denial of any higher authority' (Albrecht-Carrié, 1970: 3–5). This exemplifies the main characteristic of diplomatic negotiation: to harmonize the interests of different states without an overarching framework that is strong enough to direct them to a common agreement.

Christer Jönsson and Karin Aggestam attempt to get more of a grip on the term 'diplomacy' by looking at its different functions:

This section on 'Characteristics' is based on Meerts (1999).

First, 'diplomacy' sometimes refers to the content of foreign affairs as a whole. Second, 'diplomacy' might connote the conduct of foreign policy. A third connotation of diplomacy focuses on the management of international relations by negotiation. Fourth, diplomacy may be understood as the use of diplomats in a diplomatic service. Fifth, diplomacy, and especially the adjective 'diplomatic', often refers to the manner in which relations are conducted (Jönsson and Aggestam, 2009: 33–34).

To this they add diplomatic norms and practices facilitating conflict resolution: coexistence and reciprocity; open communication channels; shared language; commitment to peace; diplomatic immunity; and *pacta sunt servanda*, meaning agreements must be kept (Jönsson and Aggestam, 2009: 36–40). They also refer to diplomatic norms and practices that complicate conflict resolution: precedence problems; openness; constructive ambiguity and its consequences for implementation; questions of recognition before the process can start; and multilateralism and 'polylateralism' being problematic because of their complexity (Jönsson and Aggestam, 2009: 40–61). However, others nuance both the positive and negative effects of the diplomatic norms and practices as summed up by Jönsson and Aggestam.

For example, their last point is particularly important to conference diplomacy, or negotiating in the framework of international conferences. Winham, however, sees advantages in complexity: 'Complexity works in favour of reaching an agreement because the inherent lack of precision in the material makes it difficult to argue effectively against an agreement.' 'It pushes parties to adopt simplified logics and goals.' 'Complexity strengthens the position of the negotiator back home' (Winham, 1977: 87–114). Albrecht-Carrié agrees with Jönsson and Aggestam on 'the advantages of a common medium of expression, whatever it might be, Latin, French, or some other, have often been pointed out' (Albrecht-Carrié, 1970: 8), but he sees a gloomy future for this: 'It is one of the less attractive aspects of our contemporary hypersensitive nationalism that this aspect of universality has ceased to exist in our day'. Diplomatic negotiation is therefore a process of international negotiation characterized by diplomatic norms and practices that can have a positive and a negative effect on its function of coming to closure, but it is difficult to point out which characteristics will have a positive or negative impact on its outcome because of the contextual nature of the process.

Turning to the question of process, this study already referred to it in the last chapter: many authors have defined process in many different ways, but in the end the differences are not substantial. It is a question of wording. According to Zartman, process 'refers most precisely to the parties' exchange of concessions and compensations in an effort to reach a point of agreement that is favourable and acceptable to each' (Zartman, 2002: 9). At a later stage Zartman added 'construction', meaning reframing or restructuring the issues so that a new goal, which is of interest to both sides, will help to get things done.

Combining the views of Kissinger, Albrecht-Carrié, Zartman, Jönsson and Aggestam, this dissertation's preface defined *diplomatic negotiation as an exchange of concessions and compensations in a framework of international order accepted by sovereign entities*. It is undeniable that shorter and more extensive definitions would be equally valid and useful. But for pragmatic reasons, the definition as formulated above will be used by this study as

an understanding of the term 'diplomatic negotiation'. The definition clarifies the difference between diplomatic negotiation and international negotiation. Through the acceptance of the legitimate framework and the application of diplomatic norms and practices, it assures some control over the process of international negotiation. This control is instrumental in assuring closure, or at least in enhancing the probability of successful outcomes and effective implementation of these agreements. The framework became stronger over time, thereby adding value to negotiation as an alternative to warfare. This study will now analyse the elements of diplomatic negotiation processes.

Conflict of Interest and Power Relationships

Depending on their interests, states can have contacts with each other in three different ways. If their interests overlap completely, all that is necessary is to sit around a table together to discuss how business should be conducted, based on mutual interests. After the common interests have been established, common strategy can be determined. Negotiation is not necessary, as there are no conflicts of interest. Conferring is sufficient. In this situation, the representatives of the states need to ask how the parallel interests can be maintained. Indeed, if both states have identical interests on certain issues, it is possible that after achieving the common goal, the interests of the countries involved may then become diametrically opposed. An example can clarify this. In cases where two resistance movements fight against one government, it is possible for them to work together to bring down the government that they oppose. If they succeed in bringing down the 'legitimate' government, there is a serious problem if each resistance group wishes to form the new government without the other. In this situation, they can only work together before their success; once they succeed, cooperation changes to competition with each other. They try to eliminate the other party and a civil war can result. It is different if the two rebel movements have complementary interests. In that case, cooperation after the 'successful overthrow' of the government can be achieved by forming a new coalition government. In other words, even in a situation in which states have only common interests, a difference needs to be made between the situation before and after carrying out a common decision.

The other end of the spectrum in relations between states is the situation in which there are only opposing interests, so cooperation is not possible because of the lack of common interests. It is a question of 'fighting' or 'fleeing', of forcing the other party to agree, in the event that one side is stronger than the other and the issue of disagreement is a priority. One side can withdraw from contact because there is not sufficient power to force the issue, or because the problem in question is not so important. A difficult situation arises if a state does not have sufficient power to force an issue, but that issue is very important. In that case, it is important for the state to try to build up power quickly enough to lead to the desirable result. When there is a lack of sufficient common interests, the power relationship between states is the factor that determines whether or not the differences can be resolved by force.

Negotiating power is determined by many factors, both internal and external (Frenkel, 1969: 118–128; Northedge and Donelan, 1971: 61–64; Zartman and Rubin, 2000b: 3–20; Mearsheimer, 2001). The first question concerns the internal balance of the state that is negotiating. The position of a state will be undermined if that country is torn by internal

differences of interest and opinion. Then comes the issue of external dependence: the more independent a state is, the greater its power. These internal and external factors determine the structural power of the state. In addition, there is the specific power of the country, which includes the power a land can bring to bear on a particular dossier. It is clear that countries have comparative power advantages or disadvantages, depending on the subject in question. For example, even though Luxembourg is a small country, because of its strong banking position, it is a financial power within the European Union. Power is not an unchangeable variable and is not merely dependent on the strength of the state. The negotiator can also influence the balance of power by functioning more or less effectively (Mastenbroek, 1989).

The negotiator can try to influence the balance of power to his or her advantage in different ways. One method is to obtain the most information possible about one's own position, about the position of the other party or parties, and about parties who are not included in the negotiation but who could become involved. This knowledge is necessary to determine what alternatives exist for the negotiations in question. Increasing the number of possible alternatives is another way to enlarge one's own negotiating power. Those who have no alternatives are at the mercy of the other party or parties. A well-qualified negotiation delegation, in which participants combine good knowledge of dossiers along with good negotiation skills, can also contribute to strengthening the state's position. In addition, coalition-forming is very important. Given that coalitions are easier to form in multilateral rather than bilateral negotiations, it is best for the less powerful states to try to negotiate with a more powerful state in a multilateral setting. Meanwhile, the more powerful state has a distinct advantage in bilateral negotiations. The choice of negotiation forum is thus of major importance in answering the question about in what context the negotiations should be held, which is also the reason for the pro-supranational inclinations of most of the small member states of the European Union.

The means that can be used to force the other side to agree in a situation where there are no common interests and where negotiation is not an option vary from political and economic pressure to use of violence. There are many examples of states using force, even when there could have been attempts to create common interests in order to avoid the use of violence. There are also situations where there are common interests and negotiation could therefore be used, but where one of the parties prefers to use force, because it feels that force can lead to better results. Examples such as the recent conflict in Chechnya and the Vietnam War show that there can be misjudgement on the part of the state with the most power. The more powerful party may feel that it can use all of its structural preponderance in the conflict, but that is often not the case. The specific power that the structurally weaker opponent can project can often be very effective, whereby the weaker party can achieve its goals in relation to the issue. In many instances, this can only be maintained in the short term and, at the most, the middle term. This sort of issue can be seen in the relationship between Israel and its Arab neighbours, and between the People's Republic of China and Taiwan. How long can these potentially weaker parties keep the balance of power in their favour, or at least in a stalemate? When might there be a turning point and when is it the best time to act? This is one of the most difficult decisions for diplomatic negotiators: when should they make concessions and to what degree? If they

are too early, they will give away things they could have kept, and if they are too late, they will lose more than was necessary.

The temptation to use superior power and to avoid negotiation is sometimes too great. That does not lessen the fact that the use of physical power is increasingly difficult in a world in which there is so much interdependence. The rise of asymmetric warfare, the spread of modern weapons technology, and the increasing 'refinement' of guerrilla tactics and terrorist methods make it also less appealing for those with superior power to use it, because the 'weaker' party often has access to technologically highly developed weapons that neutralize the stronger party. This so-called 'mosquito power', whereby the 'weaker' party takes action against a weak spot of the 'stronger' party, thereby negating the power of the stronger, plays an increasingly important role in conflicts (Zartman and Rubin, 2000b: 271–290).

Inter-state Negotiations

The third situation is that of both common and opposing interests between contending states. In this situation, negotiation is a usable means to arrive at solutions for mutual problems. In situations where the common ground is large and the differences small, negotiations can be without problems, relatively speaking. The parties can meet with openness and the approach of negotiating in openness can be used (Fisher, 1971). This is naturally more difficult in a situation where common interests are limited and opposing interests are great. In such cases, there is competitive rather than cooperative negotiation, and negotiations will be conducted in an antagonistic atmosphere. To build up trust in a situation plagued by distrust requires much skill on the part of the negotiator. In this kind of situation, such as in Bosnia, the question is whether or not negotiation is a usable method.

It is all too true that there are many situations where 'negotiations' take place, but where questions can be raised about whether or not this is the best procedure. The discussions do not have to be successful in the sense of solving the existing problems. The discussions serve other purposes, such as maintaining contact between the parties in order to make possible more successful negotiations in the future. The opposite is also sometimes true, for example when people do not really wish to negotiate, but refusing to negotiate would make this very clear. Thus, to confuse the issue, parties 'negotiate' to hide the fact that they really want totally different results than what the 'negotiations' seem to be trying to achieve. Well-known examples of this smoke-screen tactic took place in Munich in 1938, and in the meeting between Egyptian President Hosni Mubarak and Iraq's Saddam Hussein about Kuwait, just before Iraq attacked Kuwait in 1990. In the latter case, the Iraqis pretended to be interested in a peaceful solution in order to hide their real plans. There are also 'negotiations' where neither party wishes a solution. They want the negotiations to fail in order to prove to public opinion that other actions are necessary, such as the further strengthening of military forces. Make-believe negotiations can also serve to acquire information that might otherwise be difficult to get, or to embarrass the other party by breaking off discussions, etc.

Real negotiations can only occur if countries have common interests that they acknowledge. In many instances, an outsider can see that countries have common

interests, while the countries themselves cannot or do not want to see this themselves. Even if they acknowledge the common interests, they may view the issue at hand as less important than issues that they consider higher priority. That higher priority, however, may not be seen as such by third countries. For example, European Union countries considered avoidance of the destruction of lives and infrastructure in Bosnia in the first half of the 1990s as much more important than the nationalistic desires of the fighting parties, while those fighting placed their feelings of national unity and desired national borders above the safety interests of human beings and property. The same point may be illustrated by the attitude of the People's Republic of China, which for a long time considered its claim on Taiwan as more important than the risk of damaging its own economy by increasing tensions in the Strait of Formosa.

Negotiations are only useful, of course, if it is in the interest of the involved countries to solve their problems in a peaceful way. One important point is that it is not always necessary to have mutual overlapping interests at the beginning of the negotiations. These mutual interests can be developed during the negotiations by bringing up new discussion points and trying to create common interests by combining different questions: the so-called 'package deals' that can help lead to effective negotiations. The more parties that play a role and the more subjects that are brought into the discussion, the bigger the chance of creating a common basis. The European Union could never survive without package deals on a daily basis. From a certain but insufficient overlapping common interest, negotiations occur until it is clear that no solution will result. Attempts are then made to combine different wishes, sometimes on totally different topics, so that progress can be booked. By definition, these trade-offs take place at the very end of the negotiation cycle, because it must first be clear what the unsolvable differences are, and which wishes and offers can be coupled together. This requires a negotiator being capable of analyzing complex situations and having the ability to come up with creative solutions. A good network is essential in such a situation. The creation of a good working atmosphere is a requirement in order to make progress in regard to the subject. These skills are very important for a diplomat. This is the real contribution of diplomacy, and this is where the specialists of other departments need the skills of the diplomats of the foreign ministry.

Although the term 'negotiation' can be defined on the basis of common interests between states, the term 'common interests' itself is not always simple to explain (Berridge, 1998). In the first place, it is often not simple for the parties themselves to determine what their common interests are. Interests are often a sum total of smaller partial interests that can contain opposing factors. In general, the instructions that diplomats receive are the result of *internal negotiations* and are often a compromise that holds together because of vagueness. However, if the mandate is not the result of extensive internal negotiation or consultation, there is a great chance that the results of negotiations with the external party will be unacceptable to some internal groups. This can lead to very painful confrontations that damage the negotiation partner. If the result is not acceptable to one's own supporters, what kind of trust can the external party have in future negotiations? Without legitimacy, good negotiations are impossible and this legitimacy is based largely upon internal consensus.

As well as the issue of the difficulty of defining *the* interests of a country in a certain situation, the perception of those interests plays a role (Berridge, 1998). How much of

a priority is a particular interest? What concessions are possible? What is negotiable? Especially those emotions tied to interests can create obstacles in the path of successful negotiations. Emotions in the negotiation process cloud the perception of the party's position, especially because the opposing party often cannot understand those emotions. Insight into business issues can be shared, whereas understanding emotions in a negotiation process is more difficult. The basis of conflicts is often a disagreement about values and norms, rather than about interests. Ethnic, religious and linguistic differences are used to mask interests or to support them, while at the same time they are obstacles to successful negotiations and their closure (Anstey and Meerts, 2012: 376–390). They are not negotiable – a Protestant and a Muslim cannot negotiate about their religion. Such differences can make an 'objective' analysis of interests difficult.

The Diplomat and Negotiation Behaviour

Negotiations are carried out by people who usually act for organizations. Diplomats, the official representatives of their countries, bring all of their country's power and prestige to the negotiating table, putting the negotiations under extra pressure, but also bringing risks with it that must be limited. Serious loss of face for diplomatic negotiators can result in serious loss of face for the country, which can lead to unforeseen consequences. After all, the representative was not only the representative of his emperor; he was, in a way, the ruler himself. This is still the case. The ambassador is not only the representative of his or her state; he or she personifies it. This is why representatives are listened to, but some of course carry more weight than others. Their influence, which is also determined by their skill, is still largely based on the power that they represent.

The diplomatic negotiator is protected by many rules and procedures, which see to it that no one state can be raised above the other. The Vienna Convention of 1961 put into black-letter law the accumulation of European practices, norms, values and regulations assembled over the centuries (Berridge, 1995: 19–31). In addition, a 'diplomatic culture' has developed, in which diplomats from very different cultures can interact with each other in a 'safe' manner. The great contrasts that cultural differences can cause are in this way reduced to acceptable proportions. It can be argued that differences in negotiation style have a more limited influence on the negotiating climate in diplomacy than in international business, unless the diplomat is planning to use these differences as a tactical weapon. Research has shown that – perhaps in contrast to popular belief – substantial cultural differences exist among negotiators from EU countries, but that such differences do not create any real barriers (Meerts, 2004). On the other hand, individual character-trait differences can damage the atmosphere. Differences in negotiating skills will naturally always have influence on the outcome of the negotiations; there is also a visible increasing difference in training techniques.

The difference between the official representative of a state, whether this person is a diplomat or an internationally functioning civil servant, and the negotiator who represents a company or other group, is based on the formal character of the negotiation mandate of the first. The instruction that the diplomat gets as a negotiator carries the status of the state. This almost emotional dimension of the empowered negotiator of a country is often an obstacle in searching for and finding the most rational and effective solution for

differences. After all, in addition to the 'honour' of the country, issues such as public opinion, the political position of ministries and parliament and, sometimes, military leaders play a great role. The political dimension, with its emotional aspects, often leads to negotiation results that, mildly stated, are 'unbalanced' and 'not carefully thought out'. This can be an advantage or disadvantage for the negotiating state. Deliberately vague and contradictory agreements often provide a solution, when a crystal-clear and straightforward statement would lead to great resistance from parliament and public opinion.

Diplomatic negotiators not only have the task of problem-solving; sometimes their task is to conceal problems, to introduce uncertainty and ambiguity instead of clarification (Friedman, 1995). This has the consequence for negotiations that issues are continually pushed to the future and that finding solutions can be seen as untimely and even harmful. The interest of the state often requires negotiations to be strung out and solutions to be delayed, because the existence of the current unstable situation offers an advantage to one or more of the negotiating states. This can be seen in Cyprus over the past decades, where different groups within the Greek and Turkish communities have no interest in eliminating the island's current partition. In other situations, an external power may want to delay a solution, because its influence would be limited. This is again the case on Cyprus, where the lines clearly go back to Greece and Turkey. Restoration of the *status quo ante* would lessen or remove the influence of both countries in Cyprus, although such a revision is further away than ever, given the outcomes of the referenda, the stagnation of EU enlargement and the euro crisis hitting Cyprus in 2013. Such tactics are often visible in bilateral negotiations, but in multilateral negotiations it is very difficult to determine why progress is not being made. There can be 'legitimate' reasons because a state binds different issues together in order to tie progress on one issue to progress on another; forced delays on one point may encourage solutions on another point. It is also possible that it is in the interest of all participants to frustrate progress, given the great costs that decisions may bring in the short term, even though it is clear that long-term damage will result to these states. Negotiations about environmental issues are a good example of this. Countries agree about the damage caused by air pollution, but if the changes required for out-of-date industries cost too much, a country may feel little enthusiasm about taking the necessary expensive and far-reaching steps.

Progress in inter-state negotiations depends on a number of factors: the mutual dependence of the countries involved; the quality of their political relations; power relations between the states; and the priority that states give to the subjects under negotiation. In addition, the skills and prestige of the diplomats play a role, but they must still operate within the four named parameters and must thereby use the negotiating space to the best of their ability in order to find a solution or to undermine the negotiations. It has become fashionable for effective negotiators to strive to maximize or optimize their goals to create a 'win–win' result. If the theorists have their way, this is what negotiators should strive for. And indeed, that is the best result for negotiators. But is that always realistic? In many countries, preference is given to a negotiation method that does not lead to an optimal or even a maximum result. Negotiators are prepared to accept a loss in the event that the other party suffers an even greater loss.

The negotiation strategy of states is, in part, determined by the state's structure and the hierarchy within the ministries. Differences influence the process of negotiation and

its outcome, and can make communication difficult. This explains why there has been so much discussion going on for some time about a certain harmonization of the structure of the different ministries of foreign affairs, up to the point of proposals for radical change (Neumann, 1997; Coolsaet, 1998). Diplomats who negotiate for a federation, such as the Federal Republic of Germany, often have to deal with a long negotiation process within their country, whereby their instructions often arrive late and their position is inflexible. Centralized countries with a clearer command structure, such as France, can operate much more quickly, but the basis of acceptance of the decision taken is sometimes too narrow. This may lead to decisions that will be rejected by segments of the population, with strikes and boycotts as a consequence.

In Conclusion

International negotiations are being nationalized and national negotiations are being internationalized. This chapter noted that the domain of inter-state relations and a country's carefully separated area of internal affairs are beginning to merge with each other. If it is no longer clear where the demarcation lies for the international dimension, how can the diplomat's position as the monopolist in international relations be maintained? In this way, the diplomat loses his prerogative as an international negotiator. He or she is in competition with colleagues (departmental civil servants) who often know more about the specialized subject than the diplomat. The increasing complexity of international affairs increases the influence of the non-diplomat expert. The diplomat maintains her or his function as a generalist who is necessary for coordination. Improved means of communication make it easier for the civil servant to negotiate directly with his or her counterpart in another country. The same is true for ministers and heads of state who do business directly at summit conferences, sometimes ostentatiously closing out their assistants. Coordination is therefore often no longer needed or possible. In summary, the role of the diplomat as negotiator is being undermined. Inter-state negotiation is increasingly 'inter-civil-servant' negotiation and less often diplomatic negotiation – that is, if people view diplomatic negotiation as the process of give and take in which the actor is generally a member of the diplomatic service.

Above all, within the European Union, there are visible processes that threaten to marginalize the diplomat's role in relation to the negotiator of the specialized departments. Also outside of the Union, there are developments that threaten to diminish the role of the diplomatic negotiator. In addition to the civil servant, there are other competitors. The democratization of society leads to increasing interventions by politicians and non-governmental groups and organizations. This leads to greater openness and increases the role of the media and journalists as players in the international arena. Companies also play an increasing role in international affairs, certainly now that there is a higher priority placed on economic developments. The businessman and his interests can no longer be ignored by diplomacy. For example, the effort to increase exports has become a larger part of the diplomatic task. Saner describes and analyzes the divergent post-modern diplomatic roles in the economic sphere of representatives of states and of non-state actors (Saner, 2009: 9). Commercialization, privatization, democratization, politicizing, professionalizing,

increasing interdependence, improved communication, improved transport, greater security risks and the increasing number of international issues: in short, the quality and quantity of the international questions to be negotiated is on the rise.

Inter-state negotiations are thus less often synonymous with diplomatic negotiations, and international negotiations are less often the same as inter-state negotiations. The state has lost influence, and within the state, the diplomat. Paradoxically, because of the increase in importance of diplomatic negotiations, a more modest role is set aside for the diplomat. It would perhaps be better to speak nowadays about 'inter-state negotiations' – that is, negotiations in which diplomacy is only one of the players. In addition, it can be concluded that inter-state negotiations will have competition from an increasing number of other forms of negotiation, while the state-like character of negotiations between countries will lessen.

Does this mean that the roles of diplomacy and of the state are becoming so marginalized that diplomatic/inter-state negotiations will lose their meaning as a theme for study and training? The answer is just the opposite (Flemish Foreign Affairs Council, 2013: 1; *Modernisering van de diplomatie*, 2013). The study of, and training in, diplomatic/inter-state negotiations are increasing, just as the world is becoming more internationally oriented, just as international developments have an increasing influence on the internal development of states, and just as the increasing complexity of international developments bring greater pressure on the ability of states and their representatives to create order, without which further peaceful development is not possible. It is precisely in these circumstances that the role of the diplomat as coordinator, shaper and negotiator – in short, communicator – will gain in significance. The tasks of the modern diplomat of the twenty-first century will be difficult to compare to that of the twentieth century, not to mention of the nineteenth or eighteenth centuries.

The unpredictability of diplomatic negotiations and their outcomes is problematic. Unpredictability is bad for stable relations between states and is bad for effective negotiations. It is up to the diplomat to demonstrate his abilities and to improve predictability. In order to do this, the diplomat must be formal and flexible at the same time. He or she must maintain relations and continue to work precisely in those instances in which the conflicts threaten to become the most serious. Power must be used in situations in which states consider themselves inviolable, which calls for great knowledge of the dossiers. Diplomats work in extremely complex situations, making it necessary for them to have a lot of professionalism and general skills and knowledge. In negotiating, which by definition is a paradoxical method because of competitive and cooperative elements at the same time, the diplomat is confronted with difficult situations for which an acceptable solution must be found.

Diplomats will be inclined to take into account the consequences of their decision making in the future: 'diplomats involved in international bargaining are almost always less concerned about the issue immediately at hand than about the impact of the settlement on resolving future issues' (Ray, 1998: 143). Furthermore they 'are anxious to avoid giving the impression that they make concessions easily' (Ray, 1998: 145). Daniel Druckman highlights this problem by making a distinction between settlement and resolution: 'the former emphasizes getting deals; the latter promotes longer term relationships' (Druckman, 2013a: 201). Seen from this perspective, diplomatic negotiation is still a useful tool in conflict management, but it might be an obstacle to conflict transformation.