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著者	ZARTMAN I. William
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# Development of the Concepts of Negotiation and Mediation and Their Mechanisms in The Contemporary International Community

**I. William ZARTMAN**

John Hopkins University

There have been many studies of conflict in the postwar period, but negotiation and mediation are relatively new subjects. Although accounts of negotiation can be said to go back to the Scriptures (Genesis 18: 20-33) to classical times (Thucydides), the analysis of political negotiations begins in the 1960s with the works of Schelling (1960) and Iklé (1964), borrowing from economic and political studies, and branching out from there into the fields of social psychology, management studies, and related disciplines. Although nearly all the cases examined in these studies occurred during the Cold War, the theoretical observations hold for negotiation and mediation in international politics in general and their validity is not limited to a particular period.

The development of the concepts and analysis of negotiation over the recent decades has brought to light a number of analytical controversies that are useful to the pursuit of better understanding of the process and of its improved conduct. Using the typology of elements of negotiation developed by the Project on International Negotiation of the International Institute of Applied Systems Analysis (Kremenjuk 1992) — structure, process, actors, strategies, outcomes — these controversies can be examined to prepare the further development of concepts and mechanisms of use for the practitioner of negotiation and mediation.

The structural or power question relates to conflict management vs conflict resolution. Does the more attainable agreement to manage a conflict, that is, to reduce the means of pursuing it, also lower the pressures and hence the possibilities for resolving it, or, more directly, must it take more war to get more peace? The outcomes question refers to distributive vs integrative negotiations or, more familiarly, zero-sum vs positive-sum outcomes or win-lose vs win-win solutions: How can negotiations be moved from a situation and perception of outcomes where my gain is your loss to one where we both gain? The strategic question focuses on the concession/ convergence vs formula/ detail process. How can negotiations be moved from a process viewed and practiced as giving in bit by bit to the other party inching toward you and toward a process characterized by an overarching agreement on the nature of the problem and its solution, following by the hammering out of implementing details? The procedural question concerns the mechanisms by which different types of negotiation are carried out, depending on the number of parties. Most of the conceptualization

discussed so far concerns bilateral negotiation; is the same process applicable to multilateral negotiations involving large numbers of parties? Finally, the parties question deals with negotiation vs mediation. Under what conditions can the parties solve or manage their own conflict, and when do they need some help, with what consequences?

## **Management vs Resolution**

Opportunities for negotiation or mediation of a conflict, and the degree of management or resolution obtained, depend on the readiness, or ripeness, of a conflict for resolution. Feelings for a ripe moment lie at the fingertips of diplomats. "Ripeness of time is one of the absolute essences of diplomacy," wrote John Campbell (1976, 73). "You have to do the right thing at the right time." However, few diplomats have clearly identified that essence, leaving it to a sense of feel. Henry Kissinger did better, recognizing that "stalemate is the most propitious condition for settlement." (NYT, 12 Oct 74). Even then it takes a special kind of stalemate. The concept of a ripe moment centers on the existence of a mutually hurting stalemate, optimally associated with an impending or recently avoided catastrophe (Zartman 1989). The idea behind the concept is that the parties find themselves locked in a conflict and cannot escalate their way out, and that this deadlock is painful to both of them (although not necessarily in equal degree). The catastrophe provides a deadline. Additional elements necessary for a ripe moment are valid spokesmen and a way out. Ripe moments are necessarily perceptual events, not ones that stand alone in objective reality; they can be created if outside parties can cultivate the perception of a painful present vs a preferable alternative, and therefore can be resisted so long as the party refuses or otherwise blocks out that perception.

They have, however, intriguing problems (Zartman 1992; Stedman 1991; Haass 1990; Kriesberg & Thorson 1991). One arises when increased pain increases resistance rather than reducing it. Although this may be considered a "bad" or irrational reaction, it is common and may even be the natural and functional response to opposition: "don't give up without a fight," and "if at first you don't succeed, try, try again." Although the model implies efforts to break out before giving in, nothing indicates when and how the switch from breaking-out perceptions to giving-in perceptions will occur. In addition, pressure on a party in conflict often leads to the psychological reaction of worsening the image of the opponent, a natural tendency which is often decried as lessening chances of reconciliation but which has the functional feature of justifying resistance (Pruitt & Rubin 1986). Thus, the conditions which are designed to produce ripe moments naturally tend to produce its opposite.

The other problem is that the search for a mutual hurting stalemate encourages escalation, sunk costs, overcommitment, and other negative aspects of conflict. Brinkmanship is the godfather of ripeness. Is the death of Romeo and Juliette necessary for the reconciliation of Capulets and Montagus? Must the horse be stolen before the barn door is locked? The positive equivalent of ripeness is much more rare, if only because, inescapably,

the name of the game is conflict. Even its name is unknown and it will have to be called a mutually enticing opportunity, until a catchier label is found. It exists, however.

In positive terms, a conflict is ripe for resolution when the parties perceive an opportunity in the ambient conditions to gain a favorable outcome. The emphasis is the reverse of the negative ripe moment, but it is not merely a restatement with a different accent. While the mutually hurting stalemate also requires the perception of a way out, in the mutually enticing opportunity, the way out makes the moment, rather than complementing it, and the inability of the parties to escalate their way out is merely the background condition. Rather than a hurting stalemate, parties at the time of the mutually enticing moment are likely to find themselves in an ongoing deadlock of no particular cost, a drag rather than a pain. Furthermore, the mutually enticing opportunity is usually associated with a third party's efforts to mediate the conflict, in which an additional aspect of the opportunity lies in the chance to improve relations with the mediator. The positive ripe moment, then, contains a double opportunity — to lower the conflict and to raise relations with the mediator.

While research has made great strides in separating the idea of management from resolution, in identifying the components of a (negative) ripe moment, and in conceiving of a positive equivalent, these advances open further questions (as they are supposed to): How can conflict management be used to promote rather than delay conflict resolution? What are the components of a mutual enticing opportunity and how does it work?

## **Distribution vs Integration**

Distributive negotiations deal with "cutting the pie," or allocating parts of a fixed and finite outcome, whereas integrative negotiations refer to enlarging and sharing rather than just cutting the pie (Walton & McKersie 1968, ax % Sebenius 1986). In reality, the types overlap. Even when it is possible only to cut a fixed pie, the pieces may in fact have different values to the different parties (a notion that is easier to sustain if we change the image to dividing up a fruit basket rather than cutting a more homogeneous pie). Hence the wisdom of Homans' Maxim (1961, p 62) that "the more items at stake can be divided into goods valued more by one party than they cost to the other and goods valued more by the other party than they cost to the first, the greater the chances of successful outcomes." Thus, integrative outcomes can be achieved by differential evaluation, even when the process is one of distribution. On the other hand, even when the pie is enlarged and shared, there is still likely to be some distributive element involved, since everything cannot be shared and the enlarged pie will doubtless have to be distributed in some way.

Conceptually, there are only a few ways of turning negotiations perceived as zero-sum or distributive into those perceived as positive-sum or integrative, although the conceptual categories can be translated into a myriad practical examples. Objectively, there are three ways of creating an integrative or positive-sum situation — by expanding the common pie (or basket), by establishing trade-offs between differently valued articles, and by producing side-

payments (out of items not in the pie or basket) (Pruitt 1994). While this sounds rather straightforward, there are many negotiations which have foundered because the parties focused only on their respective demands and did not consider giving something to the other party to get what they themselves wanted or bringing in additional items of interest to both of them in order to create a larger total out of which each might find something of value.

Subjectively, what is necessary is the admission that achieving one's demands does not require depriving the other, and that the other party has a legitimate existence and legitimate concerns, interests and demands itself (without of course any a priori granting of those demands). While this too sounds unobjectionable in the abstract, many international (and also domestic) negotiations are preceded by a fight over the legitimacy of one or more parties, and end with a refusal to "reward" the other side with any concessions or trade-offs. Reflecting on the Bosnian situation, the UN representative Cyrus Vance said, "If we refuse to talk on so-called moral grounds to all parties to a conflict, how could we have ever solved any problem?" (NYT 19 Jan 93)

There are cases when trade-offs are not available or legitimate, however, when improper acts cannot be used by buy concessions, and when punishment and deprivation are the issue, just as there are bottom-line demands and vital interests in any situation that are beyond negotiation. The fact that such situations exist allows parties to claim them at any time and deny the creative potentialities of positive-sum negotiation.

Taken to the extreme, these misappropriations of the positive aspects of negotiations lead to Nicolson's Dilemma (1939), one of the most important problems in the negotiation literature: What happens when a Shopkeeper meets a Warrior? His answer was, "Don't negotiate!" Yet the answer is the sign of the dilemma, for in negotiating or in not negotiating, the Shopkeeper grants the Warrior a victory. In negotiation, the only deal is on the Warrior's terms, but in not negotiating, the Shopkeeper himself becomes a Warrior. Only lately has the question been addressed to find an answer in other terms (Ury 1992), whereby the Shopkeeper is able to bring the Warrior to negotiation, to an exchange of concessions, and to the creation of outcomes beneficial to both sides. The dilemma is resilient and the answers are not definitive; more work is needed.

## **Concessions vs Formulas**

The typical image of negotiation, on which much & penetrating research and analysis has been based in economics (Young 1975) but also in sociology (Bartos 1978) and in philosophy (Barry 1986), is that of two parties starting at fixed and finite positions and inching toward each other to reach agreement somewhere in the middle. This is the image of bazaar bargaining with a rug merchant (Khoury 1968). It is also the apparent image of labor-management collective bargaining, although in reality new items and larger issues may be added which go beyond the image and produce different bargaining processes (Douglas 1962).

The model gives rise to the basic paradox which underlies the dynamic of negotiation,

known as the Toughness or the Negotiator's Dilemma: Whether to act tough and concede little or soft and concede alot, when toughness increases the chance of a favorable agreement but decreases the chance of any agreement at all, whereas softness increases the chance of agreement but decreases the chances that it will be favorable (Zartman & Berman 1981; Cross 1969; Lax & Sebenius 1986). The Dilemma is crucial to understanding the indeterminacy of negotiation and the tactical challenges of practitioners as well, leading to Bartos' Paradox (1987) that toughness begets softness and softness begets toughness, quite the opposite of the image of meeting in the middle. In the end, the result can be seen to lead back to the Warrior and the Shopkeeper again.

There are several problems with this image of negotiation, besides the paradoxes and indeterminacy which provide little advice for practitioners and analysts on how people should and do behave in negotiations. One is that it fosters a negative public image of negotiations, of giving in to the other party. Negotiation then becomes necessarily a matter of winning, of holding to one's positions, and anything less is losing and weakness. The idea that negotiation is giving something to get something or that a meeting in the middle is a way of creating new goods to the benefit of both parties is lost in the image.

The other is that the image is usually inaccurate. Negotiations usually do not begin with fixed and finite positions and parties usually do not inch toward each other. When they do, it is only after they have established a general framework for their agreement and, within it, have left some details to be worked out. Negotiation typically passes through three phases — that of diagnosis or pre-negotiations, in which the parties examine their positions and issues and prepare several conditions for their meeting; formulation, in which the parties look for a formula or common understanding of the problem and its solution, or a common sense of justice to govern the outcome, or a joint understanding of terms of trade; and then detailed agreement, in which the formula is translated into specific terms of agreement (Zartman 1978; Zartman & Berman 1981). Concession/convergence may indeed appear in this sequence but it tends to be in the final phase, after, explicitly or implicitly, a formula has already been established. Thus, the rug transaction is already governed by a tacit understanding that “rug for money” is all that is at stake, and most wage negotiations operate under the formula of “wages for productivity.” On the other hand, “security for territory” as embodied in UNSC R242 was an effective, negotiated formula that served as a basis for the withdrawal agreements in the mid-1970s, the Washington Treaty of peace between Egypt and Israel in 1979, the Oslo Agreement of 1993, and current talks between Syria and Israel. Many other diplomatic examples can be cited.

The formula image has many advantages for both practitioner and analyst, in addition to its accuracy. In developing public support, it permits a more positive, creative picture of the negotiating process. It thus allows and encourages parties, and their supporting audiences, to think of the process as one of creating a greater good that is not only beneficial to oneself but also has payoffs for the other party that engage its commitment to hold the final agreement in the future. (There is no purpose in making an agreement that does not contain incentives for

both parties to observe it). It provides a framework within which details can be placed and given coherence, so that they do not clash with each other or undermine the general structure of the agreement. The framework can also be used to help determine the outcome for details, without which each small item would become a battlefield and each small solution a isolated outcome. Furthermore, the three-phase division of the process helps practitioners and observers tailor expectations to likelihoods — parties should be expected to spend a long time in diagnosis and this is naturally a wary, even hostile, period; parties should then expect to look more cooperatively for common understandings of the problem and its solution; parties should be expected to warily turn that formula into detailed agreements, being very much on the alert against attempts to gain advantage over the other, trying to win some final advantages for oneself, and in the process making sure that the formula translates itself into acceptable details.

But further questions still remain. How are optimizing formulas found, other than by the time honored practice of trial and error? Neat notions of Pareto optimal outcomes, Nash solution and Homans' Maxim have brought out precise criteria of maximizing behavior based on the concession/convergence image. Can similar notions be devised for the formula image, despite the fact that it is based on innovation and invention, not on a calculable negotiating front?

## **Bilateral vs Multilateral**

Most of our knowledge of concepts and L M mechanisms of negotiation concerns bilateral encounters, where the structure does much to determine the process. Bilateral negotiation is a joint decision-making process in which both parties have a veto, where an adversarial relation is inherent in the conflict of interests and a cooperative relation is a potential of the value of an agreement, and where issue positions can be indicated on one-dimensional measures. Multilateral negotiations are very different (Zartman 1993). There is no apparent structure, and no clear indication of allies and adversary; indeed, most parties are both allies and adversaries, depending on the issue. The presence of many parties and many issues also means that there are many roles to be played.

On the other hand, multilateral negotiations are dominated by a mechanism not available to negotiations between only two parties, the need to form coalitions. While the dynamics of coalition might be expected to lead back to a two-party structure, this tends to be the worst of outcomes, creating either stalemate or veto or exclusion, depending on the size of the coalitions. More likely is the creation of multiple, shifting and unstable coalitions, occasioned by the multiple issues under consideration. But coalition is not a decision-making mode (in the absence of voting rules), but only the setting for subsequent negotiation. It is, however, a mechanism for reducing the complexity inherent in many parties dealing with many issue through many roles.

The nature of multilateral negotiation is managing complexity, a very different exercise

than either the convergence or the formulation processes of bilateral negotiation. The essential functions of this process are simplification, structuring and leadership — simplification to reduce the overwhelming complexity that faces multilateral negotiators in order to render it manageable, structuring to give it a form by issues and parties in order to make it amenable to producing results, and leadership to provide direction in order to bring about a decision. There has been much research very recently in the mathematics of complexity that bears very little relevance to the practical challenges that face a multilateral negotiator, but not much study of the multilateral process to show how these functions interact in order to produce a result.

If the study of bilateral negotiation is a recent subject of attention that has already produced significant results, the study of multilateral negotiation is in its infancy (Zartman 1994; Hampson 1995) What is the relation among the various mechanisms for managing complexity? What are the strategies and limitations of simplification, structuring and leadership to be used to produce results?

### **Negotiation vs Mediation**

Mediation is best thought of as a form of negotiation, in which a third party is needed to help the parties do what they cannot do by themselves. Mediators' roles, derived from parties' needs, come in three forms. In order of involvement, they are mediation as communication, formulation, and manipulation (Touval & Zartman 1985, Zartman & Touval 1992).

The mediator as a communicator addresses the conflict as a breakdown in the ability of the parties to communicate with each other. Mediators may be needed to act simply as telephone wires, opening contacts and carrying messages. They may also be required to help the parties understand the meaning of messages through the dust of distortion thrown up by the conflict. They may be the object of communications when the parties cannot talk to each other, and even the receiver of concessions when the parties cannot give in to each other. This role is completely procedural, with no substantive contribution by the mediator, and in its lowest form completely passive, only carrying out the delivery of messages.

The second mode of mediation is more active, in that it requires the mediator to enter into the substance of the negotiation. When the conflict becomes so engrossing that it prevents the parties from conceiving of ways out of the dispute, they need a mediator as formulator. Mediators should be capable of the innovative thinking, and capable of working out ways of imaginative action that gets around the parties' constraining commitments. If the conflict prevents the parties from grasping the value of the mediator's suggestions at first hearing, the mediator needs also to be able to persuade. Persuasion involves power, and therefore requires greater involvement of the mediator than mere communication.

Yet this degree of involvement still may not be enough. The third mode requires the mediator to act as a manipulator, with the maximum degree of involvement that nearly makes it a party in the solution if not in the dispute. As a manipulator, the mediator uses its power to



bring the parties to an agreement, pushing and pulling them away from conflict and into resolution. Not only must the mediator sell its vision of a solution but it must also take measures to make that solution more attractive, enhancing its value by adding benefits to its outcome and assorted in such a way as to overcome imbalances that may have prevented one party or another from subscribing to it. Not only must the mediator help improve the absolute attractiveness of resolution but it may even have to do so relatively by increasing the unattractiveness of continued conflict, an involvement that may mean shoring up one side or condemning another and further straining the appearances of neutrality. This is the role of the “full participant,” as the American diplomatic position in the Middle East Peace Process in the 1970s and in the Namibian-Angolan negotiations in 1980s was described.

Formulation and manipulation pose the question of power, the ability to move a party in an intended direction, often referred to in mediation as leverage. A mediator has only four sources of leverage — the ability to portray an alternative future as more favorable than the continuing conflict (persuasion), the ability to produce an attractive position from the other sides, the availability of resources that the mediator can withhold from one side in the conflict or shift to the other, and the availability of resources that the mediator can add to the outcome (side payments). It is evident that in each case the effectiveness and a part of the source of the leverage lies with the parties themselves, a characteristic that makes the power mediator extremely limited.

It is of such paradoxes and complexities that the job of peacemaker is made. Like other paradoxes and dilemmas associated with negotiation, they raise questions for further study. Probably the most important concerns the sources of leverage (or power) of a mediator to bring the parties to agreement, as opposed to a particular agreement.

## Conclusions

The concepts and mechanisms identified in this review can be usefully applied to an analysis of cases, so that their dynamics can be better understood and their lessons more broadly presented. The questions raised can help us continue the expansion and development of an important field of inquiry and activity. The passing of the Cold War has opened the world to numerous and murderous conflicts previously dampened by the global structure. The new era should also provide the opportunity for a deeper understanding and more widespread practice of conflict management and resolution through negotiation and mediation.

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