

APPLYING NEGOTIATION PROCESS – THEORETICAL AND PRACTICAL UNDERSTANDINGS

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Abstract: There is no doubt that conflicts (violent or non-violent) are an integral part of the relations between different actors at both, the national, regional and international levels. Starting from this conclusion, there is an inevitable need for applying appropriate strategies and approaches that will enable their efficient and successful management and resolution. It is exactly from such aspect that the significance of the negotiation process arises as an instrument for peaceful resolution of open issues or disputes, through the establishment and realization of communication between the opposing parties. However, as the experience to date in this regard shows, the realization of the negotiation process is not always established and realized in accordance with the projected visions. Hence, the focus of this paper is specifically directed towards the analysis of the negotiation process essence, mainly through the prism of some of the existing theoretical and practical aspects in this regard. Specifically, by analyzing the characteristics of the basic elements, phases and models of the negotiation process, the aim is closer identification of the main challenges and perspectives related to the applicability of the negotiation process.

Keywords: communication, negotiation, resolution, conflict

Introduction

Within the international relations history and the management of bilateral and multilateral relations burdened with open issues and conflicts, negotiation has always had a central place as an instrument for overcoming such situations. Its importance has not diminished even today, in conditions of complex international relations and a changing and dynamic security environment. In this regard, it is noteworthy that after the Cold War, the negotiation process has become increasingly present in the regulation and management of the dynamics of internal, i.e. national open disputes and issues. Additionally, in parallel with the development of globalization and in this regard especially the strengthening of economic and technological globalization, of international financial and trade institutions and other multilateral organizations, as well as with achievements in the economic sphere, new national, regional and international challenges are emerging, which, among other things, make the structure and nature of the negotiation process itself, even more complex. In fact, compared to historical experience, today the negotiation process cannot be perceived only through the prism of resolving a specific problem or dispute between sovereign and independent states. On the contrary, there is a noticeable so-called deepening of this process by involving numerous

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actors, such as: non-governmental organizations, national or autonomous movements and groups, para-state entities, regional organizations and institutions, religious institutions, media, etc. However, the peaceful resolution of disputes and conflicts remains the main goal of negotiations between different actors, in accordance with the Charter of the United Nations, which requires states to: "settle their international disputes by peaceful means and in their international relations to refrain from threats or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations" (UN, 1945).

Additionally, such issue is also regulated by the Vienna Convention on Diplomatic Relations, which aims to facilitate the development of friendly relations between governments through acceptable practices and principles, which aim to eliminate the fear of coercion or harassment in international relations (UN, 1961). The Vienna Convention, in fact, is the cornerstone of modern international relations and international law. The Convention has been universally ratified and is considered one of the most successful legal instruments developed within the framework of the United Nations. However, despite the indicated international regulation of such issue, we are also witnessing frequent violations of the indicated principles, even during the third decade of the XXI century. It is precisely such a situation that confirms the undiminished importance of negotiations as the only recognized model for the peaceful resolution of open issues, disputes and conflicts. After all, historical experience itself shows that almost all clashes, conflicts and wars ultimately end with negotiations and agreements to cease armed violence or with peace agreements. Hence, the focus of this paper is on analysing both, the theoretical and practical aspects related to the negotiation process and its main challenges.

Applying negotiation process - theoretical aspects

Within the conflict theory, conflict is assumed to be the state of nature and it is governed by self-interest. Groups use any means necessary to gain advantage and maximize power. Although realism as a theory of political contact remains a place in diplomatic relations, it has been increasingly refined to include more theoretical complexity that includes cultural, economic, educational, and psychological factors (Haas, 1990). New approaches seek to use communication and human relations in not only the analysis of conflicts, but also their resolution. Communication approaches are used between conflicting parties to develop functional interests. Conflicting parties need to change, and communication is the engine of such change (Ellis, 2006).

The processes within the conflicting parties engage with the intention of resolving the conflict through direct mutual communication, are known as negotiation. Depending on how the conflicting parties approach the conflict, as well as what kind of solution they seek to achieve, negotiation can be competitive or collaborative. In competitive negotiation, each party tries to defeat the other party and get what it wants, i.e. each of the involved parties tries to impose its arguments on the other party and force it to lose. On the other hand, within the collaborative negotiation, the conflicting parties approach is manifested when their collaborative focus is on finding a solution that would satisfy the needs of both parties. In addition, negotiations can also differ in the way they are carried out, and hence they can be called informal (which includes collaborative negotiations) and formal negotiations.

The complex nature of the negotiation process itself is, among other things, a result of the very structure and essence of the negotiating elements. In this regard, the values, positions, interests and needs of the parties entering into the negotiation process, are particularly important.

A values represent beliefs about which activities, things and ideas are or are not useful, good and acceptable. It is undeniable that a system of values is formed throughout life through the overall socio-cultural influences and one's own experience, as a standard that guides people's actions. Therefore, it is very difficult to initiate any change of the formed system of values and if it does change, it happens slowly, which is why values are most often experienced as an issue that cannot be subject to negotiation. This means that within the negotiation, values should not be ignored, but on the contrary, it is important that they, as well as potential differences in relation to them, are respected. In most cases of conflict resolution, where the basic source are differences in values, the negotiation acceptance as an instrument for their resolution is very complex issue (Georgieva, 1999).

Within the negotiation process, positions are associated with the demands that each of the conflicting parties puts forward in the conflict. Moreover, despite their perception as a specific demand, positions as an element of the negotiation process can also be manifested as a threat or accusation. However, the positions between the conflicting parties can most clearly be determined through the answer to the question: What do you want or What do you require? During the negotiation process, the negotiator emphasizes his position because he is convinced that it is the best way for his needs satisfaction. Hence, from the negotiation perspective, conflict can also be defined as a clash between positions, i.e. positions formulate the conflict or the disputed issue.

Additionally, within the framework of attempts and activities for negotiation initiation between the conflicting parties, their very different and diametrically opposed positions, as well as the difference between theirs and the positions of the third, i.e. external party that appears or seeks to appear in a mediatory role, can pose a serious challenge to the such process beginning. For example, during the last process about initiating dialogue between Russia and Ukraine, in May 2025, European leaders rejected the idea of direct negotiations, unless an unconditional cessation of military actions between the two countries was previously agreed. Although at the beginning this position was also advocated by Ukrainian President, V. Zelensky, he has since changed it and declared that he is ready for a meeting with Russian President, V. Putin, in Istanbul without the indicated precondition (DW, 2025).

It is undeniable that positions demonstrate what the conflicting parties want to achieve, but they do not express the concerns and motives that lie behind the conflict. It is these aspects that constitute the essence of interests and needs, which are presented as goals that the parties believe will be fulfilled if their positions are realized. In fact, interests are seen as a specific, functional and practical results achieved by the eventual realization of the conflicting parties' positions, with the motivating nature of the interests themselves being linked to a series of more fundamental physiological and psychological needs (Georgieva, 1999). Distinguishing between positions and needs, as well as identifying needs, are basic prerequisites for effective collaborative negotiation. Therefore, in this context, it is necessary for the negotiator to determine the real needs of the conflicting parties and thus to more closely detect the underlying reasons why they take different positions in the specific conflict. It should also be emphasized that although at the beginning the need sometimes seems

obvious to the negotiator, the assumption about it must still be checked. In this regard, the negotiation process is further complicated if the need is incorrectly identified.

Despite such theoretical aspects that constitute the essence of the negotiation process, there are certain differences in relation to the negotiations themselves, i.e. in relation to the question of whether the expected agreement is necessary, or whether the negotiating parties can part ways without an agreement. This of course depends on the specific situation, i.e. on the intensity of the conflict or the disputed issue. Hence, certain negotiations last a long time, precisely because the agreement must be reached at any cost. In fact, its reaching failure would lead to intensification of the conflict situation with even greater consequences. In this regard, an example is the negotiations on the American-Iranian hostage crisis, which lasted over a year (1979-1981), because the situation required the necessary achievement of an agreement. The same was true of the negotiations to end the Vietnam War, which lasted almost two years (1973-1975), until a compromise solution was reached (Kovačević, 2004).

The negotiation process phases

The negotiation process, especially collaborative negotiation, consists of several basic phases or levels, namely: ritual exchange, identifying positions and needs, reformulating the problem, solving the problem and reaching agreement. (Georgieva, 1999)

Ritual exchange within the negotiation process is significant because it allows the parties to begin negotiations on a neutral topic or issue in an informal manner, while they engage in establishing and building a mutual relationship, creating a favorable atmosphere for negotiation and establishing common ground before the discussion on the main, contentious issues is opened. Additionally, this phase is significant because it allows the involved parties within the negotiation process to gather important information about the values and interests of the opposing party through dialogue, which are of crucial importance when moving into the essence of the negotiations.

The identification of positions and needs is important because each party reveals its position within this phase. Still, it is significant that the presentation of positions is not unilateral (ultimate), but they should be presented in a more flexible manner. Thus, within this phase, the parties clearly manifest their willingness or unwillingness to reach a mutually acceptable solution. In this context, it should be emphasized that there are also situations in practice within the parties avoid revealing of their positions to each other. Most often, this is case because they are afraid of conflict, or because they consider their request to be illegitimate. However, the conflicting parties in the negotiation process should be open, if they truly want to reach a solution to the conflict. There is no doubt that openness determines the essence of negotiations. Hence, postponing the position presentation leaves less time for negotiations aimed at what the parties really want. Such a delay, in itself, is fertile ground for possible additional conflict. Moreover, during such negotiating approach, it is important to keep in mind that obvious issues are often not essential for resolving the conflict. Therefore, the parties should not dwell on secondary issues, but within the framework of negotiations to resolve the essential issues. This is even more so, because if the obvious issues are resolved within a certain time, but not the essential ones, there is a high probability of a recurrence of the conflict, during which other secondary issues between the conflicting parties may also come to the fore.

Within the third phase, or the so-called reformulation of the problem, instead of emphasizing their positions, the negotiating parties maintain tension in the negotiations primarily by putting their focus on the basic needs, which makes the atmosphere more acceptable, i.e. collaborative. This actually represents reformulation or redefinition of the problem, and it is achieved by finding answers to the question: How can we satisfy the basic needs of both parties? In this way, a phase of initiating ideas and proposals from both sides occurs. The main goal of such approach within this phase is creation of a collaborative atmosphere, i.e. a perception and feeling among both conflicting parties that both represent part of a common side, unlike the disputed issues that in such a situation would be on the other side. This means that the parties are constructive and, through developed communication, contribute positively to the negotiation process. To this end, at this phase, if there is a conflict between positions, the specific issue or issues in dispute are reformulated, by previously determining the order of issues on which negotiations will be conducted. Therefore, it is acceptable the negotiation beginning with the easiest issues, in order to provide an incentive for progress in the further course of the negotiation process.

Problem solving, as the fourth phase of the negotiation process, has crucial significance about the overall dispute or conflict resolution. In fact, within its framework, the parties (negotiators) produce numerous ideas and proposals about the dispute or problem solving. In doing so, each party offers its own proposals (chips) for settlement as alternative ways to satisfy the needs of the other party. The main challenge in this regard is related to the need for careful situation monitoring, i.e. the proposals offered and accepted should not contradict the negotiating parties' own needs. This is even more needed considering the fact that during the producing of ideas and proposals for problem resolving, the focus should be more on its quantity than quality. It means that the appropriateness and possible acceptability of each of the offered proposals should be discussed after the entire (quantitative) offer of ideas and proposals has been exhausted. Such approach significance is due to the perception that if the offered proposals are discussed individually immediately after their presentation, and they do not meet the real needs of the confronted party, the possibility of increasing tensions is open as a result of the possible fear that a satisfactory solution to the problem is not possible at all. Therefore, within such phase the negotiating parties should demonstrate a more-tolerant approach to the highlighting and possible repetition of the proposals and ideas, as well as to the possibility of their negative and bad qualification. Such an approach is necessary in the context of efforts for maintaining the negotiation collaborative atmosphere as well as in moving them to the next phase, i.e. towards reaching an agreement.

Within the last phase, the parties focus is on considering and selecting the optimal offered idea or proposal that would satisfy the basic needs of both parties. In doing so, such an idea or proposal may arise as a combination of several previously separately offered proposals. In addition, it is possible for such a proposal to be directly related to the presented initial positions of the opposing parties. However, the most significant aspect is that such an idea or proposal should be accepted by both negotiating parties as the best solution that satisfies their needs to the greatest possible extent. Achieving such a solution will also mean fulfilling the ultimate goal of the negotiation process, as a result of which, both parties will feel themselves as winners. Such a conflict resolution approach, would provide the best foundations for its efficient, sustainable and lasting solution.

Negotiation models

Starting from the complex conflicts nature, which often drags the confronted parties into a dead-end situation within which their own survival or the realization of their own interests and needs is perceived only through the prism of the opposing side defeating, i.e. through the prism of the perception of "either them or us", several negotiation models have been identified in theory and practice, which application should ensure the avoidance or overcoming of the indicated situation.

The first model in this context is known as direct negotiations. Regarding to the so far peaceful disputes or conflict resolution, direct negotiations between the opposing parties have been one of the most widely used models. In fact, such model can yield the best results because negotiations are conducted between entities that are best acquainted with the problems, as well as, that are interested in the achieving negotiation outcome and, ultimately, are the only ones competent to decide about the specific dispute resolution. However, the main question that arises in such a situation is: How to start the process of direct negotiations? This question becomes even more important if it is a dispute within which the opposing parties are already using armed violence as instrument for its solving. However, so far experiences confirm that the answer to the indicated question (especially if it is a dispute in which armed violence has not been used) is most often sought as a part of the activities of the consular-diplomatic missions of the concerned parties, i.e. states, then, through the activities of the Ministries of Foreign Affairs, as well as through various goodwill missions or special delegations authorized to negotiate on a specific case (Georgieva, 1999).

Within certain situations, the possibility of international organizations mediation for a peaceful dispute resolution, or even, convening an international conference for overcoming the problems that have arisen, is not excluded, especially if it is a multidimensional problem in which several countries are interested or affected. For example, as a result of direct negotiations between representatives of the 4 largest political parties in Macedonian society, initiated under the auspices of the EU's special representatives, François Léotard and Javier Solana, and the US, Peter Feith and James Perdue, in 2001 the Ohrid Framework Agreement was signed, which put an end to the armed conflict in the country.

The next negotiation model is known as good offices. Considering that in disputes resolving between states, direct negotiations are often not established quickly or do not initiate certain results for a long period of time, the application of good offices is envisaged. In that context, good offices for resolving disputes are most often offered by third countries or a group of countries that are interested in overcoming the problems that have arisen more quickly, and quite often, this role can also be played by a specific political figure (with appropriate legitimacy and authority). When offering good services, from a theoretical perspective the mediators' focus should be on: establishing communication with and between the opposing parties; once communication is established, transferring the views and opinions from one side to the other one and vice versa; and offering a place and needed logistic for a direct meeting if the opposing parties show interest in it, while the mediators should not offer their own solutions in this regard. So, within such negotiation model, the mediator's or third party's focus is only on facilitating the beginning of negotiations through appropriate assistance in establishing direct contact between the opposing parties, most often on the territory of the state offering the good services. In this regard, the constructive role of Norway

as a good services provider for the negotiations between Israel and Palestine in Oslo in 1993 is worth highlighting.

Actually, it is an approach that for the very first time enabled direct contact and negotiations between previously extremely opposed and hostile actors. Regarding the positive impulses from the application of such model, Jan Egeland, former Deputy Minister of Foreign Affairs of Norway, and directly involved in the implementation of the good offices, stated: "The two sides talked immediately and privately, then there were really good people on both sides. When they met, we noticed that they slowly began to gain mutual trust" (DW, 2018). In the context of the current attempts for the Russian-Ukrainian dispute solving through negotiations, Turkey has twice (2022 and 2025), appeared as a good offices provider, but unfortunately in both cases, without concrete success that would initiate a rapprochement of the positions of the two sides towards the eventual achievement of a peace agreement between the them.

Another significant negotiation model is mediation, which is usually carried out by external entities, i.e. states that are not directly involved in the dispute or conflict and that act in the function of resolving it, mainly by transmitting the positions from one side to the other and vice versa, but with the opportunity to provide their own proposals and ideas for conflict overcoming, but which are not mandatory and binding for the opposing parties. Most often, the third party, i.e. the mediator, on its own initiative (less often based on a request submitted by the opposing parties), is involved in the negotiation process after it becomes obvious that progress is not possible without some external intervention. During crisis situations, especially regarding to the possibility of aggravating and expanding the specific local crisis, the third party most often is involved in order to mitigate or neutralize the conflict and to prevent its further expansion and destabilization of the entire region or the international system itself. In doing so, the intermediary role of the third party can manifest itself in several ways, such as: bringing the parties to the negotiating table, assisting the parties in clarifying their positions, discouraging creation of unreasonable demands and taking of unreasonable obligations towards their own public, ensuring that negotiations do not break down, and articulating the reasons for reaching an agreement (Raiffa, 1982).

However, despite its mediation willingness, the possession of certain important qualities for such role by the third party is also required. In particular, it must be impartial and neutral towards the opposing parties or at least with regard to the disputed issue after the start of the negotiations. In this context, experience so far demonstrates that great powers are often perceived by one of the conflicting parties as biased towards the other party (for example, the Palestinian perception of the United States). Therefore, it is necessary to demonstrate complete impartiality during mediation process in order of possible distrust elimination, as well as, to develop an atmosphere for accepting mutual compromises and reaching an agreement. Most often, taking into account the significance of the regional or global security protection, as well as, from prestige reasons aspect related to its affirmation as a great power, the third party is usually interested in reaching any agreement, even if it has certain shortcomings or ambiguities. The European Union and Javier Solana, as the main mediator in finding a solution to the problem in relations between Serbia and Montenegro, has been interested in reaching a solution primarily in the context of regional security – to prevent a referendum in Montenegro, which, as a result of the great division of the electorate, could produce serious tensions and new destabilization of the entire region (Kovačević, 2004).

Hence, their focus was mainly on reaching an agreement, while the quality of the solution itself was with secondary significance, i.e. how functional the new state union would be.

An inquiry commissions are also part of the negotiation models. Namely, within the conflict situations between two or more countries, different opinions and positions often arise both in relation to the very nature of the specific conflict as well as in relation to the factual situation that needs to be resolved. In such situations, according to The Hague Convention (1907), the possibility of forming an international inquiry commission is envisaged, whose task is to initiate the resolution of the dispute or conflict, mainly by: facilitating the procedure for resolving the dispute, determining the factual situation of the dispute that has arisen, and monitoring the situation until its resolution (Convention for the Pacific Settlement of International Disputes, 1907).

The next negotiation model is conciliation. Within peacefully disputes resolving approaches, the conciliation model is often applied, and primarily such a role is entrusted to an elected commission or to authoritative and experienced individuals. The established commission or individual has the task of studying the dispute in detail and offering the opposing parties a solution that they can accept or reject. The proposed solution may be based on legal norms, on the assessment of the inquiry commission or individual, or on the basis of proposals from the opposing parties themselves. The success of such model is determined primarily by the existence of goodwill among the opposing parties to avoid further conflict escalation, as well as, by their readiness to accept the conciliator opinion, who must necessarily be impartial in the perceptions of both parties.

Arbitration is a similar model to conciliation, but its conclusions are binding. The disputes resolution through arbitration has been regulated since the First Hague Convention in 1907. The idea was that disputes should be resolved according to legal norms, and that they should be resolved by elected persons – judges. Therefore, there is an obligation for respecting and implementing the judgments and decisions of these arbitration bodies. Most often, an issues that could not be resolved through diplomatic or other regular channels, are solving trough such negotiation model implementation. One of the more recent initiated cases for the arbitration resolution of an interstate dispute is the one that Ukraine initiated against Russia to The Hague arbitration court in 2016, as a result of Russia's ban on Ukrainian access to the Sea of Azov. Additionally, with the beginning of the war between Russia and Ukraine (2022), the Ukrainian perception of international arbitration as one of the possible instruments that can hold Russia accountable, has further strengthened.

Conclusion

The paper analysis confirms the crucial importance that the negotiation process has in resolving open issues and conflicts. However, despite its importance, it is undeniable that it is often burdened with numerous challenges that make it difficult to both, process beginning and realization with reaching a final agreement. Therefore, the paper analysis focuses on some of these challenges that are present equally in relation to all negotiation elements, phases and models. In this regard, the initial conclusion is that the negotiation elements, primarily: values, positions, interests and needs, have a decisive influence on both, the very beginning and the efficiency and effectiveness of the negotiation process. In the context of current events on the international scene, a direct confirmation of the above statement are

the challenges faced by attempts to start and complete a negotiation process for resolving the Russian-Ukrainian conflict. In fact, as a result of the complex nature of this conflict on the one hand, as well as a result of the diametrically different values, positions, interests and needs of the involved parties on the other hand, since its beginning in 2022 until today, only two direct meetings (at a lower political and diplomatic level) have been held between them, without any significant results in the attempts to end the conflict. In addition, even the strong international pressure about reaching a solution, has not initiated any significant results, at least to date. However, as the paper analysis shows, despite the time, international and other pressure, the negotiation process results in such and similar situations cannot always be expected within the predefined time frame. This is, among other things, precisely due to the fact that different values, positions, interests and needs initiate additional sensitivity, complexity and caution that negatively affect the negotiation process itself. Of course, this should not be understood as a complete cessation or rejection of attempts for negotiation process establishing or realization, among other things due to the fact that from a historical perspective, almost all open disputes and conflicts have ultimately been resolved through negotiations and reaching a final agreement.

Furthermore, the analysis confirms the importance of knowing the characteristics and essence of the negotiation process phases as well. This is because the analyzed phases clearly illustrate the directions along which the negotiation process should take place. As a result, enormous expectations in specific situations that can further complicate the negotiation process would be avoided.

Finally, the paper analysis also recognizes the significance of the wide range of existing negotiation models with different applicability depending on the nature of the specific dispute or conflict. In this regard, the analyzed negotiation models, in addition to the (political) readiness of the opposing parties to resolve specific open issues through direct negotiations, good offices, mediation, conciliation, etc., additionally highlight the possibility of their (legal) resolution through arbitration as significant model. This is significant from the perspective that the possible failure or limited success of a specific negotiation model should not be accepted as a complete rejection of the possibility about reaching an agreement. In this context, the focus is initially placed on negotiation models whose success is directly determined by the political will and readiness of the disputing parties to negotiate (regardless of whether the initiative for this comes from themselves or from an external, i.e. mediating party), and if such approach does not initiate positive results, the focus is usually shifted to negotiation models that include seeking a legal solution to the specific problem.

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