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Diplomatic negotiation : essence and evolution

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CHAPTER III

Process and Context

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This chapter will deal with the context of the diplomatic negotiation process, not only because of its impact on the start, the flow and the closure of the process, but also because of its function in enhancing the utility of diplomatic negotiation in comparison to other instruments of conflict resolution. The chapter will first focus on the boundaries of negotiation as a function to channel the process in the desired direction. The role of six boundaries will be analyzed: geography; system; needs; resources; regulators; and time. The second part of the chapter will study negotiation as a tool to provide order to international relations and the role of regimes therein.

Trying to understand a negotiation process without its context is not helpful in explaining what happens, why and when. Despite this, most negotiation literature tends to focus exclusively either on procedure and process, parties and people, or positions and products. Of course, to take the environment of these phenomena into account complicates matters, touching, as it does, on the tension between vertical and horizontal research. If one digs into the vertical axis, it is difficult to include much of its horizontal context. The same dilemma is faced in negotiation itself, with the risk of the in-depth working groups installed in order to bargain on a given issue losing touch with related questions that are being dealt with in other committees. A good compromise might be reached, but the trade-offs will not necessarily be used. So-called package-dealing cannot be done and optimality will not materialize.

The famous Chinese strategist Sun Tzu, already referred to in chapter I, stated that strategy is to change a situation in such a way that it will be ripe for victory (Chung, 1991: 12). In other words, you cannot solve a problem without changing its context. He meant that conflicts arise out of a certain situation and can thereby not be solved unless one tackles the environment producing the problem. In negotiation terms, this would mean that not everything is negotiable right from the start. In order to reach a solution, one might have to modify the context and thereby create the conditions needed to start the process of exploration, bargaining and deciding. The idea of the 'mutual hurting stalemate' might be of some help in timing the conditions for negotiations to start, since getting the people around the table is often the hardest challenge we face, but it is not applicable in every cultural context. However, the hypothesis that one has to suffer in order to understand that change is necessary may well be a typically Western rationalist notion. There are cultures, for instance, where suffering is the highest good. The hero is the one who suffers. In such a cultural context, suffering is more likely to aggravate the problem of negotiation than to resolve it.

Structural power asymmetry no longer guarantees victory (if indeed it ever did). Nowadays, the weak have missiles and, if needed, use the adversary's planes to destroy the towers of the mighty, although 9/11 seems to be an extraordinary 'accident of history'. One might turn the reasoning upside down: in the new millennium, it is easier to control a state that is well structured than to dominate a failed state, because there is nothing fit for control. Somalia is out of control, for example, and the world's most modern warships

cannot put an end to piracy by tiny boats. To win a conventional war in Iraq was not much of a problem, but to control the country after the state's structures broke down, that was a problem. To chase the Taliban out of Kabul has not been too difficult, but who will be the winner in Afghanistan in the end? What has long been recommended but constantly neglected is now finally going to happen: serious talks with the Taliban about power-sharing.

The more unstructured the opponents, the more difficult they are to control. In negotiation, this can be both a problem and an opportunity. To be ambivalent until the very end comes with the risk of failing to reach any agreement, but to remain ambiguous during most of the process might be very useful in keeping options open. The more options one has, the more alternatives and the more process power can be generated. This is illustrated by British negotiation behaviour (Hemery and Meerts, 2006). The British are extremely good at keeping their hands free as long as possible, while they consistently work in the direction of a 'fair' solution, being at least very fair to themselves. They combine flexibility in the process and towards the people with toughness in defending their interests. They are capable of acting like that because this tenet of behaviour is engrained in their culture and language. Some negotiations can only end in agreement if constructive ambiguity is involved: parties can interpret the end result in their own way and will therefore agree. Depending on the situation, uncertainty can therefore be an asset or a weakness. For the weak, it is generally a strength, because it enhances their room for manoeuvre, while it restricts the effectiveness of their opponent with more powerful resources.

Weaker parties can be winners if they use the context most favourable to them. A good example is the accession of the Republic of Cyprus to the European Union. The fact that the Greek part of Cyprus wanted to become a member of the European Union was widely seen as the only incentive to be used to reunify the Greek and Turkish parts of the island. The Turkish Cypriots seemed to be ready for unification, as the referendum in 2004 on a UN-sponsored solution showed (<https://www.cyprus-conflict.net/chronology.html>). The majority of the Greek Cypriots, however, were not in favour of reconstructing a union with their countrymen in the north, but it was hoped that desire to be an EU member would wither away the Greek Cypriots' worries. The EU, for its part, was of the opinion that a divided island with a strong military Turkish presence would keep the island unstable and might therefore create problems for Europe. The Greek Cypriots in the south were of a different opinion, however, as a divided island keeps the Turks out of the government and the economy – as the north is poor and the south is rich – while many landowners profit from the separation. The Republic of Cyprus used the context to be the winner. It took the opportunity of the EU being in an enlargement process with eleven other states as well. The Greek Cypriots managed to get their compatriots in Greece to threaten to veto enlargement with Central Europe if the EU would not initiate negotiations with Cyprus. As Central Europe was – especially for Germany – of much more importance to the EU than the accession of Cyprus, the Republic of Cyprus could sneak into the Union as a full member. The opportunity to reunite Cyprus in a peaceful way was thus lost, affecting not only the Cypriots on the island, but also those in the diaspora (Hampson, 2012: 120).

Another example of context change is the European Union itself (Jönsson and Elgström, 2005: 1–5). The bilateral French–German relationship of the second half of the nineteenth and first half of the twentieth century did not foster stability, let alone – to put it

mildly – an effective negotiation process for solving their differences. The world wars were needed to make the Europeans understand that this bilateral process should become a multilateral process, or, even better, supranational. In themselves, these crises were not enough to make the European Communities emerge. The threat to Europe's existence by the Soviet Union and the willingness of the Germans to admit responsibility for committing the atrocities of the Second World War – combined with an internal balance between the United Kingdom, Germany and France on the one hand and the middle and smaller powers on the other – made for a context change that allowed negotiation processes to be the most effective tool in governance. Context and content became clearly connected, thereby optimizing the effectiveness of the policy tool called negotiation. This transnational negotiation process shaped the institutions of the European Union, while the institutions channelled the processes. In that sense, the European Union might be very much more about these processes – bringing together diplomats from different nations in an intense ongoing diplomatic negotiation – than about the content. Perhaps the process is of more importance than the question of what the end-stage of the European Union will be. It is more about the road itself than about the targets envisioned.

The importance of context change for effective governance and negotiation is something that was understood long ago by the Swiss. Switzerland is a potentially weak country without natural resources, land-locked, with two different religions and four languages, which had been one of the poorest European regions in the past, but which is today one of Europe's richest countries. The light, however, is often seen when it is too late. During the Paris negotiations in 1919 following the First World War, the French minister of trade and industry suggested not occupying the German Rhineland and Saarland, but creating a joint regime where the French and Germans would collectively decide on the coal and steel in these areas. However, the chief French negotiator, Georges Clemenceau, rejected the idea. The minister of trade and industry had a young assistant, whose name was Jean Monnet (MacMillan, 2001). Jean Monnet, who became one of the most important founding fathers of the European Union, foresaw the disastrous consequences of the decision to exclude Germany from the Paris negotiations and to decide to punish the Germans in such a way that they would become resentful. He therefore opted for cooperation, but he could only successfully push this idea after the Second World War, 30 years later.

BOUNDARIES IN BARGAINING

Boundaries help to clarify a concept or object by marking its limitations. Actually, the word 'definition' contains the Latin word for boundary. The first part of this chapter focuses on the positive and negative effect of boundaries – meaning limits or constraints – in bargaining processes. Boundaries can serve to define, promote and constrain the bargaining process. Boundaries are both an obstacle to – and an opportunity for – effective negotiation, and

This section on 'Boundaries in Bargaining' is based on Meerts (2011a).

thereby to its give-and-take component: bargaining. Negotiation is the broad concept of the process of planning, exploring, parking, trading, deciding and implementing in situations of opposing and converging interests. While negotiation is the broad process of giving something in order to get something, bargaining can be defined as the nucleus of this interaction. It is thus the heart of the negotiation process: the phase of compromising and compensating, of trading concessions and emotions. These processes of conflict management and resolution are not unlimited. They proceed in a distinct setting, a recognizable format. This section is about the interconnectedness between process and structure, flow and ebbing, river and shore. It focuses on the importance of the context for the process and its positive and negative impact.

As already mentioned, a boundary is a constraint and an opportunity in the process. Delimitations in negotiation restrict the freedom and flexibility of negotiators, but they can also be tools to push things forward. This chapter will distinguish six boundaries:

1. Geographic: borders between states and state entities, the issue of sovereignty;
2. Systemic: the strength of states and international organizations;
3. Needs: the role of interests and positions;
4. Resources: the capacity of people and their tools;
5. Regulators: the significance of rules and regulations, norms and values;
6. Time: short-term versus long-term perspectives and projections.

This analysis departs from the assumption that diplomatic negotiation cannot be a viable tool in international relations if it is not channelled in a certain direction by boundaries, provided that the positive aspects of boundaries outweigh the negative.

Geography: Bargaining Borders

Borders are not only an important factor in international negotiation processes, but they play an important role in organizing the world. They distinguish nation-states from each other and they facilitate the proper functioning of representative governments and the rule of law (Baudet, 2012: 239). Geographical borders were negotiated in the two classical ways to solve a bargaining problem: compromise, or compensation. Compromise in the sense of a negotiation focusing on the border and trying to change its course will be called micro-border-bargaining here (in the sense that diplomats focused on the border and bargained its change). Macro-border-bargaining would be the swapping of whole territories and people from one ruler to another, compensating for the loss of one territory by gaining another. Swapping people was done between Greece and Turkey after the First World War, while India and Pakistan swapped Hindus and Muslims during Partition after independence in 1947. There are many examples of land trade-offs, such as the loss of Swedish Finland to Russia in 1815, when the Swedes were compensated by being given Norway, which had been ripped from Napoleon's ally Denmark. Another example might be newly proclaimed King William I of the Netherlands gaining Belgium and Luxemburg in 1815 in order to strengthen his country against France, while losing the lands of his ancestors in Germany. Interestingly enough, the British hung on to their possessions in Germany until the First World War, which led to most interesting dynastic complications (Davies, 2011: 541–573). The Second World War put an end to this second mode of border bargaining,

although Yalta in 1945 can be seen as the last negotiation when major country-swapping was practised. From a negotiation point of view, this limited the range of options available to diplomats and those who instructed them. It removed opportunities for integrative win-win bargaining and strengthened the tendency to see border negotiations as distributive, win-lose processes, or even lose-lose situations, as in the former Yugoslavia.

The border question implicates sovereignty, and the autonomy of the people within the delimitations of their territory implies sedentary units, or states. The transition from societies of hunters to cattle-herding, to agriculture and craft, and trade in and between enlarged settlements like cities, created the prerequisites for states. In the process, more or less fixed borders emerged, demarcating the more or less absolute power of the rulers over people and palatinates. Within those borders to be bargained, (semi-)sovereign blocs came to flourish. Negotiations between these blocs became extremely tough. Unlike negotiations on internal matters, when the ruler could always force an outcome if internal haggling came to a grinding halt, negotiators were much less in control of external affairs. If anything distinguishes national and international negotiation, it is the measure of control over the process. While internal bargaining has more assured outcomes, bargaining across borders is characterized by less-assured agreements, both in creating an effective process and in securing implementation of the promises made to the other party.

Regime-building is to a large extent the answer to enhanced control in bargaining across geographic borders (Spector and Zartman, 2003). Perhaps it is not a coincidence that the growth of multilateral international organizations in the twentieth century is in tandem with the loss of opportunities for boundary swapping and the growth of packaging. Package-dealing is a hallmark of multilateralism. To dispense with the tool of country-swapping, compensating for territorial losses narrows possibilities for negotiated solutions. Package-dealing in a multilateral setting might be a solution. Countries can now swap issues instead of land. Rising interdependency implies a loss of sovereignty, both inside and outside international regimes. Geographic, and thereby political, boundaries are losing their significance in global governance. In the very long run, the border problem in bargaining might thereby wither away. Nevertheless, one should not be overly optimistic about the possibilities for settling geographic boundary problems through negotiation instead of violence, as shown by the annexation of the Crimea by the Russian Federation in March 2014. Border wars are less frequent nowadays, but they are still looming behind the horizon: *'Ces guerres frontalières entre régimes jusqu'ici sont peu nombreuses, mais leur présence est visible juste en dessous de l'horizon'* (these border wars between regimes are by now less frequent, but just behind the horizon they are still visible) (Zartman, 2009: 215).

However, geographic and sovereignty borders also had a positive impact on the negotiation process. Mandating diplomats has been a more or less transparent process. Ambassadors were instructed by the sovereign to negotiate on the external dimension. This is now, however, becoming less clear, as a horde of ministries, parliaments, companies, trade unions and other pressure groups are mingling in the process of mandating, just as national and international spheres are merging. Mandates are often unclear, as they are a compromise by themselves. Add to that the progress in means of communication, as well as the impact of specialized ministries entering the external bargaining platforms, and loss of autonomy for diplomatic negotiators comes to the fore. This in turn might have

a negative impact on their ability to be creative in the process and to act in a situational manner. As negotiation is context driven, and thereby by definition situational, the phasing out of geographic and political borders could have a stifling effect on negotiation navigation. This would in turn diminish the effectiveness of negotiators and thereby of bargaining as a tool in conflict resolution in global governance. Geographic borders are not, however, the only borders in international negotiation processes and the evolution of other delimitations will also have consequences on bargaining. Although there are many limitations of a non-geographic nature, only a handful have been selected in this analysis, namely systems, interests, resources, regulators and time.

Systems as Boundaries in Bargaining Processes

The structure and dependencies of the international system create obstacles and opportunities in bargaining across borders. Intergovernmental and non-governmental organizations, states as well as regions, political parties and private sector companies will limit and enhance the opportunity for successful negotiation processes.

An important function of international and supranational organizations is to compensate for lack of trust. As has already been pointed out, trust is essential but not often assured. Exchanging family members does not work anymore, as royal courts are no longer the focal point of modern power structures. Leaving garrisons behind as a guarantee for implementation is also no longer done. Military bases nowadays have a more external function. The days of the Tatar or Polish garrisons in Moscow are long gone, as is the Dutch barrier of fortresses in what is now Belgium against a possible surprise attack by the French, which also acted as a control mechanism over the policies of the Spanish and Austrian rulers of the Southern Netherlands. International regimes will have to do the job instead. They create a more or less tightly-knit grouping of states that, if they do not want to live up to their international pledges, will be forced to keep them. Of course, if the international organization is weak, it will be less successful than if it carries supranational authority. In other words, the more interdependency between states, the more an effective negotiation process is needed, and the stronger the international fabric has to be.

Political reality, however, cannot be overlooked. Powerful countries cannot easily be constrained within the limits of international regimes. It could not be done in 2003–2004 when the French and Germans violated the three per cent budget limit prescribed by the European Monetary Union. Neither did it work when the United Nations Security Council could not reach agreement to use military force to overthrow Saddam Hussein in Iraq or Bashar al-Assad in Syria. Yet international regimes do have an important function in channelling bargaining processes in such a way that their efficiency and effectiveness will be optimized (Spector and Zartman, 2003). Without these organizational boundaries, there can be no effective processes, but these limitations also, of course, might have negative effects, such as inflexibility through over-bureaucracy.

To take the argument one step further, governments have tried to overcome the trust – and partially also the power – imbalances by creating ever-closer cooperation. Attempts were made through regular diplomatic bilateral meetings and the first diplomatic conferences with more than two parties involved, as well as the foundation of long-lasting

conference frameworks, bringing the dimension of time into the picture. Long-term stability created opportunities for concession-making on a long-term as well as a short-term basis, thereby diminishing the prisoner's dilemma factor in finding common ground between opposing short-term interests.

Needs: the role of interests and positions

Parties take positions connected to their needs. These positions will normally be more radical than the interests that they have to defend. Depending on the situation, these positions will be more or less exaggerated. In ad-hoc bargaining, such as in the bazaar, more polarized behaviour can be expected. This will often be a one-time deal with a serious shortage of trust and information on both sides. There is also power asymmetry, which will have to be dealt with as a boundary to effective negotiation.

The negotiation problem is the fruit of the situation into which it has been born. Without changing that context, the problem cannot be solved through bargaining, as it will always pop up again until external incentives change its environment. A customer who has to choose from several carpet shops has a better power position than the merchants. By getting the buyer into the seller's shop, the context will change, however, in favour of the carpet expert, who can now use his 'best alternative to a negotiated agreement', being more beautiful and therefore more expensive rugs. The seller can now deploy his strengths, composed of alternative carpets, plus more expertise about the quality and price, and more effective bargaining skills.

There is a cultural element here as well. In some cultures, excessive first bids will not prevent buyers and sellers from concluding a successful agreement, while in others it will. Experience in training diplomats and civil servants, suggest that the perception of negotiating parties on process, procedures, positions, power and products (in the sense of agreements) is indeed important (Meerts, 2014). Perception determines reality. In some cultures, perceptions are important but are open to nuance and change, for example through neutral media. In others, perceptions are inflexible and static. People might be used to haggling and therefore would not hesitate to use distributive bargaining (and indeed may actually enjoy it), while others are accustomed to fixed prices and do not like the risk of the give and take (Faure, 2009: 311–314). It should be noted here, however, that flexibility in market haggling does not necessarily mean having an open mind-set on negotiation processes between states. To the contrary, the reverse situation has been observed: the majority of young diplomats from 'haggling cultures' have a tendency to be very positional/inflexible in inter-state bargaining. Those from cultures where horse-trading is not part of day-to-day life, and where approaches to negotiation are more rational and less emotional, will be inclined to be more relaxed in inter-state processes. This is a general statement, of course, and there are many exceptions to the rule (Meerts, 2014).

Some cultures see concessions as tools that can be used to bridge the gap between positions and to move in the direction of uncovering the real needs, thereby finding synergy between the parties – and if needs be, to create synergy and Zones of Possible Agreements between the actors through trade-offs (Peyton Young, 1994). In other cultures, however, a concession might be seen as a pure loss, even if this could be more

than compensated for by certain gains. To offer something will be seen as loss of face, not in the marketplace, but in a negotiation between states or sovereign units, especially if negative emotions rule the game, and hatred and traumas from the past bedevil the process. Even if a profit can be made, the parties will renounce it because the gambit is emotionally unacceptable, especially to the people in the streets. Culture and character can both limit and remove obstacles in bargaining.

There is also, then, the impact of the gap between the needs, and the question of how to bridge it in such a way that closure is possible. A wide gap will obviously be a barrier to win-win bargaining, whereas a wide zone of overlap between minimum and maximum positions will ease the negotiation process. Overlaps are sometimes absent, and negotiators have to remove this boundary through trade-offs. A multi-issue process might be needed, and perhaps a multi-party interaction as well. Both complexity and opportunities will be created on purpose, throwing in new obstacles and new solutions. If bargaining is anything, it is a paradox. Solutions create problems and problems open windows for outcomes, depending on the linkages between those problems and the relationships between the parties struggling with their common and opposing interests. In general, longer processes will be needed to overcome complex situations. Interests will have to be reframed, and negotiators' mind-sets will have to be turned over. This takes energy, time, and also resources to deal with the bargaining barriers in an effective way.

Resources: Human, Immaterial and Material

Power and influence, as discussed above, are based on available resources. Power and influence create boundaries for the weak and remove them for the strong. Yet power and influence are not only structural, but also situational. The question is not only what the resources are, where they are and who is controlling them, but also how they are dealt with in the process needed to go from A to B, and how they are influenced by that process.

Humans, then, pose boundaries and create opportunities (Zartman and Berman, 1982). Character, culture, expertise, profession, skill, style and non-verbal leaks all contribute to a positive or negative flow of the process. The question of the ideal effective negotiator is an old problem, but some authors have found some reasonable answers. For example, effective negotiators are those who are tough in defending their interests, while being flexible in the process. They use power without overdoing it, working on the relationship with the other side without coming too close, thus avoiding emotional blackmail. For example, parents have all the material resources that children lack, but the children are often the more successful negotiators, using the emotional means at their disposal. In relationship-dominated bargaining, this will indeed give the emotionally skilled negotiator power. In a business-like, more rationalistic process, the relationship will be of less importance. Rationale and emotions will either create boundaries or remove them, depending on people, the context and their interdependencies.

Immaterial resources were partly dealt with in the paragraph above, but these resources are not always tied to individuals. They can also be an integral part of history or culture, such as moral obligations, past suffering, or cultures of blaming and shaming. These all bring emotional boundaries into play. If the Germans had not accepted their wrongdoings in the Second World War, the European Union could not have been so

successful. In other words, boundaries to the convergence of material resources could only be removed by conceding on the emotional dimension. Without the expression of guilt, no business can be done. We see this problem in cases like the Rape of Nanking in 1937, which has become a tool in the hands of the government of the People's Republic of China (PRC) against Japan, whenever the political situation demands pushing Japan into a corner in order to strengthen China's bargaining position. This event from the past has become a boundary to effective negotiation behaviour for Japan and an opportunity for the PRC. The same is true for the atrocities committed against the Armenians by the Ottoman Empire in 1915. Non-acceptance of responsibility will be a barrier to Turkey's EU accession and can be used to keep the Turks out of the EU without naming other – more painful and important – obstacles.

Material resources will, in general, be a more decisive boundary for the less-powerful than immaterial resources. Again, however, the question is to what extent the relationship between the bargainers might reverse the power balance between them. We also need to answer the question: what are the boundaries to employing structural resources on unsuitable terrain? By winning the conventional war in Iraq, for example, the Americans changed the situation in favour of those who can swim as a fish in the water of guerrilla warfare. So-called 'salami tactics' will slice down the potential of the other side. Entrapment will undo the effectiveness of many of the structural material resources available. This step-by-step process can, according to prospect theory, only be undone by a government that does not carry responsibility. Thus French President Charles de Gaulle, not being responsible for the French entrapment in Algeria, could start the bargaining process to solve the problem. Likewise, US Republicans in the early 1970s could remove the barriers against withdrawal from the swamps of Vietnam in which US Democrats had landed the United States; just as in the new millennium the Democrats took the United States out of their entrapment in Iraq.

A special kind of material resources are natural resources like gas, oil, iron, gold, and to a certain extent food and wood. Their ever-growing scarcity will give rise to a multitude of bilateral and multilateral negotiation processes of a predominantly distributive nature. As availability of these commodities diminishes, the bargaining processes will multiply and polarize (Voorhoeve, 2011). The nature of these processes will not be limited to international bargaining, but will be characterized as much by trade-offs and compromises between regions within countries. This in turn can set internal strife into motion, enhancing the two-level dimension of bargaining across borders, and adding to its complexity. This will place serious strain on regional and global negotiation systems, to the extent that new, innovative forms of bargaining will have to be developed.

Regulators: Law, Procedures, and Diplomatic Norms and Values

Rules and regulations can also be both obstacles and facilitators of effective bargaining. The dictum of the *Mare Liberum* (Freedom of the Sea) by Grotius in 1609 is not by accident a Dutch 'invention', for the Republic of the Seven United Netherlands needed unrestricted usage of the seas in order to dominate them, thereby making as much money – through trade and piracy – as possible. Those who are weak need protection through international law, while to the strong, the law might be an obstacle. It is interesting to see the

changes in the United States' policy towards the multilateral systems. During the Cold War, multilateralism helped the United States to keep the former USSR at bay. After the dissolution of the Soviet Union, however, the multilateral fabric created a constraint to the optimal employment of US force against opponents. Therefore an anti-multilateralist attitude prevailed during the administration of George Bush Junior (2001–2009), providing new opportunities in the short run and creating serious long-term problems. Not being able to control the international disasters of the new millennium, while confronted by the rise of China as an upcoming superpower – usurping the vacant place of the former Soviet Union – President Obama has to steer the United States back into the multilateral system in order to restore some kind of balance in world politics, particularly because regional powers like Brazil, India and South Africa are now counter-balancing the traditional US allies of the European Union and Japan (Layne, 1993 and 2009; Kupchan, 1994 and 2002; Nye, 2002; and Walt, 2005).

Procedures are important boundaries in inter-state bargaining, regulating the behaviour of the parties in such a way that the processes might be successful. In that sense, procedures are boundaries creating channels for effective processes, although they will also hamper those parties who want to exceed these delimitations for situational purposes. It is very much up to chairpersons, secretariats, facilitators, mediators and negotiators to deal with procedures in such a way that they will not be a negative bureaucratic obstacle, but can be manipulated in favour of a successful outcome. Stop-the-clock tactics used by negotiators in the framework of the Conference on Security and Cooperation in Europe (CSCE) – renamed the Organization for Security and Cooperation in Europe (OSCE) in 1994 – are an example of mollifying the procedures in order to temper the negative effects of their inflexibility. While the CSCE had to finish work on the Helsinki Final Act on 1 August 1975, the clock was stopped in order to allow for extra hours of negotiation. Another example, as already mentioned in the first chapter, is the incorrect translation of certain wording on the Human Dimension of the Helsinki Final Act in order to produce an outcome acceptable for all parties. While the English text allowed for criticizing the Soviet Union for human rights violations, the Russian text facilitated a defence against such criticism (van der Velden *et al.*, 1976). It allowed the Soviets to proclaim that such critique was interference in their domestic affairs.

Diplomatic norms and values regulate negotiation behaviour in order to overcome cultural and other differences and to create opportunities for effective flow. Yet outsiders might see them as barriers to effective participation in the process, as not being acquainted with these prerequisites, they could feel excluded and discriminated against. Those who master the diplomatic formula will be more successful than those who do not, with French diplomat Talleyrand as a shining and, at the same time, monstrous example (as Talleyrand's name is now also synonymous with diplomatic betrayal). Etiquette made diplomatic bargaining fit for those who knew how to observe it and use it – that is, for the nobility and the elite of the state (Wicquefort, 1997). It gave the nobility a monopoly on negotiation, also because of the money available to them at a time when the function of Ambassador Extraordinary and Plenipotentiary did not generate any salary.

The Time Factor

Time in a macro sense has already been touched upon because of the impact that past events have on present and prospective bargaining processes. History mirrors itself in the future, and the future will reflect on, and reflect back to, the present. For a member state of the European Union, upcoming negotiations will throw positive or negative shadows over negotiations today. On a positive note, time and the expectations of harmonious processes in the future – where counter-concessions are to be expected in order to compensate for our gambits of the day – will help negotiators to be more flexible in give-and-take. Negative expectations, however, perhaps fed by bad experiences in the past, will leave negotiators less open to a fruitful bargaining process. A future threat might force us to cooperate, while short-term losses might create unwillingness to do so. As said earlier, an interesting example over time is the success story of the *Confederatio Helvetica*. Switzerland at first glance hardly appears to be a viable country with its costly agriculture and infrastructure, difficult terrain and autarkic people, no abundance of natural resources and the absence of seaports, two major religions and four different indigenous languages. Such a country, however, can exist because of the time factor: the prospect of poverty and loss of autonomy if cooperation is successful. The elite understand that continued fighting between elite factions supported by different segments of the population will weaken both the country and the grip of the ruling elite on state and society. Therefore cooperation should be give priority over competition. We see the same phenomenon, though underscored by different structures, in the Netherlands (Lijphart, 1968: 205–219).

In a micro sense, too, time is an important boundary to bargaining. It can have a positive and a negative impact on the success of the negotiation process (Haass, 1991). A shortage of time will limit the opportunities for finding integrative solutions, and there is always a restraint as far as time is concerned. Countries will create time pressure in order to reach conclusions; deadlines are needed as the process will otherwise continue endlessly. States will wait with major concessions until time is nearly up, thus creating a crisis atmosphere. If timing is important, when is the moment ripe for closure? Not too early, and not too late, but how can a negotiator be effective in this? We need time for pre-negotiation and for post-agreement bargaining. Some negotiators will buy time as they need the situation to change before they can bargain a profitable outcome; others are in a hurry. Upcoming elections might be a boundary to negotiating outcomes now, or they may force opponents to concede hastily, as a new government might not be willing to conclude a treaty with them. Negotiators in some cultures feel the absolute need to hurry up anyway, while in others, for example, their time horizon is so wide that they can wait another 50 years for Taiwan to fall into the cradle of mainland China. Action now might diminish the chances for an advantageous outcome later. Some bargainers can still follow a negotiation process while seven of them are talking at the same time (poly-chronic); others have a need for bargaining on a one-dimensional time level (mono-chronic). These different approaches also create opportunities as well as obstacles (Cohen, 1997).

ORDER THROUGH ORGANIZATION

The building of international regimes and organizations may be seen as an attempt to overcome several boundaries, as discussed above. How can one ensure multilateral order in a world where big states dominate medium and small powers, a world where the state itself is prone to erosion, where relations between states are shifting, where extreme non-state forces are putting enormous pressure on the web of states and the multilateral system, and where international law is losing its significance? In other words, how can we deal with conflicts resulting from this and how can we navigate within inter-state relations? The answer is as old as human history: *give and take*. Negotiations – *nec otium*, or not to be idle in Latin (Constantinou, 2006) – are a creative act, or action producing value, an activity by those who are free to choose their ways, in contrast to those who are forced to repeat the same act all the time in order to create quantities instead of qualities: ‘work’ instead of ‘labour’ (Arendt, 1958).

As noted in the previous chapter, negotiations have been used since time immemorial as an instrument to reach goals in situations in which parties strive towards a common goal, when at the same time their interests are not exactly running parallel. If these interests are strongly opposed, one speaks of a distributive negotiation situation (Saner, 2005: 41–63). What one wins, the other loses; parties opt for maximum gain and negotiate – if necessary – a compromise. Integrative negotiating is possible, however, in a situation where both parties gain more from the negotiations than they lose in what was invested, because parties are looking for an optimal outcome (Saner, 2005: 81–104). In general, the interests of the parties involved will more or less overlap with each other, which determines whether they will give and take in a cooperative or competitive manner. In some circumstances there is no question of a direct overlap, but by combining issues a common interest can be created. Parties compensate each other's losses with package deals and side-payments, thus ‘log-rolling’ as the process proceeds.

Where negotiating can be defined as ‘to give something, in order to get something’, inter-state negotiations add to the sovereignty factor. The consequence of the state dimension in negotiation processes is a certain loss of control over the process. Whereas an agreement can be enforced by a ‘third party’ in negotiations on a national level, for instance through the EU's Council of Ministers, the problem arises that external pressure is not always successful.

Regimes

Robert Keohane denotes regimes simply as ‘devices to make agreements possible’ (Keohane, 1989: 111). In his view, they meet the demand for institutionalized multilateral consultations as a derivative of international agreements and institutionalism, and are created because of the lack of an international framework with enforcement capability

This section on ‘Order through Organization’ is based on Meerts (2006a), with the support of Theo Postma.

(Keohane, 1983). Another reason for their existence is the high transaction costs for successive multilateral agreements. It is cheaper for states to have consultations on a permanent basis than constantly have to organize separate conferences. In this perspective, governmental and non-governmental organizations act as 'brokers' on the 'market' for international agreements and promote a certain measure of order in international relations. Supporters of the regime theory are taking it one step further in stating that these types of permanent, multilateral consultation structures (regimes) are not only useful, bearing in mind international agreements, but that they also focus on implicit or explicit principles, values and codes of conduct. Krasner thus defines regimes as 'a set of implicit or explicit principles, norms, rules and decision-making procedures around which expectations converge' (Krasner, 1983: 1). This would boil down to nothing other than a socialization process of sovereign states, which would comprise a sustainable added order of international relations.

Some see the development of regimes as a natural evolution of groups of countries trying to deal with their differences in a peaceful way. Morgenthau notes: 'Each of the three world wars of the last century and a half was followed by an attempt to establish an international Government. The Holy Alliance followed the Napoleonic Wars; the League of Nations, the First World War; the United Nations, the Second World War' (Morgenthau, 1967: 438). Groom adds '[I]t was not until [...] Vienna in 1815 that institutions of the modern type emerged. The main political system was the Congress and, later, the Concert System, as subsequently modified by the Hague Conferences. At the same time a network of functional institutions began to spread' (Groom, 1988: 11). Another author, Inis Claude, also sees the Hague Conferences as a turning point between negotiations where major powers are the decisive entities, but where also small powers are an integral part of the final decision-making: 'In contrast to the Congress system, the Hague Conferences included the small powers not only of Europe, but also of Latin America as a matter of right' (Claude, 1964: 25). This does not mean, however, that all states have equal chances in influencing the final agreement. 'Historical accounts suggest that powerful member states determine the policies of international organizations and induce the cooperation of weaker members with side-payments' (Schneider, 2011: 331; Moravcsik, 1991 and 1998).

International organizations may be taken as formally structured international regimes that are recognizable as physical entities with head offices, staff and letterheads. International regimes like the Ottawa Convention banning landmines may exist without any organizational structure. Some authors postulate that international organizations come into being through the intervention of a supreme power and are not more than the institutionalization of existing power structures. As long as the international organization serves the interests of a supreme power, it continues to exist; when this is no longer the case, international organizations will disappear (Mearsheimer, 2001). Furthermore, the international organization will change or even disappear when the underlying power structure changes considerably (Strange, 1983). According to this view, the orderly effect of international organizations is therefore restricted and only as lasting as the international power structures themselves.

It is interesting to consider this controversy in the context of time. For example, at the beginning of the 1980s, the United States was considered a supreme power past its prime, which after the Second World War had created a great number of international

organizations in order to guarantee its position of power and to ensure maximum control over prospective inter-state negotiations. The field of security, for instance, had the North Atlantic Treaty Organization (NATO), which would act as a guarantor for European security and US supremacy in Western Europe; and at an economic level there were the Bretton Woods institutions, which created the preconditions for the United States effectively exerting its economic power: free trade; exchange-rate stability; and free access to raw materials.

Some saw in these developments proof that the post-war Western negotiation regimes were indeed the resultant as well as an instrument for US supremacy to exert its power. A changed, more multi-polar power configuration would force regimes into fundamental adaptations or even make them disappear. Others stated that the *own dynamics* of negotiation regimes were probably strong enough to survive the shift in the underlying power relations, and that years of mutual cooperation between member states should have led to converging principles, values and codes of conduct.

Dramatic changes took place, however, in global power structures. The velvet revolutions of 1989 in Central and Eastern Europe, followed by the collapse of the Soviet Union in 1991, created a new world system in which the United States played an absolutely dominant role in terms of political, economic and military power. The effects of this on international regimes and the channelled flow of negotiations were clearly visible. The international trade regime was enforced by moulding the General Agreement on Tariffs and Trade (GATT) into the World Trade Organization (WTO) in 1995, in order to provide it with a mechanism for settling trade disputes. The International Monetary Fund (IMF) and the World Bank threw themselves into liberalizing the planned economies of the former Eastern Bloc countries and raised the Western views on democracy and the economy as absolute norms. NATO rapidly recovered from the shock of a disintegrated Warsaw Pact and started its new lease of life as a transatlantic organization for collective defence, expanding towards the East and throwing itself into out-of-area operations like in Kosovo and Afghanistan. There was hope that the United Nations, which had been greatly paralyzed during the Cold War by the superpowers' rivalry, could finally commit itself to executing its essential mission: keeping the peace by international cooperation and collective security (Langhorne, 1998: 5).

Regimes and Negotiations

Depledge observes that '[g]lobal negotiations are often closely associated with the formation and development of regimes, defined as sets of both formal and informal rules, institutions and procedures aimed at governing action in a particular issue area, usually based on a founding treaty', while 'an important function performed by regimes is precisely to provide an efficient framework for negotiations' (Depledge, 2005: 13). On the nature of negotiations within regimes, he notes that they:

[...] have a special character. Like all intergovernmental negotiations, they are repetitive, but more intensively so, often involving not only the same governments, but also the same individuals. [...] The negotiation process within the regime typically gives rise to its own set of informal practices and procedures, even

its own culture. While such intensively repeated games can provide important opportunities for learning and therefore improving ways of negotiating, the flipside is the danger of ossification: the negotiation process gets stuck in old ways of thinking and doing that drag down substantive progress (Depledge, 2005: 13–14).

Similarly, William Zartman points to the connectedness between negotiation processes and international regimes by arguing that ‘international regimes are continuous two-dimensional negotiations among sovereign states for the purpose of resolving a problem of coordination under conditions of uncertainty’ (Zartman, 2003: 14). Zartman sees regime-building as an ongoing negotiation.

Like Depledge and Keohane, Zartman believes that ‘the concept of “regime” was devised to meet the need for something looser and less rigid than “international law” or “international organization”’ (Zartman, 2003: 17), although nowadays an international organization is regarded as a highly structured regime mode. Spector and Zartman point out that regime building is a painful negotiation process: ‘Fear of relinquishing sovereign legal authority is obviously a very serious issue that contrains the evolution of any regime. International regimes constitute governing in the absence of government through the processes of negotiation’ (Spector and Zartman, 2003: 282).

There is a rich variety of regimes. Spector distinguishes three kinds of national, and three kinds of international regime negotiations. On the national level, he identifies: (1) acceptance/ratification negotiations; (2) rule-making negotiations and enforcement; and (3) monitoring and reporting negotiations. As for international regime negotiations, he classifies: (1) regime formation negotiations; (2) regime governance negotiations; and (3) regime adjustment negotiations (Spector, 2003: 65–66). Together with Zartman, Spector concludes that the following categories of regimes can be observed: those that remain more or less in force as originally negotiated; regimes that grow and evolve; and regimes that follow a jagged course (Spector and Zartman, 2003: 372). The second kind of regime, those that grow and evolve, is seen most frequently in the world.

It is important to recognize that regime and negotiation are symbiotic: while regimes are created through national and international negotiation processes, they then protect these processes and thereby enhance their effectiveness in reaching outcomes. Moreover, *‘for the most part, exogenous shocks or crises increase the probability of success in efforts to negotiate the terms of international regimes’* (Young, 1989: 371). These outcomes ‘are not monocausal events, but rather the product of a multitude of strategic, political and [...] psychological factors’ (Terris and Tykocinski, 2014: 14). ‘As in any negotiation, personal skills are an important factor in the process, but in the multilateral setting, the context, the jargon and the procedures rule the day’ (Perlot, 2014: 27). Nevertheless: *‘Institutional bargaining is likely to succeed when effective leadership emerges; it will fail in the absence of such leadership’* (Young, 1989: 373).

How structured or how fluid are regimes nowadays? According to Spector and Zartman, regimes tend to be more fluid than before: ‘In the early twenty-first century, reality tends to lie on the softer end of the spectrum’ (Spector and Zartman, 2003: 292). Taking the number of regimes in the world, this statement is true for sure, especially after the present-day erosion of the multilateral system through unilateral action. Yet if one divides regimes into ‘strong’ and ‘weak’, ‘important’ and ‘less important’, or looks at

strength and effectiveness, the world might look very different. Regimes with most added value are normally more structured than those of a more fluid nature. In other words, more 'regimist' regimes seem to be more structured. As they matter more to the international system, one could make the statement that *effective regimes in the twenty-first century tend to lie on the institutional side of the spectrum*.

However, as regimes' effectiveness seems to be dependent on their flexibility, one should add that *effective regimes are highly structured institutions that are managed through fluid processes*. If the processes become less fluid and more bureaucratic, as tends to be the case with successful regimes (which therefore have a long life-span in general), 'regimist' regimes might hamper their own success in the long run, just as diseases tend to affect a body more as it grows older and older. The fluidity of the process is even more important if one looks at the political dimensions of the regime. According to high-ranking German diplomat Michael Schäfer:

Negotiations are the art of consensus-building, and the more political the subject matter is, the less formal the formats of the negotiation process will be to prepare for the best possible outcome. Why? Because of the heterogeneity of the various interests involved in that process (Hanschel, 2005).

Shifts in Multilateralism

In less than twenty years, the United States' position on the world stage changed from a superpower past its prime in the Western world to the sole global superpower, although this monopolarity is already eroding into multipolarity in the second decade of the twenty-first century. In a slightly different form, the issue of being able to bring order in international negotiation regimes is more than ever of current interest (Van Staden, 2005). The problem has become the incomparably large dominance of the United States in international relations. Has the United States become too big for its self-selected existing order of multilateral negotiation regimes? The foreign policy pursued by the George W. Bush administration points very strongly in that direction. The Bush administration's willingness for military intervention when US national security was supposed to be at stake, without even a mandate from the UN Security Council, the sudden withdrawal of all support for the implementation of the Anti-Ballistic Missile (ABM) Treaty, the US Senate's refusal to ratify the Comprehensive Nuclear Test-Ban Treaty (CTBT), the US refusal to accede to the Statute of Rome on the creation of the International Criminal Court, and the neutralization – for example through the North American Free-Trade Association (NAFTA) – of multilateral WTO agreements by 'voluntary' bilateral covenants with trading partners, all of these attitudes indicate that the way in which the United States lets unilateral action prevail over multilateral solutions was on the increase. In other words, in the first decade of the new millennium, the multilateral order became more of an obstacle than a transmission channel for pursuing US national interests, or, as Peter van Ham comments, 'all in all the United States seem to have come to the conclusion that they no longer can afford the luxury of unadulterated multilateralism. [...] The existing international order was established to *manage* the Cold War, not to take al-Qaida for a ride' (Van Ham, 2004).

After the Bush administrations' interventions in Afghanistan and Iraq, President Obama changed the United States' course, as he saw that the dismantlement of the current multilateral order is not in the ultimate interest of the United States. Washington is aware that the *collateral damage* of a one-sided action can take a turn for the worst regarding national interests in the long run. Multilateral approval and support for US actions therefore remains advisable, if only for pragmatic reasons. Even if the United States puts aside the question of legality, the question of legitimacy remains an important consideration. The (neo-)realists' point of view subsequently dictates that, for this reason only, it is not in US interests to blow up the multilateral order.

It therefore seems that the multilateral order has its own dynamics at its disposal and that it plays an enduring role in regulating present international negotiation processes. Unfortunately for the US regime's thinkers, these dynamics do not emanate from converging implicit or explicit values, principles and codes of conduct, but from a (neo)-realistic strategic perception of the national interests of the United States.

The United States' position of power is in itself neither a positive nor a negative factor for the institutions that form the international processes of negotiation. The question is much more about whether these institutions include or exclude the supreme power (Meerts, 2004). To speak in terms of negotiating, are the institutions being integrative or distributive? The so-called BRICS are on the rise (Brazil, Russia, India, China and, to some extent, South Africa). They demand power-sharing with the United States and Europe, both inside and outside the United Nations Security Council.

But apart from a potential multi-polar supremacy of six countries plus the European Union – with Germany, France and the United Kingdom as the EU's main powers – we live in a world of increasing mutual dependency, with a natural tendency in the direction of regime-building in order to reach more predictable negotiation results. The more that negotiation processes are embedded in strong international structures, the more stable they will be and the greater the chance of *assured outcomes*, guaranteed outcomes. With regard to the evolution of negotiation processes, it is clear that the disruption of the international order will erode the effectiveness of negotiating as a means of settling conflicts. The processes will increasingly lead to successful results in fewer cases, but the negotiation process as such is certainly here to stay.

Indeed, the more fragmented the international system, the stronger the need for negotiating as a bridging mechanism. Negotiating processes will have to compensate for the weakness of the structure. This is not ideal, because negotiations are more fragile as an instrument if they lack being embedded institutionally.

Coping with Challenges

New international orders often come into being after man-made disasters. The world apparently needed a first and a second world war in order to finally create global political organizations: the League of Nations and the United Nations, respectively. The Cold War gave rise to NATO and Warsaw Pact. Meanwhile, German–French animosity needed three wars before it was understood that a problem cannot be solved on the level that it arises, so the European Union was created.

As soon as a major threat arises, regimes are put in place. The more serious the challenge, the more willingness there is to invest in dealing with it, but if and only if the threatened party cannot deal with it on its own and needs allies, and moreover if an ad-hoc alliance cannot be the answer and an institutionalized structure is needed. If the party under threat is strong enough to deal with the issue, regime formation is not needed and will actually hamper the room for manoeuvre of the state involved so that an effective negotiation process cannot be expected to take place (Zartman and Rubin, 2000a).

New challenges might put life into existing organizations that never really got off the ground or that lost their significance. The need for peacekeeping operations led by countries in the region itself thus vitalized the Organization of African Unity, now the African Union (AU). The need for security, stability, protection of human rights and the emergence of new democratic systems gave new meaning to the earlier-mentioned CSCE, now the OSCE. But how effective are these regimes in comparison to the needs of the international community? How effective are new institutions such as the Yugoslav Tribunal and the International Criminal Court? They want to move from peace to justice, but peace versus justice is often the problem (Zartman and Kremenjuk, 2005) and there is not enough external and/or internal pressure to start a 'common project', to establish a regime that is strong enough to cope with the challenge.

Although many techniques have been developed in order to get regimes to deal with problems effectively, for example in the European Union (Meerts, 2004), they can hardly be successful if the major powers within and outside the regime want to handle regime change unilaterally, bilaterally, or trilaterally, or indeed outside the existing regime(s), as the restraints of the regime might block an effective '*Alleingang*' (going it alone). Here we have the paradox that rules and regulations, and institutions and vested interests, strengthen the capability of a regime to cope with problems. This creates a bargaining platform, but at the same time it restricts the bargaining range and freedom of the more powerful states. They will therefore work in the spirit of negotiation, being a context-dependent process, by acting in a situational way. This might then be favourable for some parties involved, but it can be disastrous for the common good. In the European Union, this is the classical dilemma of full or partial integration of new member states; in the United Nations Framework Treaty on Climate Change and the World Trade Organization, it is about short-term over long-term interests.

In other words, the constraints to having adaptable and effective regimes are of both an internal and an external nature. Internal delimitations are often difficult to handle if outside pressure is lacking. This is not so much an issue of a 'mutual hurting stalemate', but of lack of 'painful pressure from outside' (PPO). Perhaps this was comfortable hurting pressure from outside, which is what kept the Socialist Federal Republic of Yugoslavia together. When the Cold War was over, this pressure fell and so did Yugoslavia. PPO can, of course, be created by the regime itself, as with Indonesia's regime, which sought to strengthen its internal position by seeking the '*konfrontasi*' (confrontation) with Malaysia from 1963–1966, and like the Soviet Union and United States, which gained more control over their allies in the Warsaw Pact and NATO, respectively, by overplaying the external threat. Both regimes flourished in this way, as a regime at least, but somebody of course had to pay for this – the civilians of the particular regime's member states. NATO hardly survived the end of the East–West confrontation and the Warsaw Pact died on the spot,

yet with the regimes gone or destroyed, instability entered the European theatre (Davies, 1996).

Negotiation processes within the regimes – a regime's lifeblood, it has been said – are quite defenceless without their cover. Like a turtle, the process of international negotiation is a peaceful, but slow animal. It needs the shell of the regime to survive, or at least to be effective and sustainable. At the same time, the shell is a heavy burden that slows down the turtle even further, with the turtle thereby losing its relevance and perhaps being trod upon. If the shell is hard enough, however, the animal will survive and can wait for a better future.

Possible Future Developments

So what about that future, let us say the first half of the twenty-first century? From a political point of view, it will be impossible to calculate the evolution of international regimes as international organizations if national regimes in the form of the sovereign states are overlooked. The central question seems to revolve around the extent to which (member) states need each other in order to expect further regime growth.

As centuries pass by and violence becomes a more costly affair, one can observe an evolution in regimes in the sense of their international organization and cooperation. In general, regimes become more complex and more effective, although the one does not always favour the other. Interdependency fosters regime-building, but because it removes stimuli (threats), it also puts the brakes on.

At the beginning of the twenty-first century, there does not seem to be much room for optimism as far as the further growth of international regimes is concerned. The present distribution of power among states, which still continue to prioritize sovereignty over international cooperation and international organization, works against further regime-building. Some kind of equilibrium – whether mutual assured destruction or risk management, a Concert of Europe approach or a well-understood balance of interests (Dupont, 2003) – seems to be needed to create the cradle in which the international regime can grow old and flourish. So we cannot expect too much from regimes as long as a new balance between major regimes has not been established, and this might take the whole first half of the twenty-first century.

Strengthening regimes in the coming 50 years will only be possible if states not only focus on structured international cooperation and multilateral bargaining, but also prioritize ad-hoc negotiation processes and bilateral bargaining. Multilateralism does not work without bilateralism. As negotiations are the life-blood of regimes, so bilateral negotiation is the gist and juice in creating a new balance of power among the major regimes, whether they are states or international organizations. In other words, we have to look at both structured and less-structured modes of cooperation. Negotiation processes are fit for both.

Another important point is the level of negotiation. National problems will have to be negotiated at the national level. This seems self-evident, but in the European Union in particular, problems are shifted to inappropriate levels. Governments tend to get rid of difficult issues by pushing them to higher levels, then blaming 'Brussels' for not being effective (see chapter XI).

Inclusiveness is also important. The OSCE is a good example of regional inclusiveness, both for issues and for countries. Again, inclusiveness might give rise to opportunities (such as trade-offs and multiple outcomes) and to problems (such as complexity). William Bottom gives an example of the disastrous consequences of exclusion at Versailles (Bottom, 2003), while Dupont shows both the importance of including the major players and excluding the minor ones in Vienna in 1814–1815 (Dupont, 2003).

We should keep in mind, however, that:

Regimes may assume a life of their own, a life independent of the basic causal factors that led to their creation in the first place. There is not always congruity between underlying power capabilities, regimes, and related behaviour and outcomes. Principles, norms, and procedures may not conform with the preferences of the most powerful states. Ultimate state power and interests condition both regime structures and related behaviour, but there may be a wide area of leeway (Krasner, 1983: 357).

In Conclusion

Some positive and negative effects of boundaries and beyond have been dealt with in this chapter. The first part identified some aspects of process and context connectedness, concluding that bargaining is a viable alternative to warfare and other tools of conflict management, but that it can only be effective if it is set within certain limits. Without boundaries, there can be no effective bargaining. These processes can flourish in a world of carved-up states, structured by systems, squeezed between common and opposing interests, on the basis of human and other resources, regulated by law and mores, and operating under variable time constraints. This is the positive side of the coin – without this, the process will not work.

However, boundaries also pose problems. Geographic limits can be an obstacle to effective cooperation, which is why we try to let geographic and other boundaries evaporate in the European Union. Systems might exclude potential partners, and radically opposing interests create intractability. Governments and their representatives are often unwilling to negotiate because of the past, present and their vision of the future. Regulations can strangle creativity. Bargaining takes time; if not enough time is allowed for the process, it will falter or at least give sub-optimal outcomes. Yet these are the negative situational effects of a structural ingredient that we defined as a prerequisite for bargaining processes: boundaries. In other words, without limitations we cannot have negotiations, but we have to undo the negative aspects of them. Without nerves there is no happiness in life, but these same nerves can unleash pain that we would prefer to avoid as much as possible.

In order to balance the negative aspects of boundaries, regimes built networks in order to cut across the frontiers between them:

Government networks promote convergence of national law, regulations, and institutions in ways that facilitate the movement of people, goods, and money across borders; that assure a high and increasingly uniform level of protection and legal rights; and that guarantee the cross-fertilization of ideas and approaches to common governance problems. That cross-fertilization, in turn, may in some cases produce competition among competing standards. It also makes possible informed divergence, where national regulators, legislators, or judges deliberately proclaim and preserve national law, rule, principle, or tradition in the face of countervailing global trends (Slaughter, 2004: 213).

As bargaining is an evolutionary process, boundaries will change with it. Context has a huge impact on the processes within its domain, but the processes will influence its environment as well. Just as the river erodes the mountain slopes, the process will change its context. In the short run, context seems to be the dominant feature, but in the long run the process will modify its own context. It is, in other words, a question of give-and-take between process and context.

Bargaining is another dimension, like negotiating a difficult road. Understanding this two-fold process of evolution is the real challenge. How did political processes create the state structures in which we are living, and to what extent do states and international organizations shape the processes that will have to take us from A to B? Clearly, this goes beyond the boundaries of bargaining, but it is important to state that process and context deserve equal attention because of the way they are intertwined. Only by studying them in connection with each other might we gain some insight into the role of bargaining and boundaries in the coming decades.

