

PINpoints

PROCESSES OF INTERNATIONAL NEGOTIATION



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The Processes of International Negotiation (PIN)

The Processes of International Negotiation (PIN) Program is a not-for-profit group of scholars and practitioners that encourages and organizes research on a broad spectrum of topics related to international negotiation seen as a process. Its objectives include the dissemination of new knowledge about negotiation as widely as possible and developing networks of scholars and practitioners interested in the subject, for the purpose of improving the analysis and practice of negotiation worldwide.

The PIN network includes scholars, students and practitioners of international negotiation. The organization is presided over by a Steering Committee, which organizes the many activities and publishes the PIN review PINpoints on its website www.pin-negotiation.org. PIN has a training wing named POINT (Program on International Negotiation Training), with 35 well-established experienced trainers in international negotiation and mediation processes.

The PIN secretariat is based at the Geneva Centre for Security Policy (GCSP) and the Anwar Gargash Diplomatic Academy (AGDA) in Abu Dhabi. There are currently 12 PIN Steering Committee members (in alphabetical order):

- Dr Karin Aggestam of Lund University;
- Dr Khalifa al-Suwaidi of the AGDA;
- Dr Mark Anstey of Nelson Mandela University;
- Dr Guy Olivier Faure of the Sorbonne;
- Dr Fen Osler Hampson of Carleton University;
- Dr Paul Meerts of Leiden University;
- Dr Valerie Rosoux of the Catholic University of Louvain;
- Dr Rudolf Schüssler of Bayreuth University;
- Dr Mikhail Troitskiy of Wisconsin University;
- Mr Tobias Vestner of the GCSP;
- Dr Sinisa Vukovic of the Johns Hopkins University
- Dr I. William Zartman of the Johns Hopkins University SAIS.

Every year the Steering Committee conducts a workshop devoted to the analysis and improvement of the practice of an aspect of negotiation, involving scholars from numerous countries. After the workshop these papers are

revised for publication. PIN has published a book per year out of these workshops. Topics generally fall into one or both of two categories: conceptual issues, often bringing together another conceptual area that has hitherto not been combined with negotiation, and current issues. *Power and Negotiation* (2000), *Escalation and International Negotiation* (2005), *Negotiated Risks* (2009), *Diplomacy Games* (2009) (on formal modelling), and *Endgame* (2019) are examples of the first; *Negotiating the Comprehensive Test Ban* (2010), *Negotiating European Union* (2003), *Climate Change Negotiations* (2010), *Negotiating the Intifadat (Arab Spring)* (2015), and the upcoming *Negotiating Identity Complexities in a Fragmenting World Order in 2024* are examples of the second.

The Steering Committee also offers mini-conferences on international negotiations in order to disseminate and encourage research on the subject, where the inviting host pays for room and board and PIN pays for transportation. Such road shows have been held at the Argentine Council for International Relations, Buenos Aires; Beida University, Beijing; the Center for Conflict Resolution, Haifa; the Center for the Study of Contemporary Japanese Culture, Kyoto; the School of International Relations, Tehran; the Swedish Institute of International Affairs, Stockholm; the University of Cairo; University Hassan II, Casablanca; the University of Helsinki; the UN University for Peace, San José, Costa Rica; the University of Economics, Prague; and the Mediterranean Academy of Diplomatic Studies (MEDAC), Valletta.

PIN has been hosted by the International Institute of Applied System Analysis (IIASA, 1986–2010), the Clingendael Institute (NIIB, 2011–2017) and the German Institute of Global and Area Studies (GIGA, 2018–2022).

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1. Editorial: PIN Has New Hosts

Paul Meerts

The Processes of International Negotiation (PIN) Program has moved from the German Institute of Global and Area Studies (GIGA) to the Geneva Centre for Security Studies (GCSP) in coordination with the Anwar Gargash Diplomatic Academy (AGDA) in Abu Dhabi. In May 2023 PIN had the honor to be hosted by the AGDA for a book workshop, a roadshow, workshops for AGDA students, and meetings with the directors of the AGDA and GCSP and their staff. In spring next year the annual conference will be held in Geneva. The PIN website, www.pin-negotiation.org, can now be consulted on the GCSP website, and includes news on the Program on International Negotiation Training (POINT), involving PIN associates.

The PIN Steering Committee welcomed a new member: Karin Aggestam from Lund University, as well as two host members: Tobias Vestner from the GCSP and Khalifa al-Suwaidi from the AGDA. After a term of one year – during which he was responsible for handling the transition to our new hosts in a smooth way – Rudolf Schüssler handed over the rotating PIN chair to Mikhail Troitskiy.

PIN originated at the International Institute of Applied Systems Analysis (IIASA in Laxenburg, Austria) in the 1970s, based on the plans of the IIASA's first director, Howard Raffa. In 1987 its first conference was held at the IIASA, and many more would follow. At the beginning of the 1990s a Steering Committee was installed which published the handbook *International Negotiation*, and more than 30 books were to follow in the course of 30 years, as well as 52 issues of its review, *PINpoints*. In 2022 it succeeded Johns Hopkins University SAIS as producer of the journal *International Negotiation*. After being hosted by the IIASA, the Netherlands Institute of International Relations "Clingendael" (The Hague) acted as host from 2011 to 2017, followed by the GIGA (Hamburg) until 2022.

In this issue of *PINpoints* the reader will find the summaries of the chapters of the upcoming PIN book *Negotiating Identity Complexities in a Fragmenting World Order*, edited by Mark Anstey and Paul Meerts, which will be on the shelves in the first half of 2024. They are followed by two articles on the war in Ukraine, an article on "Guided Mediation" and a "Travelogue."

As far other activities are concerned: PIN has been invited by the Mohammed VI University in Rabat for a roadshow next October, while it held a roadshow in Malta last October at the invitation of Stephen Calleya, director of MEDAC (the Mediterranean Academy of Diplomatic Studies). The result of the Malta roadshow has been six articles, published and edited by Monika Wohlfeld in the volume *Negotiating a Fragmenting World*, which appeared in January 2023.

2. The Effect of Ukraine and Entropy on Negotiation

I. William Zartman

The Russian aggression in Ukraine and the general system of world disorder that accompanies it pose enormous challenges to the established concepts of negotiation, and more broadly of conflict management and resolution. Yet, importantly, there are still some key applications that remain and that may be obscured by the current context.

Most basically, negotiation operates under the ethos of equality. Its rule for taking decisions is unanimity, meaning that the parties are in a formal position of equality, since each party has a veto. De facto, of course, parties are not equal in power, but the equality ethos colors the proceedings in many ways. Optimally, parties seek a win-win outcome, achieved by each side's giving something to get something. While these "somethings" may not be strictly equal, they are generally at least equivalent, with costs, benefits, alternatives and needs taken into account, and they are judged to be equivalent or satisfactory by the parties or they would not agree. The negotiation process is presented as one of compensation (integration or exchange), i.e. working toward a positive-sum outcome for the parties, or of concession (distribution or division), i.e. splitting the difference more or less equally between the parties. The third mode can be characterized as reframing or construction, which seeks a new definition of the problem with a focus on problem-solving to the satisfaction of each party.

These are basic, elementary notions underlying the process, and their emphasis is both strategically and definitionally necessary. It is important to accept the opponent as a legitimate party with its own legitimate position, and to recognize that the opponent needs to receive something in the outcome in order to assure its adhesion to an agreement that also provides the first party with a preferred outcome, i.e. a process of giving something to get something in both the outcome and the process. Even the identification of an opening or ripe moment emphasizes the mutuality or shared sense of a hurting stalemate as necessary for negotiation to begin.

It is often said that negotiation and mediation should be free of moral judgement, that analyzing and intervening parties must avoid taking sides, and that what the parties decide to agree to is the requirement for an agreement; as Stephen Low, US ambassador to Rhodesia during the Lancaster House talks, said, "We have no preference; what the parties agree to is agreeable to us." The meaning of "justice" in the agreement is left up to the parties, since an absolute definition of justice has eluded authorities for centuries; in many cases, if not all of them, it depends on cultural, situational, historical or contextual elements unique to the case (Zartman et al. 1996). The whole idea is to achieve a just outcome between engaged parties, regarding justice as one of the forms of equality that include equivalence, equity, proportionality, and compensation, and the parties' acceptance of the outcome testifies that it is deemed just according to each party's criterion (Zartman 2023). Bosnian president Aliya Izetbegovitch said at Dayton, "It's not just, but there's no alternative." External criteria of justice – and, indeed, equality – can be and have been debated interminably, and they are not irrelevant: the August 1939 Molotov-Ribbentrop agreement was just and equivalent from the parties' points of view, but manifestly unjust and unequal from the point of view of the absent party, Poland. Yet, in fact, negotiation analyses generally hold to the view that justice is a relevant but internal matter to the proceedings, and consideration of an agreement at all is an external, situational issue.

The current situation in Ukraine upends these ideas and pushes aside notions of conflict management – let alone resolution!

2.1 Stalemate and Outcome

In the current situation in Ukraine the second worst outcome would be an agreement negotiated according to current notions. In recognition of the mutually hurting stalemate that makes for a ripe moment, each side would recognize its present inability to overcome its opponent. A likely exchange in the present context, recognizing the legitimacy of both sides and the nature of the problem, would be for Russia to end its military activities and violence in exchange for its current territorial holdings, while Ukraine would end its military activities against Russian positions in exchange for peace, and leaving the parties to pursue their goals by alternate, political means. It of course would also leave Russia with all or some of its irredentist gains at some cost and Ukraine with no tangible gains at its enormous economic and human costs – process equality would leave aggression rewarded.

Yet this eventuality has been evoked by many commentators, who add in the cost of continuing the war (Druckman & Meerts 2022). This probably underlies the call for negotiation issued by Chinese president Xi. Although it translates negotiation ideas literally, it also involves an additional notion frequent in negotiation analysis and especially in mediation. Conflict expressed in violence cannot be divorced from the substantive disagreement underlying the parties' positions, an aspect that unfortunately raises the issues of a deeper dimension of justice. Eventually this may mean that that peace outweighs justice (Zartman & Kremenik 2005). The Peace Now movement in Israel was met by a wider movement for Peace and Justice; the DC Council of Churches' call for peace in Ukraine in 2022 was met with sad dissatisfaction by the Ukrainian Orthodox Church, which looked for a reversal of territorial conquest and an end to genocide. Peace alone can be a sham, although tantalizing, like all shams.

Conflict management or the cessation of violence is envisioned as the creation of space and time to let hostilities settle and give parties the chance to work things out peaceably and politically. In reality, this idea does not hold. Conflict management removes the pressure for parties to look for further agreement: with a truce to violence, there is little hurt to the ensuing stalemate and so little pressure for further negotiation. Only a return or a threat of return to conflict violence provides that pressure, although it generally worsens the situation, raising the pressures instead against accommodation. Ceasefires such as in Nagorno-Karabakh (1993, 2021), Israel (1948, 1974), Cyprus (1964, 1974), Western Sahara (1991, 2022) and Korea (1960, 1993), to mention a few, generally lead only to violence requiring more ceasefires when the unconsummated promise of a subsequent resolution did not materialize. Unless the parties turn immediately to completing the process toward resolution, with the threat of return to violence brandished when necessary to encourage them to return to negotiations, there is little likelihood of negotiations taking place to end a conflict equitably after a ceasefire. An additional exceptional condition would be the presence of a stronger party managing the process and making continued stalemate painful.

It is clear that standard negotiations and conflict management notions based on an ethos of equality are not appropriate or adequate to guide negotiation efforts to end the fighting in Ukraine. Standard analysis and guidelines lead only to an unjust peace – if peace at all – by any external definition of justice. The broadest implication is that the prescriptive application of negotiation analysis and conflict management ideas is unable to handle an admittedly major and unusual situation such as Russian aggression and genocide in Ukraine. In light of this, it is worth going back to 424 BCE and listening to the Melians confronting the Athenians in Thucydides' *History of the Peloponnesian War*:

Athenians: You know, and we know as practical men, that the question of justice arises only between parties equal in strength, and that the strong do what they can, and the weak submit.

Melians: As you ignore justice and have made self-interest the basis of discussion, we must take the same ground, [that] it is in your interest to maintain a principle which is for the good of all—that

anyone in danger should have an equitable treatment and any advantage, even if not strictly in his due, which he can secure by persuasion

Athenians: Apparently you do not realize that safety and self-interest go together, while the path of justice and honour is dangerous; and danger is a risk If you are wise, you will avoid that fate. The greatest of cities makes you a fair offer, to keep your own land and become her tributary ally; there is no dishonour in that. ... The most successful people are those who stand up to their equals, behave properly to their superiors, and treat their inferiors fairly

Melians: Our resolution is unaltered ... and so we will try and save ourselves. Meanwhile we invite you to allow us to be friends to you and foes to neither party, and to retire from our country after making such a treaty as shall seem fit to us both (Thucydides 1960, Bk V: 89–112).

The statement of both realist negotiation and conflict management principles is clearly applicable two and a half millennia later, and in fact fits the current situation rather well. The negotiation and conflict management approach has sought to present itself to the inexorable claims of power alone and promote creativity in contrast to structural inevitability. The Melians fell victim to this inevitability while fighting it; their creativity and persuasion were not enough, and their allies left them.

2.2 Realist Negotiation and Conflict Management

While Athenians and present-day realists alike would decry those who “regard the future as more certain than the present and allow wishes to convert the unseen into reality” (Thucydides 1960: 272), an analysis that refuses to accept the future as given and pursues the conversion of wishes into reality can combine both approaches and provide guidelines for more productive and creative prescriptions.

To begin with, a deeper understanding of ripeness can open up some productive results. In the current stalemate, both sides are attempting to change the balance, and so the situation has not reached the level of a mutually hurting stalemate that is recognized by both parties. Ukraine is indeed hurting from the vicious Russian campaign of destroying civilian targets; Russia denies its opponent’s hurt and only promises more of the same. Until the situation is evened out, negotiation will be unproductive. The stalemate has to be made to hurt on both sides, at least equivalently, to force them to return to the negotiation ethos. To do so indeed requires a resort to realist tactics in order to provide a future more certain than the present. The Melians’ experience emphasizes the importance of maintaining a broad alliance to overcome an apparent imbalance.

Negotiators then need to come to an initial understanding of the formula under which they are operating, defined as a common sense of the nature of the conflict, the governing sense of justice and the terms of trade. The conflict is not merely over an act of aggression or even of genocide, but over the breach of the norms of the international order, whose infringement demands punishment so that impunity does not become the new norm. The applicable notion of justice is clear, but it must not only cover the wrongs suffered by Ukraine, but also avoid creating a sense of wrong felt by Russia.

Once negotiations begin, other experiences provide useful guidelines.

However successful the Ukrainian counter-offensive might be, the conflict is not like the Second World War, which ended with unconditional surrender. Russia will remain and will need to be offered measures to accommodate its continued existence and affirm its continued importance. The lesson comes from the Napoleonic Wars, when French foreign minister Charles Talleyrand appeared unexpectedly at the Congress of Vienna (1815) and declared that it was not France that had been defeated, but Napoleon, and France was ready to take its rightful place among the leading five European states. This lesson is confirmed by the negotiations for the Treaty of Versailles (1919), where

Germany was absent, blamed and punished for the First World War, and left to start a war of revenge two decades later. How the Russian author of the aggression against Ukraine will be best dealt with is a serious matter and challenge to our creativity. As noted, it is a peace treaty and conflict resolution that are needed, not a ceasefire or managed conflict.

The terms of trade for the negotiations also pose a challenge. What is appropriate to give and to get? There are three main categories of issues: territory, security and reparations. Ukraine wants the full return of all its territory. The most difficult issue is Crimea, which has been occupied by Russia and emptied of Ukrainians for a decade, and populated mainly by people identifying as Russians, but blocking more than half of Ukraine's Black Sea outlets. The other area is Donbas (comprising the Luchanskiy and Donetskoy oblasts) and the Karkinitzki-Azov coast. The latter is a high priority for Ukraine: there is no natural way to cut the Donbas oblasts into east-west sections. The security issue concerns the form that European or Western membership for Ukraine would take. The strongest form would be that of NATO membership, which would be anathema to Russia but essential for Ukraine's future security; EU membership is "softer" and therefore more likely. Ukraine is the largest country in Europe and the third largest by population. Intermediate proposals involve a "NATO-like" guarantee or a disarmed or otherwise neutralized eastern buffer zone on Ukrainian territory of possibly 200 km in width between Ukraine and Russia—. The third, reparations, is probably the hardest for Russia to swallow because it is so tangible and symbolic at the same time. Ukraine has been careful to minimize damage on Russia territory to undercut the chance of counter-claims. But there are other symbolic issues, some less tangible, including war crimes and crimes against humanity, reconstruction aid, and lingering sanctions. As is always the case, a balance between sustainable peace and appropriate justice is the necessary challenge for a stable outcome.

In a word, a rush to conflict management would destroy any possibility of resolution. Much as it would trouble negotiation specialists and conflict managers, realism has its place. Much of the current negotiations analysis after the end (so to speak) of the Cold War has focused on internal or intrastate conflicts that take place within a newly reasserted system of world order, where the standard findings of the approach are deeply insightful. The current situation is something different – a breach of the system itself, not just by a major incident, but in many other ways (Zartman & Vukovich 2019; Anstey 2022). Realism has much to offer, but it cannot manage the conflict it has analyzed. Conflict management and resolution and negotiation then have their turn. The challenge is enormous.

References

- Anstey, Mark (2022) *Russia in Ukraine: Entrapment Dilemma*, in *PINpoints*, 51, 5–10.
- Druckman, Daniel and Paul Meerts (2022), *War or Words: How to End the Russian Invasion of Ukraine*, in: *PINpoints*, 51, 13–16.
- Thucydides (1960), *History of the Peloponnesian War*, Oxford: Oxford University Press.
- Zartman, I. William (2023), *Justice in Negotiation: How and Where to Find It and Use It*, in: *International Negotiation*, 29, 3.
- Zartman, I. William, Daniel Druckman, Lloyd Jensen and Daniel Pruitt (1996) *Negotiation as a Search for Justice*, in *International Negotiation*, 1(1), 79–98.
- Zartman and Victor Kremenyk, eds (2005), *Peace vs Justice: Negotiating Forward- vs Backward-Looking Outcomes*, Washington DC: Rowman & Littlefield.
- Zartman, I. William and Sinisa Vukovic, eds (2019), *New Diplomacy for New Conflicts*, special issue of *Global Policy*.

3. The Art of the Ceasefire

Robert Weibel

Whether the result of an art, science or dumb luck, ceasefires de facto herald a cessation of hostilities. Data collected by the Uppsala University identifies 285 distinct armed conflicts having taken place since 1946, and a quick look at Wikipedia's lists of wars¹ makes for sobering if not depressing reading. A closer look reveals that a huge proportion of this post-1945 fighting has raged outside of Europe, and this protective insulation led many to naively (and arrogantly) believe until very recently that war in modern Europe was impossible since it had attained a higher level of civilization, etc., etc. Proof again that people do not change; they die: the Second World War generation with their blood and guts experience have permanently disappeared and the notion of war has morphed into a creature to be quieted at all cost or a surreal video game that excludes terror and horror. During the Balkan Wars in the 1990s many thousands of Europeans served as part of UN missions and humanitarian operations, but shamefully never received any collective recognition nor appreciation for their efforts and, in many cases, trauma. Thus the war and their experience were sanitized!

What makes the second 21st century Ukrainian war appear so unique and "difficult" is that 'we' are directly and/or collaterally implicated through geographical, political and material proximity, and not least by managing the humanitarian and refugee challenges of millions of displaced persons. Furthermore, this war has resurrected "classical" large-scale warfare with its thousands of tanks and vehicles, artillery and rocket systems, trenches and large troop formations, as well as the indiscriminate targeting of civilians and non-military objectives. No romantic small unit superman special forces here!

The view from Africa, Asia, and Latin America is obviously more distant and occasionally self-serving and opportunistic – the historical tables have turned. Yet, compared to past conflicts, the Ukraine war differs hugely in that the potential of direct nuclear confrontation has been threatened on and off, with or without the use of hypersonic weapons. Is this a bluff or for real? Peter and the Wolf? In such a context of confusion and uncertainty, the Hobbit urge to grow vegetables in the Shire and dream the violence to go away could be tempting. The instantaneous Swedish and Finnish applications for NATO membership speak volumes about another reality – these two countries have no desire to invade anyone. In fact, after Napoleon and Hitler, no sane person wants to invade Russia. Ever. Switzerland's repeated and public insistence on respecting the rule of law and territorial integrity is historical and self-interested because it is the most basic guarantee that smaller states have to protect their liberty and independence.

The desire for a ceasefire is understandable, but who is promoting it the most? Is it the battling Russians and Ukrainians, or "we" the increasingly implicated backbenchers? Ceasefires do not bring peace; mutual exhaustion and depletion of resources or military victory do, but for how long? Does ceasefiring allow the parties to catch their breaths and start all over again? Ceasefires are a tool, not an end-all, they buy time and hope – perhaps for humanitarian operations to take place safely or to give diplomacy and negotiation a chance? Some questions need answering: would talks address "core" issues? Which core issues? Are previous arguments and declared positions smokescreens or real concerns and objectives? Do justifications and arguments become self-fulfilling prophecies? What's needed not to lose face? Even now, after 11 months,² do we know? Terminology has changed: special

¹ https://en.wikipedia.org/wiki/List_of_wars:_1945%E2%80%931989.

² This article was first published in January 2023.

operation versus stop fooling around to produce more hardware. For Ukraine, survival is obviously the number one priority because it is ground zero, its cities and countryside are being reduced to rubble and wasteland, its people listening for warning sirens and living below ground. And what about Russia? Whose Russia? There are too many unanswered questions and too few answers to them without which nothing can get started.

3.1 Talks

We need to accept that meeting, talking or possibly negotiating is perceived as life threatening by those directly concerned, because it might signal weakness. If you are winning, why talk? Dayton only happened because the fortunes of war turned dramatically against Serbia. Formal diplomacy was desecrated before the start of the Ukraine war and used to mask invasion. Now nothing said or done is taken at face value, because the risk of miscalculation is too high. Structured informality can lead to multiple lines of communication that need to be coordinated to reduce mixed messaging and misunderstanding(s). There is mediation competition, however: the temptation of trying to win the Noble Peace Prize is irresistible.

As a rule, talks begin informally, under the radar, never openly. Why? Because if they fail, nobody loses face, no prestige capital is squandered. They can occur directly or with agreed third-party facilitators (maybe mediators) who can help decipher the publicly shared ultimatums and declarations loaded with unacceptable demands, hard principles, and so-called “red lines” (how red? blood red?), and identify what flexibility might exist to accurately uncover true priorities and develop a future negotiation agenda (or flight plan). But we are nowhere near there yet, and are at best at the stage of talks about talks (already a miracle).

Any workable deal will need to meet the stress tests of not setting dangerous precedents, keeping internal cohesion because coalitions are facing off, and defining historical “legacy” optics because so much blood has been spilled. If the current zero-sum context can successfully address legitimate security, longevity, and transactional concerns with incremental confidence and relationship-building measures (themselves negotiable items), then there is hope. But is there the will?

Mediators need to appear neutral and impartial and be believed to be so. I have often wondered who could have mediated the First Gulf War (I’m still wondering). Key to the 1992 Mozambican peace talks were Mozambican bishops trained in mediation (but fighting resumed in 2020). For someone profiling themselves (and by extension their institutional persona) to kick-start a negotiation process via mediation, the perception by the conflicting parties that this third-party actor (facilitator-mediator) is “sufficiently” impartial (i.e. that this resolution effort is not aiding and abetting the enemy) is key. Clearly, some mediation superpowers (Norway, Sweden, Finland) are disqualified with regard to Ukraine, but it is to be hoped that Switzerland has a role to play. Or Uruguay. But the word “resolution” always scares me when referring to international conflict: while reaching some degree of mutual understanding to reduce the level of violence for a limited period is often doable, resolving the core contentious issues once and for all is the mediator’s Holy Grail. To gauge conflict resolution potential, five basic contextualized questions need to be answered:

- Do the disputants have the wherewithal to pursue their conflict indefinitely, and what happens if they do/do not?
- Do the sides believe they can win unilaterally, hence excluding negotiation and its joint decision-making character?
- What is the risk (reputational, strategic, etc.) for the conflicting parties to engage in conflict resolution processes? Why should they risk entering into a give-and-take negotiation environment?

- Does the third-party actor have leverage over the disputants to “encourage” them to engage in conflict resolution?
- Does the third-party actor benefit from sufficient trust and the perception of impartiality by the conflicting parties to perform operationally as a facilitator/mediator?

Depending on this basic analysis, one can determine whether a situation is “ripe” for possible conflict reduction and potential resolution.

Negotiation is never a level playing field in terms of the importance of the subject matter under discussion. There are always frontline states and/or actors whose interests are directly at stake depending on (1) whether any solution is found at all, and (2) what the concrete results imply in terms of implementation, the setting of standards, precedence, legal bindingness, etc. The “elephants” of the world are rarely if ever impartial (although for strategic reasons they may claim to be neutral), because given their size and their concomitant constituencies, whatever happens has direct implications “back home.” And they are competitors on so many levels outside of the purely conflictual one.

Over more than four decades of Cold War, multiple proxy wars raged across the globe. In Korea, Vietnam and Afghanistan the superpowers funded opposing sides or fought directly against armed groups, but never directly face-to-face. More recently, in the conflicts in Iraq and Syria, proxies are proxies to other proxies. Sound confusing? It is. Most wars have involved outside “actors” either directly or indirectly committed, and not just states (please read between the lines), and they still do. There is nothing really new here.

Ultimately, for a Ukrainian peace negotiation process to succeed, highly proficient negotiators who give it their all and have the power to deal deals (that are not micromanaged) will be needed. Contextually, the degree to which the fortunes of war align with the (un)attractiveness of a negotiated deal, the command-and-control of those implementing the deal on the ground, and who gets the black hat (there is always a loser – can they become spoilers?) will determine much. Not even the best “impartial” mediator can overcome such forces alone, but at some point the shooting will need to stop. As always, the devil is in the details.

This contribution is a reprint with the permission of the author and the publisher from Die Weltwoche, January 19, 2023.

4. Summaries of draft contributions to the PIN book to be published next year entitled *Negotiating Identity Complexities in a Fragmenting World Order*

4.1 Prologue: Identity, Fragmentation and Negotiation

Mark Anstey

Where “schism” refers to a fundamental division with a clear line of fracture, “fragmentation” suggests a concurrent breaking into many parts, in many directions, at many levels. It suggests a fundamental crisis of coherence in a system of international and national relations. However, things seldom just fall apart. A tension between cohesion and fragmentation occurs in a context of forces pushing or pulling a system apart, but also pulling its various parts together. Systems theory suggests that social entities enter an organizational crisis when the structures, institutions, and rules of engagement that render them functional lose fit with shifting stakeholder goals and internal and external power realities. If they cannot adapt, they perish. Social systems are shaped by human choices, and human choices are made within exchanges between identity groups. The capacity of a single social actor to coerce others into a political and social system of its own preferences is constrained in a world of multifaceted interdependencies. Actors generally have to find ways to work with others in order to protect or further their own interests. Adaptive change then demands flexibility and mutual accommodation on the part of many actors – and this challenges existing comfort zones, value systems, organizational arrangements, hierarchies of authority, and rules of engagement.

In this book contributors explore the concept of identity as a force for systemic coherence and fracture across a range of scenarios, and the usefulness of negotiation as a means of managing change and regulating and resolving tensions that arise in processes of change. If system change is not to be coerced, it must be *negotiated*, but this requires that social actors recognize the legitimacy of one another’s interests; that they engage with meaningful intent to resolve their differences; and are willing to engage in concession exchanges, reframe issues or problem-solve their way to a settlement they can live with. But capacities for mutual accommodation are not unbounded. Tensions escalate in contexts of heightened aspirations, maximalist demands, resistance, frustrated wants, hardened positioning and polarizing us-them rhetoric.

In a time of very rapid change, technological advances have fundamentally reshaped societies everywhere: how work is done; how wealth is created and distributed; how economic policy-making and trade relations are conducted; how we access information and communicate; how we conduct political campaigning, electoral processes, and social mobilization; how we deliver health systems ... and how we conduct our wars. After the Second World War the imperial world gave way to an international system based on a logic of stability through sovereign ethno-nationalist states (now about 200), coordinated in various ways through international bodies such as the UN. But superpowers have remained in constant contests for ideological and economic control across developing regions; imperial powers left behind borders that are out of sync with indigenous identity groups; and huge regional disparities in development and wealth continue. The cohering grand narratives of religions and ideologies have been eroded. Eight billion people now crowd the planet (up from 1.5 billion a century ago). At an *international level* the contest for regional influence between the West led by the United States, China and Russia has given rise to violent confrontation in Ukraine, and seen the UN deeply internally fragmented, undermining its capacity to deliver on its original mission and mandate. Stable sovereign nation states were seen to be the linchpins of a stable international relations system. But the picture at the level of *nations* is again one of fragmentation along identity lines. Across the world

65 countries have built walls to keep out unwanted identity groups and ideas; 59 secessionist groups are demanding states of their own, but are being kept in already existing states; identity groups defined by clan or belief contest political control across Africa and the Middle East, disabling the development of a national identity and internal stability; while wars, poverty and oppression have given rise to 100 million displaced people, with surges of migrants in numbers that are changing the liberal politics of Europe and North America.

Identity groupings through time and across societies define themselves and have been defined in terms of color, culture, tribe, language, religion, ideology, values, class, geography, territory, profession, gender, sexual orientation, consumer patterns, responses to vaccination programs ... and mixes of these. All of us are born into identity groups within which we are programmed with a narrative of who "we" and "they" are and who we are not; rules of interaction; and notions of who can be trusted and who is a threat. If people define themselves simply in terms of the negative identity of others, then internal coherence becomes dependent on being against others.

The convergence of social structures and values through economic and technological development may be true to a point, but clearly has limits. The mastery of technologies, supportive organizational designs, and production incentives and trade relations have not seen all corners of the earth become convinced of the values of liberal democracy, human rights or capitalist economics. Indeed, some understand them to be sources of instability and conflict. Those who live in such "free" societies are unconvinced by authoritarian or theocratic regimes or those structured along traditional communal lines. Understanding cultural differences to facilitate transactional trade and business relations is important, but transformational agendas that fundamentally challenge core beliefs, values and cultural practices of identity groups generate resistance.

Ethnic and belief identities remain salient internationally, but differences alone are not the issue. Conflict between identity groups occurs in contexts where they see each other as a threat to their security or ambitions, or as victims of injustice at the hands of the other. *Perceptions of injustice* fuel conflict and polarize identity groups. We live in a world of rising *inequalities* in wealth and opportunity between and within nations. This fosters social breakdown, distrust of political institutions and of corporations that in the age of globalization "denationalized" themselves, spreading their operations, workforces, sourcing arrangements, profit declarations and tax obligations across countries in a search for the best returns for shareholders. And it generates new tribes in the form of elites vs the rest, particularly where there are market-dominant minorities with divisions sharply defined by *ethnicity*. Fault lines of *gender definition and sexual orientation* are being lived out with new intensity, dividing churches, legislatures, and sports administrators. On top of this, nations are struggling with intergenerational claims: backward-looking claims for suffering as a consequence of slavery and colonialism run concurrently with future-oriented claims over climate change and the push to move away from a carbon-based economy. And then, of course, intergroup hatreds and tensions are deepened once there is resort to *violence and war*.

Internet technologies that once promised to draw the world's peoples closer have been harnessed by states and a few corporations as vehicles of powerful influence over consumer behavior and social and political perceptions and choices. They are used as a means of rapid mobilization by social movements with a reach across nations. And they have been "weaponized" in international relations, fueling security fears and interstate distrust. The usefulness of the internet to push ideas and values prompts fears of a cultural invasion, along with threats of election interference, the penetration of national security systems, and economic controls. A constant struggle involving invading one another's internet space or building firewalls to keep others out is under way.

Identity shapes negotiation in many ways. It is within our identity groups that we learn who we are, who we are not, whom we are against, whom we can trust, who is a threat ... and how we engage with others on what issues. It is where we acquire core values and beliefs and what really matters or is worth fighting over; and where we learn the skills of managing and adjusting to change and fulfilling our wants and needs. While some argue that identity cannot be negotiated, there is evidence that it is often malleable. Group identities harden in conflict scenarios and can deepen polarization, but experience indicates that even in seemingly intractable conflicts such as those in South Africa, Northern Ireland and Colombia they can also be softened. And if parties act in good faith, intergroup identities can be reframed, structures redesigned, systems reoriented, protocols developed, and steps introduced to facilitate mutual accommodation and intergroup tolerance, minimize breakdowns, and regulate the expression of breakdowns when they occur.

4.2 Negotiating Identity: Cohesion and Fragmentation

I. William Zartman

Two basic reasons make people hang together: territorial community and imagined community. Two basic reasons underlie conflict: hostile neighborliness and hereditary enmity. These forces are two sides of the same coin, and the latter work to reinforce the former. The initial thesis of this inquiry is that parties often need a negative identity – an outside enemy – to hang together; positive identity is often not enough. How does this affect negotiations and how to negotiate in this situation? And when the external enemy disappears and cohesion fragments, the second question – a new one, rarely addressed – is: how does this new situation affect negotiation?

Cohesion comes with a common opponent and goes when the opponent disappears; the consequence is often a scramble for a new identity, negative or positive (positive is of course healthier and more elusive), or fragmentation leading to cohesion at a lower social level. One reaction to the dissolution of negative identity has been replacement, to find something else to unite against: cohesion requires a new scapegoat. Where a new cohesion cannot be found at the old level, either negatively or positive, it tends to drop to the lowest level, where people feel comfortable with a sense of who they are – and often also who they are not.

Two situations present themselves to the challenge of negotiation: a conflict where the parties cohere internally and separately through strong negative identity, and a situation of fragmentation, where identity has fallen to the level of the component pieces. Conflict-induced cohesion is attained at the cost of hostility and wariness in dealing with the opponent. Negative imaging shifts the conflict from the issues in dispute to the parties themselves, and thus inhibits attempts to resolve the contentious issues.

4.3 Identity in Diplomatic Negotiation: a Double-Edged Sword

Paul Meerts

Negotiation research has to become less distorted by identity issues between scientists (ego issues). Researchers should participate in real-life negotiation processes – if possible – that include as many practitioners as possible. More attention should be given to bridging the gap between research and training.

The differences in status and mechanics between diplomats and other public-sector negotiators foster identity barriers between them, but these should be diminished in order to create one – more or less homogeneous – workforce in order to facilitate more effective negotiation processes.

Context is decisive in understanding what kind of negotiation process is applicable in a given situation, while the creation of context through regime building greatly helps to add value to negotiation as a decision-making and conflict management device. Identity issues might distort this process.

Negotiation is a more effective instrument than war. However, those who feel that their identity – and thereby their very existence – has been threatened will be more inclined to use war instead of words. However, mediation and negotiation might recur if it is not possible to manage identity issues.

The evolution of negotiation as an alternative to war has been shown to be successful as the centuries went by. Nowadays more conflicts are managed by negotiation and mediation than ever before. This does not mean that war is unlikely to overrule negotiation, as the Russian-Ukrainian war sadly shows.

Diplomatic negotiation will remain countries' main instrument both inside and outside international organizations. The problem is that, because of interests and identity issues, member states will keep international regimes as weak as possible, thereby reducing the effectiveness of negotiation and mediation.

The ability to handle the effects of the positive and negative aspects of identity on the diplomatic negotiation process is the essence of the art and science of diplomacy. This task has become more of a burden as the world is increasingly fragmenting, partly because of the drive of many states to prefer competition over cooperation.

4.4 Negotiating Problems of Fragmentation at the Level of States

Mark Anstey

The focus in this chapter is on identity fragmentation at the level of the state as the assumptive linchpin of the modern international relations system. The devastation of two world wars made the logic of a post-imperial era of peace based on multiple sovereign states an attractive one. It offered hope for a world of peace and stability in which people freed from the yoke of others could cohere around a national identity, live out their various religions and cultures without interference, and engage bilaterally and through international institutions on matters of common concern. But imperial ambitions did not end in a context in which two superpowers with competing ideologies and played out their hostilities across the developing world in a Cold War. And in many instances individual states struggle to achieve internal coherence and stability.

From 69 in 1920, the number of nation states in the world has risen to 206 (193 of which are full members of the UN). Many struggle with problems of poverty and internal fragmentation. Essentially a functional modern state:

- operates within a spatial territory inhabited by a substantial population organized as a distinct society;
- claims sovereignty over all other social institutions, and has monopoly of the use of force over a territory;
- regulates social activities through a system of law, comprising socially sanctioned institutions that coordinate the making and enforcement of collectively binding decisions on its members;

- is able to collect revenues and provide public goods through its command of bureaucratic resources;
- defines members and non-members, and controls access to and exit from its territory;
- has strong claims to be advancing the common interests of its members; and
- is recognized as a state by other states (Dunleavy 1995: 611).

Central to the concept of a functional state is the idea of a national identity that overrides clan, tribal, or other identities sufficiently for groups to live peacefully together within a particular frame of governance, to pay taxes, to comply with its rules, and to change these peacefully through agreed mechanisms and work collaboratively for the “general good.” In stable states there are usually powerful forces for integration: an official language, a national flag, a national anthem, national education and health systems, a respected national law-making and enforcement system, national sports teams, national products and so on (Hofstede and Hofstede 2005: 18). Three basic means of managing identity tensions exist: partition (“separate fruits”), accommodation (“fruit salad”) and assimilation (“fruit blend”). These find expression in multiple forms across states, in informal living arrangements and formal political design.

But we live in a world in which 100 million people have been displaced by wars, repressive regimes and poverty; in which 65 countries are building walls to keep out unwanted others or their ideas; in which 59 secessionist movements seek independence; in which clans and tribes find themselves separated by borders they did not draw for themselves; and in which some are struggling to design a political system in which all feel safe, seeking their sense of security in clans above wider community. Some countries are making claims for territories they see as previously lost. The world has become a confused mix of failed states, failing states, brutal states, lost states, fortress states, isolationists, secessionists ... and renewed struggles between superpowers each with its own internal divisions.

In a context of rapid change on multiple fronts, social and political systems face constant pressures of adaptability. Analysts of Western societies argue that the surge of populism and nationalist politics is the consequence of a deepening *distrust* of political and economic elites making decisions in a global economy that are not in the interests of national citizens; fears of *destruction* of traditional identities consequent to migration, changing demographics and liberal policies; *relative deprivation* fueled by perceptions of other cultures and globalist policies; and *dealignment* with traditional party structures (Eatwell and Goodwin 2018: xvii-xviii). Others suggest an *atomization* in which liberal secularist values have given rise to multiple identity groups making maximalist demands on the state and each other in a context of increasing mutual intolerance (Chua 2018; Murray 2019). There are pushbacks across Europe against immigration, and Muslim immigration in particular (Anstey 2022).

In a world of troubled and troublesome minorities and threatened majorities, many puzzles exist. In societies bonded by national identity, internal divisions may be managed through the negotiation of coalition governments, federal arrangements and the design of electoral systems. But accommodation has limits if minorities fear permanent marginalization, cultural claustrophobia and deprivation of influence or opportunity; and majorities may resent a perceived erosion of their capacity to govern under liberal dispensations that check their exercise of power through protections of individual and minority rights. Democracy may not unify, but instead aggravate intergroup conflicts. The ideological package of secular liberalism, individual freedoms, democracy and free markets may break up rather than unite groups, and be experienced as producing unfair or inefficient outcomes. Democracy offers numerically large identity groups control over centralized government, law-making and judicial processes, economic and development policies priorities, and the military and police. Universal suffrage promises an end to unfair rule by dominant minorities. But it is no guarantee of clean government, economic growth, distributive justice or human rights protections, and can confront minority groups with permanent marginalization. Even systems boasting extensive individual rights,

opportunities for participation in centralized policy- and law-making bodies, and a devolution of power to sub-state levels may not satisfy desires for independence and realignment.

Troubled minorities resistant to assimilation and unable to negotiate a desired degree of autonomy may seek to create their own state by secession, or a unilateral declaration of independence, or the overthrow of a government through revolution. But international recognition as a new state is complicated, requiring compliance with the 1934 Montevideo Convention: a permanent population, a defined territory, a government, and a capacity to relate to other states, but also now compliance with international law and the UN Charter and resolutions, and guarantees for minority rights (Fazal 2018: 115). UN membership requires a state first to join a regional body (such as the African Union) and from there make application to the UN Security Council, where deep divisions have denied membership to the likes of Taiwan, Palestine and Kosovo. And opposition groups may unite for the purposes of a revolution, only to fragment in its aftermath. State efforts to negotiate internal coherence with minorities through forms of coalition or federalism or regional autonomy can stall if offers of participation are rejected or more autonomy is demanded than a government is willing to offer, and the minorities resort to disruption or violence. And then the state may turn to coercive strategies of repression, elimination or expulsion.

Negotiation can be a tenuous process in a fragmented society. It requires of all the parties involved a willingness to settle differences through some form of compromise, collaboration or mutual accommodation; a commitment to find a workable approach to a problem; and an openness to issues of agency and system legitimacy. And if it is to be institutionalized as the means through which differences are dealt with, it must be felt to be a process that can be trusted to deliver fair and efficient outcomes to all the identity groups involved. Interest fragmentation makes for a difficult negotiation environment.

Identity groups tend to have hard (fundamentalist) cores with softer outer layers. Rising levels of mutual fear, distrust, and negative personification polarize identity groups, strengthen us-them thinking, erode interest in searching for mutual accommodation, and increase the potential for hard confrontation and fragmentation between identity groups at inter- and intranational levels of engagement. Peace agreements are the product of shifts in narratives and mindsets that enable “coalitions of the center” and reconciliation processes to take root. Much depends on leadership philosophies and mobilization strategies, and on how secondary powers use their influence.

4.5 Memory Fragmentation and International Negotiation

Valerie Rosoux

The objective of this chapter is to explore the fragmentation process related to intense and exceptionally powerful memory issues. In the aftermath of mass atrocities, emotions such as grief, anger, resentment, shame, and/or guilt are widely shared and passed on in family circles. In such circumstances memory often jeopardizes political negotiations and constitutes one of the most powerful sources of political and social fragmentation. The chapter is divided into two parts. The first describes the interactions between the concepts used in the study, namely memory, identity and fragmentation. The second explores the scope and limits of the Special Parliamentary Commission established in 2020 to deal with Belgium’s colonial past.

The Belgian case is emblematic in four ways:

- First, the Belgian colonial period is often depicted as a kind of textbook case because of the degree of brutalization that characterized it. Since the publication of Joseph Conrad’s *Heart of*

Darkness, King Leopold II has become one of the symbols of colonial brutality. In 2020 his statues were systematically targeted by the protests against racism that followed the death of George Floyd and the Black Lives Matter movement.

- Besides the extent of colonial violence, the Belgian case is particularly significant for a second reason: the political nature of the Parliamentary Commission. It was composed of 19 Belgian MPs who represent all the elected political parties from the far right to the far left. Some were strongly in favor of the work being done by the commission, while others were entirely opposed to it.
- Third, the mandate of most commissions put in place to deal with the colonial past is typically related to a particular aspect of this past. In the Belgian case the mandate of the Parliamentary Commission was extremely broad. It did not only concern past injustices (i.e. the crimes committed in the Congo from 1885 to 1960, and in Burundi and Rwanda from 1919 to 1962), but also contemporary injustices (i.e. current discrimination against Afro-descendants in Belgium). This twofold ambition allows us to observe the pros and cons of a maximalist approach.
- And the fourth reason that justifies the emblematic nature of the Belgian case is its unexpected outcome – or, rather, lack of outcome. After two-and-a-half years of readings, hearings and negotiations at all levels, the members of the Parliamentary Commission failed to reach a political deal. This failure led to a paradoxical outcome: while the explicit objective of the commission was to favor reconciliation, it reinforced the polarization and even fragmentation of Belgian society.

The starting point of this chapter is two successive participant observations in the framework of the commission. The first took place from August 2020 to November 2021 (a panel of ten experts in charge of writing the initial 689 page report), and the second started in February 2021 until the end of the Parliamentary Commission's mandate in December 2022 (a panel of three experts in charge of writing the final 112 page report).

The analysis then shows that this identity-based fragmentation explains to a large extent the distributive dimension of the processes, the highly emotional character of the dynamics and the pervasiveness of demands for justice.

4.6 Fading Signals: How Fixed Identities Undermined Strategic Stability in the Post-Cold War Era

Mikhail Troitskiy

At the end of the Cold War, acceptance by Moscow and Washington of the need to minimize the chances of their using nuclear weapons was called strategic stability. It was enshrined in the Joint US–Soviet Declaration of 1990 and premised on the shared fear of catastrophic consequences that a nuclear strike would have for the United States, Russia, and humankind in almost any scenario. Over the subsequent three decades this concept of strategic stability deteriorated to the extent of becoming meaningless. Stability in US–Russia relations came to be associated with an ever-expanding range of disputed issues, while preventing the use of nuclear weapons lost its exclusivity. At the same time, Moscow's commitment to reduce the likelihood of a nuclear strike could no longer be taken for granted amid recurrent references by Russian officials to the country's nuclear arsenal as a key source of leverage in situations that fell short of an existential threat to Russia. Strategic stability in almost any sense ended abruptly on February 24, 2022 as a result of Russian threats to use nuclear weapons short of an existential threat to the country's survival.

At the same time, the status that Russia received in both its relations with the United States and globally as a key pillar of strategic stability – in a way, a global public service delivered to humankind by

just two nuclear superpowers – was highly cherished by the Kremlin both during and after the Cold War. Russia's status of a nuclear superpower that must behave responsibly – i.e. sometimes contrary to its narrowly defined national interest – gave Moscow a seat at the table in many key bilateral relationships and multilateral forums.

Why and how did Russia choose nuclear brinkmanship over the potent status of a responsible nuclear superpower that opened so many doors to the Kremlin and allowed it to get away with many actions that would have caused long-term damage to the reputation of any other country? What did the trajectory of the demise of strategic stability in US–Russia relations look like?

This chapter uses the concepts of identity and costly signalling to explore the impact of trends in identity formation on the stability of relations between the United States and Russia since the early 1990s. The chapter argues that the fundamental cause of the breakdown of strategic stability (understood as the minimization of the risk of a nuclear conflict) was the consolidation of Russia's identity as the successor of the Soviet Union that endorsed key Soviet foreign policy legacies and asserted the advantage of Russia's authoritarian rule over liberal democracy while being able to muster much less resources than the Soviet Union. This identity increasingly narrowed down Russia's ability to send sufficiently costly signals of reassurance to the United States and its allies. Eventually, the only appropriate response that Moscow could post to US actions was confrontational, so that any avenues for mutually beneficial cooperation with Russia were foreclosed.

Stability is defined here as a situation in which opposing sides see no benefit in taking disagreements that may arise between them to the extreme. In order to prove their commitment to stability, the sides make mutual promises to avoid direct and intense confrontation and undertake efforts to signal the lack of escalatory intentions. Signals may be sent in the form of high-profile verbal statements or unilateral moves that make the escalation of conflicts less likely. The sides may also choose to conclude formal and informal agreements that it would be costly for the signatories to breach.

For the two nuclear superpowers, the United States and the Soviet Union (and later Russia), the sign of an extreme escalation of a conflict would be a real possibility of the use of nuclear weapons. Such a possibility would manifest itself in threats of nuclear weapons use or measures to significantly increase preparedness for the launch of such weapons. It was therefore natural for Moscow and Washington to agree towards the late 1980s that they needed to avoid escalation to sub-nuclear levels. Realizing at the time that any use of nuclear weapons in a US–Soviet conflict would inevitably escalate to the launch of “strategic” missiles against each other's homelands, the two sides called the lack of incentives to escalate to the nuclear or sub-nuclear level “strategic stability.”

Ensuring strategic stability would have required constant signalling of the lack of plans and intentions to undertake surprise maneuvers. So even if there was no clear intention on the part of the Kremlin to undermine the original notion of strategic stability, the strengthening of Russia's post-Cold War identity made the demise of strategic stability inevitable. Russia's definition of itself as a leader of anti-US coalitions and the Kremlin's positioning of Russia as the only remaining “fully sovereign” country – i.e. prone to disagree with and oppose the United States on any number of issues – dramatically reduced Russia's own freedom of maneuver to signal willingness to cooperate even when it was desired by the country's own leadership.

The only type of moves that were aligned with Russia's consolidated identity over the decade after Vladimir Putin's return to power in 2012 was raising the stakes through thinly veiled threats of destabilization for demands for guarantees by the West of a status quo favorable to Russia in virtually any sphere of US–Russian interaction.

The lesson for practice here is that identity can be a powerful constraint on stability if maintaining stability requires sending costly signals that would contravene the core aspects of the cherished identity. The alignment of identities may not be necessary to ensure the basic stability in the nuclear sphere between two major powers. However, certain forms of incompatibility of identity can result in a negative feedback loop of instability and identity consolidation that leads the sides into a dangerous cycle of conflict escalation.

This may have implications for any future dyadic nuclear superpower relations. For example, if the United States and China emerge as the two rival superpowers whose security relations are based on mutual nuclear deterrence (or even mutual assured destruction), their options for achieving strategic stability through signalling may be limited should they develop highly incompatible identities that raise the domestic and international costs of reassurance. One obstacle to credible stability signalling could become China's potential identity of an encircled great power entitled to a regional sphere of influence on the merits of its long history of being the pivotal power in Asia.

4.7 Political Identity, Non-Domination and the European Union

Rudolf Schüssler

The European Union (EU) is a supranational political entity urgently in search of a common political identity for its member states. This chapter claims that political agents, and above all the EU, need to decide whether they should develop an action-guiding "roadmap" identity, or one that leaves policy choices open and instead offers a shared framework for negotiating policies. With respect to EU political identity, it will be argued that the EU is best served by a framework identity, but not one reliant on the idealistic list of values so often associated with the Union's self-image. The central value should be freedom from domination, a concept that has been highlighted as a democratic core value by recent neo-republican political theory in the wake of Philip Pettit's *Republicanism* (1997). Complications arise because states and supranational entities like the EU might not only dominate citizens, but also other states. This calls for a more versatile understanding of freedom from domination than usual, one that allows for a tradeoff between individual and collective non-domination. With such an understanding, freedom from domination can become the core of a suitable EU framework identity.

4.8 Identification Processes and Cultures of Negotiation in EU Policy-Making

Alain Guggenbuhl

Fragmentations and crises in the European Union have always been inherent to its governance system. This chapter argues that the EU's ability to effectively produce legislative and political outputs despite internal tensions relies on singular practices and norms to accommodate assorted political identities with specific problem-solving tools or cultures of negotiation. The chapter explores three specific dimensions of the EU culture of negotiation and their related identification processes taking place between negotiating parties in EU decision-making processes. The *first* is the interstate culture of consensus building and accommodation of national interests that operates within the Council of the EU, where national representatives can identify either with the common and shared interest or their exclusive national interest. The *second* is an inter-institutional culture of negotiation in which the representatives in the European Parliament rely on an internal negotiation system designed to discourage dissent and Euroscepticism, and aim to identify with a credible political counterpart in the legislative negotiations with EU member states. The *third* is a value-based culture in which the EU's constitutional, political, legal, and external trade rules aimed at establishing a democratic identity are also open to interpretation and require negotiation. All in all, this chapter offers an original vantage

point on the factors of identity formation that may account for the effectiveness of EU policy-making and its external identity.

4.9 Transitioning Identities: the Colombian Peace Negotiations, 2010–2016

Paula Garzon and Frans Schram

After more than 60 years of suffering the most protracted conflict in the Western hemisphere, in 2016 Colombia was able to take a landmark step in the difficult process of moving the country toward stability and the resolution of long-standing inequalities. In moving from a rare period of negotiability to the so-called “Havana talks” in 2010, and finally to the conclusion of a peace agreement six years later, its people turned a page in the country’s history and the complex relationship with the continent’s oldest and largest guerrilla movement, the Revolutionary Armed Forces of Colombia (FARC).

The objective of this chapter is to analyze the effect that “social identities” might have played on the road towards and during a historic negotiation such as the peace talks in Havana, and which shifts – or transitioning – of identities might have occurred during the complex, yet very successful, process itself. To what extent was an identity shift needed to allow two enemies hailing from two different worlds in Colombian society to overcome a seemingly insurmountable divide and sign a peace agreement? In order to understand the nexus between identity (transformation) and peace process, we first provide some historic and sociocultural background, with further details on the FARC’s identity. We subsequently moved to an analysis of the peace process design, the bargaining process and interpersonal relations, largely based on interviews with some 20 principal government and FARC negotiators, high-level politicians, international advisors, diplomats, and Colombian researchers.

4.10 The UAE’s Approach to Resolving Identity-Based Conflicts through Projecting Its Own Identity

Khalifa al-Suwaidi

This chapter will shed light on the approach adopted by the United Arab Emirates (UAE) to resolving identity-based conflicts, which the country has been implementing since it was founded five decades ago and which thus became a salient feature of its strategy for survival. The so-called Arab spring may have tested the rulers’ resolve, yet the country managed to emerge from it largely unscathed, thanks to its malleable approach to dealing with internal and external threats.

The UAE’s approach gained a new dimension as the country began to assume a leading role in the region after the Arab spring. By adopting a secular foreign policy, the UAE sought to resolve identity-based conflicts through convincing opposing parties to sit down at the negotiating table and emphasizing mutual benefit, which would otherwise be lost should conflict persist unabated.

The chapter draws on role theory to argue that the UAE’s approach has its roots in the nation’s founding principles and the rulers’ perceptions of how the UAE should act regionally and globally. These perceptions are referred to as “national role conceptions,” which the chapter uses to shed light on recent conflict resolution endeavors in which the UAE has successfully managed to project its own identity.

4.11 Norms Diffusion and Mediation in Fragile States: The ECOWAS Intervention in the Malian 2020–2021 Political Crisis

Brown Odigie and Pascal da Rocha

Mediation in fragile states is a recurring and recognized practice in the resolution of inter- and intrastate conflicts. Yet there is still little understanding of the diffusion of norms through mediation and the impact of peacemaking efforts in fragile state settings. This chapter considers norms diffusion and mediation in an intrastate territorial conflict, focusing on Mali's 2020–2021 multifaceted crisis and the efforts of the Economic Community of West African States (ECOWAS) to manage the crisis through its preventive diplomacy tools in the period of the COVID-19 pandemic. The fragmentation of identities and ethnic fabric in Mali is the result of a prolonged dynamic of poverty and growing insecurity in the context of a less visible state apparatus.

The current situation in central Mali cannot solely be understood as an inevitable continuation of the conflict in the north of the country in 2011–2012. Rather, both situations are rooted in the unequal and insufficient presence of the state and its failure to deliver services in peripheral regions. However, in central Mali armed and radicalized groups are also fueling old and local inter-community tensions that have led to the massacre of civilians based on their ethnicity. Insecurity has expanded to the neighboring countries of Burkina Faso and Niger (e.g. in the Liptako-Gourma region). Several groups such as the Group to Support Islam and Muslims and Islamic State in the Greater Sahara are spreading to Mali's central and southern regions (including Kayes) and control some localities in the Mopti region.

In addition to these pre-existing and structural factors, the security situation throughout the country significantly deteriorated under the presidency of Ibrahim Boubacar Keïta (generally known as IBK): Kidal remains under the control of the Coordination of Azawad Movements; gold mines have fallen out of state control; and Soumaila Cisse continues to be held by kidnappers, with the government unable to receive proof of life. In 2022 the unilateral decision to open a dialogue with non-signatory armed groups created new tensions with the Malian armed forces and foreign partners. The massive presence of foreign soldiers (Operation Barkhane, the G5 Sahel joint force and the UN Multidimensional Integrated Stabilization Mission in Mali) contributed to weakening IBK's nationalist posture. Throughout the crisis, Mali populations have rejected the international military presence and continued to support national forces, despite claims they have committed human rights atrocities.

The mix of old and more conjectural economic and security factors explains both IBK's demise and the growing fatigue of the international community towards supporting the regime. An outbreak of conflict reveals a low state capacity, prompting a reconsideration of loyalties. People who had aligned themselves with the nation state start to view their security as first and foremost lying with their ethnic groups. Using an Afrobarometer survey (a representative geo-coded survey of Malian residents), the authors reveal (using a difference-in-differences framework) that proximity to the conflict area negatively affected national identity while increasing the salience of ethnic identity.

The chapter considers the underlying trigger factors of the crisis, negotiations for a return to the constitutional order, the management of the transition process and the performative aspects of a multiplicity of mediation actors. It elaborates on the intricacies of international mediation, and the ineffectiveness of sanctions as a means of exerting pressure with regard to the norms and standards enshrined in the ECOWAS 2001 supplementary protocol on democracy and good governance and other relevant normative instruments. It also looks into the role of ECOWAS as a promotor of norms and how these norms shape member state behavior. Rationalist perspectives in the mediation literature treat norms as part of the calculation of constraints and incentives that condition and regulate actors'

behavior in pursuit of their interests, but not as shaping these interests in the first place. Whether or not ECOWAS influenced Mali's behavior is explored through an empirical case study.

The chapter makes several contributions to the literature. It is the first to highlight that civil conflicts erode national identity in non-conflict areas, loosening the identification process with the nation state and exposing communities to other non-state actors with different governance and security arrangements. Almost no research papers study the effects of conflicts on non-conflict areas, with the notable exception of Makarin and Korovkin (2018), who studied the effects of armed conflict in Ukraine's Donbas region on trade. Previous studies on the effects of conflict on identity formation focus almost wholly on the direct effects of violence in international warfare (in Bauer et al. 2016) or in war zones (Rohner et al. 2013). Based on primary and secondary data sources, the authors use a content analysis technique to provide insight into ECOWAS mediation interventions in managing the crisis, including the fostering of national identity, and identify valuable lessons for policy-makers, scholars, conflict parties, and practitioners in the fields of diplomacy, mediation, and conflict management.

4.12 Winning a Battle, Losing the War: Bulgaria's Veto of North Macedonia's EU Accession Talks

Ida Manton

Identity conflicts often come with the reinterpretation of history and the recreation of collective memory, and often new waves of escalation are caused by attempts to either rewrite history or standardize nationalist narratives that have been created in order to justify wrongdoings committed by others in the name of the identity of the group. Because these are very sensitive issues and are often at the core of the argument among various political fractions in society, they are easily manipulated whenever stakeholders find it convenient to do so. Additionally, they have a potential to turn into intractable conflicts in which parties are trapped in escalatory dynamics.

This chapter will use the conflict caused by the Bulgarian veto of the start of the North Macedonian EU accession negotiations as an illustration of the complexities of identity conflicts, but also to propose upgraded roles for multiparty mediators in order to protect the multilateral system, the supranational principles, and the purpose of the intergovernmental cooperation and peacebuilding platforms when member states violate and undermine them.

At the end of 2020 Bulgaria distributed to EU members a memorandum containing the official Bulgarian view of history, according to which the people of Slavic descent who live in North Macedonia are Bulgarians who speak the Bulgarian language, but were brainwashed during Tito's communist regime in the former Yugoslavia and were artificially given a new "Macedonian" identity and language in the process. While there appeared to be a consensus in the EU that North Macedonia had fulfilled the criteria needed to initiate EU accession negotiations, the Bulgarian foreign minister at the time, Ekaterina Zaharieva, announced Sofia's disapproval of the EU negotiation framework and effectively vetoed the talks that were expected to start at the end of 2020.

This conflict has already had severe consequences in both countries. Political crises –multiplied: in North Macedonia Prime Minister Zaev resigned, while three governments fell in Bulgaria, and with each subsequent election Bulgaria moved further away from stable government, which gave more power to the pro-Russian president, Rumen Radev. The societies of both countries are dysfunctional and there are constant calls for early elections, while perceived security threats can easily escalate into violence. While Bulgaria won the battle in the European Council, both countries are losing the outdated identity war and their populations are emigrating in search of a better life. This dispute has created a huge

divide among ordinary citizens, has undermined political life and trust in democratic processes, all leaders have lost credibility, and democratic participation has declined on both sides of the border.

Because this is an EU-accession-induced problem, the EU should not allow the accession process to be misused for nationalist narratives and can easily assist in establishing a process based on mediation guidelines and principles and its own laws, and can insist on a more professional approach to mediation as an essential requirement for coordination, coherence, complementarity, and inclusivity. A reconciliation process can have a healing effect if it addresses the asymmetry of views; if it manages to contain conflict within normative frameworks, international principles and standards; if it reminds the parties of their obligations; and if it offers to be the supranational inclusive platform where violations are exposed and addressed in a controlled environment by all the affected parties.

This case, like many others around the world, raises the fundamental question of when “outsiders” should get involved, and then how do they do so, how many of them should be involved and who does what. To answer part of these questions, the chapter discusses the responsibility of the international community to intervene in existing conflicts, as well as its responsibility to make provision for a successful reconciliation after intervening in a conflict. The main idea is that the guardians of the international system must get involved in negotiating solutions to issues between EU members states and candidate countries in order to prevent member states from abusing their situational power and membership privileges. Even more importantly, however, the international community should prevent states’ attempts to deny their neighbours’ identity and language and appropriate and revise history, and in doing so, undermine the international principles and standards that have been built by the community of states – a structure that is already under serious threat after Russia attacked Ukraine in February 2022.

4.13 The New Geopolitics of Cyberspace, Hybrid Operations and Emerging Technologies

Christina Schori Liang

In the domain of cyberspace the legacy of 70 years of creating a rules-based system of international relations and international law seems to be in retreat. A blend of intelligence, surveillance, reconnaissance, big data, and AI, often used in parallel with old-fashioned kinetic power in both public and private hands, is creating new operational, strategic, military, and diplomatic challenges.

This chapter will explore the evolving domain of cyberspace and its impact on society, security and geopolitics. Cyberspace presents a series of significant challenges to international security. This is primarily because it tears up existing categories, including the boundary between the domestic and the international. In cyberspace, non-state actors and countries can launch offensive “psyops,” misinformation operations and cyber attacks without physically crossing international borders.

There are many threats in cyberspace. The most significant ones include cyber crime, cyber espionage and cyber terrorism. Increasingly states are engaging in cyber attacks on critical infrastructure to gain strategic advantage in conflicts/war, conduct influence operations or spy on other countries. Malign influence operations and electoral interference have become an important foreign policy strategy. Hostile activities in cyberspace are omnipresent, including trolling, hacking, ransomware attacks and the disruption of communication networks. These non-military strategies (referred to as “hybrid interference”) can include methods that amplify political, ideological and economic polarization in an adversary’s society that could lead to fragmentation or even collapse.

Who governs this new space? National security had traditionally been “owned” by government agencies in most countries, but now cyber security is almost universally privatized, raising the question of who is actually in charge. Technology actors include private individuals, satellite companies, IP hosting sites, big-data companies and social media companies.

Cyber conflict is increasingly converging with real world geopolitics. Cyberspace is now central to key geopolitical issues of great power competition, and private companies are becoming central – albeit somewhat unwilling – actors in these hybrid conflicts. Ownership of critical infrastructure, IP hosting sites, and data gives the opportunity for some companies to influence the direction of international politics and international security.

Artificial intelligence (AI), arguably the world’s newest “expert,” is rapidly accelerating scientific progress both positively and negatively. AI acts as an accelerant of both beneficial and destructive or destabilizing socioeconomic forces, and will help to magnify political, economic, and physical risks. Where the risk balance ends up will depend not on how the technology develops, but on how quickly, broadly, and wisely human institutions and their leadership implement the ethical reforms necessary to tip the balance in humanity’s favor.

Understanding cyberspace has become an important diplomatic tool. The concept of digital sovereignty – or a country’s ability to control its own digital infrastructure and data – is becoming increasingly difficult to enforce and is leading to even greater conflicts between countries. Most recently, lawmakers worldwide are considering the potential negative security repercussions of foreign telecommunications and social media companies and AI start-ups.

To counter the growing threats in cyberspace, states are increasingly interested in “cyber power” and “cyber diplomacy,” deploying experts in internet regulation and governance. As such, policy-makers and governments must develop new strategies and regulations to manage these challenges in the interest of domestic security, international security and global stability.

4.14 Epilogue: Negotiation, Cohesion and Fragmentation

Paul Meerts

The tension between cohesion and fragmentation in international politics is as old as humankind itself. In ancient times tribes clashed with tribes, city states with city states and nomads with city dwellers. These clashes were the consequences of internal integration, attempts to foster cohesion with groups of humans and their fight for survival, firstly against nature and secondly against other humans. To survive, people had to learn how to keep the threats of nature at bay, and simultaneously how to use nature in order to survive. Internal unity was vital to being successful, internal unity created strength, and power had to be built in order to dominate both nature and other groups of humans.

Internal cohesion grew because of external fragmentation. But if the external powers could be integrated into the cohesive system of the nomadic tribe or the city state, then the realm of cohesion would grow at the expense of fragmentation. We see this, for example, with the growth of nomadic empires. Clans united into tribes; tribes united into nomadic empires. An example of this is the growth of Mongol power. It started with a clan with a leader who understood how to merge several clans into a tribe and several tribes into an empire. This man, Genghis Khan, understood how to apply force and negotiation in order to create new and larger identities, and the subsequent bloody wars resulted in the Pax Mongolica. Cohesion dominated over fragmentation until fragmentation destroyed cohesion when Genghis’s sons and grandsons divided the empire among themselves, which resulted in wars between the fragments.

The city states in the Middle East and China were fighting each other, taking over each other's land and thereby fostering empires that grew bigger and bigger. Cohesion was established in ever-growing empires that fragmented again because of dynastic and external pressures. Although force was the main tool of international politics, negotiation was also indispensable because of the need to trade resources. In Africa, Asia, Europe and what is now called Latin America, more or less cohesive empires dominated the scene and were either swallowed up by other empires – enlarging cohesion – or fell apart into fragmented societies. This went on for centuries until the fragments needed to work together more closely because their cultural level was on the rise and therefore needed more resources than their own “country” could deliver.

This need for international trade and the rise of technologies that made wars ever more disastrous fostered negotiation as an instrument to deal with the growing interdependency between dynasties and their countries. In Europe, from the Peace of Westphalia onwards there was an ever-pressing need to create stability through negotiation processes. These processes resulted in agreements, the agreements gave birth to pacts between allies, and eventually we saw the rise of intergovernmental organisations like the League of Nations and United Nations, and regional organisations on all continents. In the case of Europe, one of these regional organisations evolved into a supranational one as a means to create more cohesion in Europe and to undermine fragmentation. In the last century the process of negotiation became the dominant tool in managing European international relations (with two world wars as disastrous interludes).

As we have seen in the preceding summaries, the struggle between fragmentation and cohesion is an ongoing process. As has been noted, interdependency can be a process both to foster cohesion and inspire fragmentation – fragmentation between groups of countries as well as within the countries themselves. The issue is how to deal with fragmentation in order to enhance cohesion. It can be done in several ways, but suppression and co-optation are perhaps the most dominant methodologies in dealing with centrifugal tendencies. For co-optation, negotiation is the most prominent instrument; for suppression, it is force. And there is a mix in which the use of force and negotiation go hand in hand.

The consequence of this is that both the use of force and the nurturing of negotiation processes are the tools political leaders, elites and their constituencies use to create – or maintain – the balance between cohesion and fragmentation. This means, for example, an ongoing upgrading of those institutions that foster peaceful means like diplomacy and enforcing instruments like the military. The one cannot do without the other, even if we would wish for negotiation to be the supreme method of countries and international organizations to keep cohesion and fragmentation in balance with each other.

But there is another dimension, linked to this inter-human balancing act, and this is nature. Currently one might postulate the return of nature in the human fight to survive. Both cohesion and fragmentation are a threat to human attempts to ward off a global human-made natural disaster – fragmentation because it hinders our attempts to work together in taking the necessary steps to avoid disastrous climate change, and cohesion because it accelerates the world economy and thereby the pollution of the planet. A balance between the two will have to be negotiated. However, the problem has always been that humankind will only take action if there is an urgent need to do so – but when the urgency becomes unavoidably obvious, it will probably be too late to change course.

Science might be the answer to this conundrum, providing new insights and new technologies that can overcome the problem of polluting ourselves and the planet into Armageddon. As has been stated before, negotiation is one of the two instruments that can help science to implement its products through political decision-making. It is hoped that this book will be of help in this endeavor. It was

exactly this problem of implementing scientific discoveries into the political realm that motivated the creators of the PIN group to give birth to its program.

*These summaries of contributions to the prospective PINbook *Negotiating Identity Complexities in a Fragmenting World Order* were discussed at length during a book conference at the Anwar Gargash Diplomatic Academy of the United Arab Emirates in Abu Dhabi on May 22 and 23, 2023, followed by a PIN "Roadshow" on May 24 and a PIN Training of UAE diplomats the following day. Two more chapters are foreseen: "Lessons for Theory" by Sinisa Vukovic and "Lessons for Practice" by Mark Anstey and Paul Meerts. The "Epilogue" looks forward to these two chapters and draws lessons for the future.*

5. Guided Mediation

Barney Jordaan*

"Mediation is negotiation carried out with the assistance of a third party It remains negotiation, of course" (Goldberg et al. 2020: 105).

5.1 Introduction

Guided choice mediation (now more commonly called guided mediation) is a process originally developed by arbitrator and mediator Paul Lurie³ (2013) as an alternative to the standard pre-mediation (or "intake") phase (see Lurie and Lack 2014a). Its overall purpose was to improve the cost effectiveness of dispute resolution processes in the construction sector, but it has subsequently been promoted and gained traction as an approach of more general application in commercial and legal disputes (see Kaster and Lurie 2017; Helathcareneutral.com 2019; Lande 2021; Meyer and Holt 2017). It provides a framework for the greater creative involvement of parties and mediators in the pre-mediation phase to "fit the process to the problem" (Sander and Goldberg 1994), to help shorten the period to settlement, provide for greater party control in terms of process design, and reduce the expense of dispute resolution without compromising on quality (Lurie and Lack 2014a: fn 1).

A comparable process of mediators helping to shape a negotiation process can be found in the field of international mediation. Known as a "pre-negotiation" (Stein 1989; Zartman 1989)⁴ phase, it occurs when the parties to a conflict either expressly or implicitly agree that the status quo no longer serves their interests (Doyle and Hegele 2021) and begin a "purposive period of transition" (Zartman 1989) from engaging in conflict to searching for a negotiated settlement. It ends when the parties agree to formal negotiations or when one party abandons the consideration of negotiation as an option (Zartman 2008: 119). It is "the span of time and activity in which the parties move from conflicting unilateral solutions for a mutual problem to a joint search for cooperative multilateral or joint solutions" (Zartman 2008: 119, fn 9).

Reasons for this shift in the parties' positions vary and could be very relevant for a mediator's proper understanding of the parties' motives and motivations, provide a basis for establishing common ground, and help the parties develop what Zartman calls a "mutually acceptable definition of the problem," though not necessarily a shared understanding of how the problem emerged (Zartman 2008: 247, fn 8).

5.2 The Standard Pre-Mediation Process

While common, confidential pre-mediation sessions between mediators and disputants are often limited to the mediator mechanistically attending to preliminaries such as an explanation of the process, its ground rules, and the role of the mediator; facilitating document exchange (if any); finalizing logistical arrangements; and checking the parties' authority to settle (Goldberg et al. 2020).

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³ And, generally, see <https://gcdisputeresolution.com/>.

⁴ Essentially, pre-negotiation is "the span of time and activity in which the parties move from conflicting unilateral solutions for a mutual problem to a joint search for co-operative multilateral or joint solutions" (Zartman 1989: 240).

Such an approach does not take full advantage of the benefits that pre-mediation dispute analysis and process design can offer disputants. In their 2022 survey of over a thousand mediators in the United States, Wissler and Hinshaw (2022) found, for example, that despite the centrality and potential usefulness of the pre-mediation phase, most of the mediators surveyed either neglected it completely or made poor use of it (Lurie and Miller 2020). They also found that this “negatively impacts the ability of mediators and mediation participants to customize the mediation process to the needs of the individual case, which is considered to be one of mediation’s advantages” (Lurie and Miller 2020: 184–185).

Beyond the pre-mediation phase, many lawyers and mediators tend to approach mediation itself as a discrete event involving a meeting of the parties, their lawyers and the mediator during which the mediator facilitates a settlement discussion that either leads to an agreed outcome or deadlock beyond which the parties may resort to their no-deal alternatives, including litigation. Especially if the parties or mediator have settled on a so-called “facilitative” role for the mediator (see e.g. Zumeta 2018), the latter’s role is narrowed down to listening to the parties’ respective versions of the dispute in both plenary and confidential side sessions (or caucuses) and then shuttling between them to convey settlement offers and counter-offers. While this process can be productive, it fails to realize the full potential that mediation holds for achieving a settlement (Meyer and Holt 2017: 29, fn 7).

5.3 The Guided Mediation Process

Lurie’s model (see e.g. Lurie 2014; Lurie et al. 2019) “substantially expands the mediator’s role⁵ in the pre-mediation phase to that of a full partner with both parties in getting to the heart of their dispute and the most efficient route to its resolution” (Meyer and Holt 2017: 30, fn 7).

In broad terms, in a guided mediation process the mediator (donning the hat of facilitator) first acts as conflict or dispute analyst and process architect. During this phase the mediator’s first task is to work with the parties and their representatives to analyze the dispute and then, as process facilitator identify and address proactively potential impediments to settlement, and to explore ways of addressing those to ensure a faster and more cost-effective process. The mediator sees the process as part of the problem.

Guided mediation operates on seven key principles:

1. The parties formally commit to mediate their dispute.⁶
2. The mediator is retained as early as possible (taking the dispute “upstream”).
3. The mediator conducts a confidential investigation and diagnosis of the dispute with the assistance of each of the parties, their representatives and experts, if necessary.
4. The parties exchange key information identified by the mediator.
5. The mediator helps the parties design a customized settlement process to anticipate and overcome possible deadlock.
6. The mediator continues to work with the parties even if negotiations are suspended.
7. The mediator helps the parties design a customized process to resolve disputes that do not settle (Lurie and Lack 2014b).

⁵ Although this person works essentially as a mediator, the difference in guided choice mediation is that the mediator does not try and focus immediately on settling the case.

⁶ The process leading up to this decision can itself be a rich source of information for the guided choice mediator. See Meyer and Holt (2017: 30, fns 6–11).

5.4 The Process

As process facilitator the mediator does the following:

- They use the pre-mediation phase to build rapport with each party separately; uncover their expectations of the process; and explain the different roles that the facilitator can play after donning a mediator's hat, including implementing a guided mediation process. This can be done either in plenary session or with the parties individually.
- If the parties opt for a guided process, the facilitator in confidence and with the parties individually first conducts an analysis of the conflict, including an investigation into the conflict's origins, causes and effects, and identifying the factual, legal, relational social or psychological barriers to settlement.⁷ This diagnosis becomes the basis for the dispute "treatment plan" and includes a proposed process design aimed at improving the chances of an agreed outcome as early as possible.⁸
- The plan also includes options for dealing with deadlock if and when it arises; the exchange of relevant information; agreement on customized dispute resolution options in the event of certain issues requiring determination;⁹ and planning the "negotiation event" itself. Matters such as the role of representatives, the presence of key decision-makers during the next phase of the process, and logistical and other technical aspects are also addressed.¹⁰

Although the person who manages this process works essentially as a mediator,

... the difference is that [they do] not try and focus immediately on settling the case. [They work] with the parties instead, to facilitate a discussion on procedural and potential impasse issues, helping them to analyse the causes of the dispute and design an optimal process (Lurie and Lack 2014a: 168).

5.5 Success factors

Key to the success of the process is that it should be used as early as possible once the parties' own efforts at settlement have deadlocked ("moving the dispute upstream"). Some of the questions a mediator might ask in this type of process include the following:

What information must be exchanged?	Is there a requirement for the parties' executives to meet before mediation? If so, what role should the mediator play in preparing the parties for the meeting so that it is productive for settlement purposes?
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⁷ The facilitator as conflict analyst.

⁸ The facilitator as process architect.

⁹ E.g. referral of certain questions to expert evaluation, advisory or binding expedited arbitration, or to court.

¹⁰ Such as attending to the signing of the agreement, logistical arrangements, timing, etc.

Should there be provision for an adjudicator or other professional to deal with legal or factual issues that might arise? If so, what role should that person play in a settlement process?	What are the legal issues and the state of the law on them? How will the lawyers inform each other and their clients about the legal issues that need to be resolved in court, during arbitration or by other experts?
Do the parties wish to reserve in advance questions for binding or non-binding decisions by a specially selected arbitrator or other expert?	Who will be involved in the negotiations for each party? Who would the parties like to see included among the other person's representatives (e.g. a senior executive)? Why? Will those people be physically present at the negotiations? If not, how should they participate?
Are insurers involved in any settlement, and if so how? Are there coverage issues? Is there separate coverage counsel for the parties? Should the mediator independently "visit" the insurance representative?	Are there authority problems that the attending party decision-maker may have? If so, how will those problems be addressed?
What are the important entities that are not formally represented in the mediation? How will they participate in the negotiations? Examples could include subcontractors, vendors, governmental entities, citizens' groups or other aggrieved parties.	Should multiple parties be broken into groups and meet independently with the mediator? When should these meetings take place?
Can customized arbitration or other binding processes be useful settlement tools in the event of deadlock? Are the parties willing to commit to continue the mediation notwithstanding the parallel processes?	If impasse cannot be overcome at a particular point in the negotiations, are the parties willing to begin a customized arbitration to resolve legal or factual issues? Can this subject be addressed during the planning of the process design without indicating a lack of faith in the mediation process?
Is disagreement among experts a potential cause of impasse? If so, how can differences between the experts be identified so that they can be factored into a settlement choice? Should the experts meet before negotiations under the confidentiality privilege to discuss ways to narrow their differences?	Where should the negotiations take place? In an office or in a more relaxed setting?
Are apologies appropriate?	Should there be plenary opening statements? Should they be positional or invite conversation?
What would the roles of lawyers, other party representatives and experts be in making public presentations?	Will negotiations be conducted by the mediator shuttling between parties in separate rooms, or will they be plenary?
Can the parties meet with or without their lawyers during the negotiation?	How can impasse be anticipated and overcome?

What approach should the mediator adopt? Mostly facilitative, evaluative, or a combination of the two?	If the mediator is an expert in the subject matter of the dispute, may the mediator express a non-binding opinion on the matter if and when required by the parties?
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5.6 What If the Process Fails?¹¹

Giving consideration to the path of the dispute beyond possible deadlock is also part of the planning process. It may be agreed, for example, that despite deadlock the mediator may continue to attempt to facilitate a settlement and not simply close the process because of the deadlock. If the parties foresee that the dispute will end up in arbitration if not settled, for example, the mediator and the parties could spend their energies on trying to agree on the terms and form of the arbitration to limit the time and expense of such a process.

In this regard the recommendations contained in a white paper of the IMI International Task Force on Mixed Mode Dispute Resolution are relevant, particularly for legal and commercial disputes at the local and international levels (see Stipanowich and Fraser 2017). Several options for combining negotiation, mediation, arbitration and litigation are available (subject to the provisions of local legislation). These include mediators using non-binding evaluation or mediator proposals as a means of encouraging settlement; mediators “setting the stage” for arbitration by facilitating process discussions; “switching hats,” i.e. mediators shifting to the role of arbitrators in the course of helping resolve a dispute (med-arb) or arbitrators shifting to the role of mediators (arb-med); and arbitrators rendering “consent awards” based on a negotiated settlement.

Practitioners who use mixed mode processes explore the interplay among mediation, evaluation and arbitration in commercial disputes. They look at all the dispute resolution processes available to parties – mediation, non-binding early neutral evaluation, mediator proposals, mediators becoming arbitrators, arbitrators becoming mediators, arbitrators setting the stage for settlement, and all kinds of other creative interactions. They take all the dispute resolution tools available to parties and counsel and mix and match those most appropriate to the issue that needs to be resolved. Their processes are wholly fluid and flexible, truly “fitting the forum to the fuss” (Sander and Goldberg 1994).

The mediator may also form the view that mediation is premature, and then help the parties to customize other appropriate dispute resolution processes to bring the dispute to finality.

5.7 Potential Benefits

A guided mediation process can –

- promote efficiency in dispute resolution, given that impediments that could delay resolution are identified and addressed early;
- provide the parties with a deeper understanding of the drivers of their dispute; and
- allow for greater party involvement in the design of the mediation process.

¹¹ See, generally, <https://imimediation.org/2021/05/04/using-a-guiding-mediator-to-help-the-parties-design-bespoke-dispute-resolution-processes/>.

References

American College of Construction Lawyers (n.d.), *Using Guided Choice*.

Doyle, L. and L. Hegele (2021), *Talks before the Talks: Effects of Pre-Negotiation on Reaching Peace Agreements in Intrastate Armed Conflicts, 2005–15*, *Journal of Peace Research*, 58(2), 231–247, <https://doi.org/10.1177/0022343320961152>.

Goldberg, S.B., F.E.A Sander, N.H. Rogers, and S.R. Cole (eds) (2020), *Dispute Resolution: Negotiation, Mediation, Arbitration, and Other Processes*, Boston: Aspen.

Healthcareneutral.com (2019), *Guided Choice Mediation – A Better Way to Settle Disputes*, <https://healthcareneutral.com/2019/09/articles/mediation/guided-choice-mediation-a-better-way-to-settle-disputes/mediation>.

Kaster, L.A. and M. Leech (2015), *Creating Client Value by Getting the Earliest Possible Settlements*, in: *Corporate Disputes Magazine*, July–September, 144–148, <https://iamed.org/blog/creating-client-value-by-getting-the-earliest-possible-settlements>.

Lande, J. (2021), *Paul M. Lurie on Guided Mediation*, *Indisputably.org*, <http://indisputably.org/2021/04/paul-m-lurie-on-guided-mediation/>.

Lurie, P. (2013), *Guided Choice: Early Mediated Settlements and/or Customized Arbitrations*, in: *Journal of the American College of Construction Lawyers*, 7(2), 167–175.

Lurie, P. (2014), *Using the Guided Choice Process to Reduce the Cost of Resolving Disputes*, https://gcdisputeresolution.files.wordpress.com/2015/07/clint_9_1_march_2014_published.pdf.

Lurie, P.M., M. Becker, D. Thomson, and W. Geisen (2019), *How Guiding Mediators Can Help You Get Earlier Settlements and Reduce Legal Expense*, <https://gcdisputeresolution.files.wordpress.com/2019/05/guiding-mediators-can-help-you-to-get-earlier-settlements-and-reduce-legal-expense-may-27-2019.pdf>.

Lurie, P. and J. Lack (2014a), *Guided Choice Dispute Resolution Processes: Reducing the Time and Expense to Settlement*, in: *Transnational Dispute Management*, 11(6): 167–178.

Lurie, P. and J. Lack (2014b), *The Seven Principles of Guided Choice Dispute Resolution Processes*, <https://whoswholegal.com/features/the-seven-principles-of-guided-choice-dispute-resolution-processes>.

Lurie, P.M. and R.L. Miller (2020), *Using Zoom for Pre-Mediation Activities to Achieve Earlier Settlements*, *American Bar Association*, https://www.americanbar.org/groups/construction_industry/publications/under_construction/2020/winter2020/using-zoom-for-pre-mediation/.

Meyer, J. and T. Holt (2017), *New Sequences, Techniques, and Approaches for Commercial Mediation: Guided Choice and Mixed Modes Mediation*, in: *Dispute Resolution Magazine*, Spring, https://www.judithmeyer.com/_files/ugd/e4b2b1_10a3fc82f6544e57826f3131899466b7.pdf.

Sander, F.E.A. and S.B. Goldberg (1994), *Fitting the Forum to the Fuss: A User-Friendly Guide to Selecting an ADR Procedure*, in: *Negotiation Journal*, 10, 49–68.

Stipanowich, T. and V. Fraser (2017), *The International Task Force on Mixed Mode Dispute Resolution: Exploring the Interplay between Mediation, Evaluation and Arbitration in Commercial Cases*, *Pepperdine University Legal Studies Research Paper No. 2017/4*, <https://ssrn.com/abstract=2920785>.

Stein, J.G. (1989), *Getting to the Table: The Triggers, Stages, Functions, and Consequences of Prenegotiation*, in: *International Journal*, 44(2), 475–504.

Wissler, R.L. and A. Hinshaw (2022), *What Happens before the First Mediation Session? An Empirical Study of Pre-Session Communications*, in: *Cardozo Journal of Conflict Resolution*, 23, 143–185.

Zartman, I. William (1989), *Prenegotiation: Phases and Functions*, in: *International Journal*, Spring, 44(2), 237–253.

Zartman, I. William (2008), *Negotiation and Conflict Management: Essays on Theory and Practice*, Routledge.

Zumeta, Z. (2018), *Styles of Mediation: Facilitative, Evaluative, and Transformative Mediation*, <https://mediate.com/styles-of-mediation-facilitative-evaluative-and-transformative-mediation/>.

6. Training Travelogue, Third Decade (2011–2021)

Paul Meerts

This contribution to PINpoints 52 is the third and last part of a triptych of the author's international negotiation training experiences from the fall of the Berlin Wall until the onset of COVID-19. The first decade can be found in PINpoints 50, the second in PINpoints 51.

6.1 Chernivtsi, 2011

Because I was also interested in Chernivtsi, the capital of Austrian Bukovina under the name of Czernowitz, I asked my host in Lviv, Professor Markian Malskiy, to connect me with his colleague in Chernivtsi. On one of my Lviv trips I took the ten-hour journey on the night train to Chernivtsi. With six people, of whom five were elderly Ukrainians, it was not easy to get sleep in a train that seemed to stop at every farmhouse along the track. Thank goodness there is a modern train nowadays that takes only three hours. On the platform of Chernivtsi's beautiful art nouveau station, Vitaliy Makar and his father, Yuri, awaited me and took me for breakfast at their home. Everybody was dressed up as if I were some kind of gentleman; luckily, this had already changed by the next morning. I quickly became a friend of the family and, years later, a part of it. Yuri Makar was – and still is – head of a department at the university, although he is far into his 80s. Vitaliy took me to his class. In the front section of the lecture hall the students were fully participating in one of my simulation exercises. The students in the back, however, did nothing and started to talk among themselves. I went over. "Why don't you negotiate?" "We cannot speak English; our second language is German." "Ok," I said in German, "I will explain the exercise and you can start working."

The city of Chernivtsi is still art nouveau; it looks the same as it did at the beginning of the last century. The same goes for its university buildings. They are built in a Germanic style, like Heidelberg, Uppsala or Tartu universities. In 2011 the university organized a conference with Canadian academics of Ukrainian origin. I decided to take my youngest son, Fedor, with me on a trip that brought us through Timișoara, Chernivtsi, Kyiv and Istanbul to Ankara, where Fedor had worked at the Netherlands Institute. We took the train to Düsseldorf and flew to the interesting – again, art nouveau – city of Timișoara in western Romania. The next day we wanted to board the plane to Chernivtsi, but we had to wait for five hours because of fog at Chernivtsi airport. I was reading a book about Bukovina, written by an Austrian, Kurt Scharr (Scharr 2007). A guy in a Tyrolean outfit came towards me and asked: "Do you like the book?" "A very interesting book," I answered. "Nice," he said, "I am the author!" He had just come from Chernivtsi.

Next morning we walked to the conference in the beautiful German-style building of the University of Chernivtsi. The conference's topic: "Ukraine and Canada." Why this subject? Well, there is quite a diaspora of Ukrainians in Canada and they are well-to-do. With their money, it is easy to get a conference funded. As usual, everybody was present the first morning and many students were observing, but from then on the number of listeners and participants gradually diminished. Some parts of the program did not materialize, for whatever reason. The day before the end of the symposium I said to my son: "Your MA thesis was about the High Commissioner on National Minorities, dealing with Estonia, Romania and Ukraine (Meerts 2011). Why don't you give a speech on that tomorrow?" He did, and suddenly there were many girls in the back of the room listening to his intervention. *Lesson learned: a young attractive speaker draws more attention than an old one. But there are exceptions.*

6.2 Durham, 2012

Durham University has an excellent conflict-management center. The city is beautiful, remaining untouched from Norman times onwards – or at least the inner town. During one of my trips I was received by a German lady who had taken over from the usual coordinator. At the end of the first day we had dinner with the students. I came in last. All of the seats but one were taken. This seat was at the end of the table, next to a student on my right and no students on my left. The German lady was sitting at the opposite end, discussing my lecture with students. The next day I started my workshop. One of the issues I brought forward was: "Negotiation is about people. One has to show empathy for them, especially if they are the guest of honor. Take yesterday, for example: the guest of honor should have been seated at the middle of the table, with the host next to him." The students did not notice my irony. During the break I wondered whether I had been too undiplomatic. I went to the German lady and said: "I'm sorry for referring to yesterday's supper." Her answer: "No problem."

I have to add that my experiences in Oxford have been quite the opposite. For 30 years the directors received me most cordially; all of them were former diplomats. Let me just note one interesting moment. The last director, who was as staunchly anti-Brexit as all her predecessors, asked me if my flight had been pleasant: "How was your flight from Europe?" I answered: "But I am still in Europe!" *Lesson learned: even if your perceptions are different, you can still be on the same wavelength.*

6.3 Budva, 2013

The Montenegrins organize a diplomatic course every year, both in the mountains in Kolašin and in the capital, Podgorica. My friend Sinisa Vukovic (Vukovic 2013) – although working at Johns Hopkins in Washington with William Zartman – is very instrumental in this. He takes care of the content and some of the speakers. I remember him showing up in a white Mercedes cabriolet to take me from the airport into the mountains. We were driving too fast and a policeman stopped us. Sinisa got out of the car and went to his superior. After a while he came back to the car. "No fine?" I asked. "Well," he said, "the officer is a friend from school, from a long time ago. I asked him about his wife and kids." As we continued, we passed a monastery. "Look, how beautiful!", he exclaimed. I agreed. We passed a church. I wanted to flatter Sinisa, so I said: "Look, how beautiful!" He had a different opinion this time, because the church was not Montenegrin, but Serbian.

After the seminar, Sinisa took me to the beautiful old capital, Cetinje, and from there to the fortified town of Kotor on the Adriatic. He would stay with friends and had booked a room for me in a very nice authentic hotel on the town's main square, opposite the main medieval gate. I had put pressure on Sinisa to allow me to pay for the room myself and, indeed, I managed to do so. I paid for a simple room. The waiter took me upstairs to a luxurious apartment with a balcony and a view of the square and the fjord beyond. Later, I asked Sinisa how this was possible. "Well," he said, "the owner needed some advice when he started this hotel. I gave him the advice he needed." The next day we went to another seaport: Budva. This time I was determined to buy lunch for Sinisa and myself. He initially disliked all the restaurants, and eventually took me to a very nice one on the shore, where the owner shouted: "Sinisa, my friend! Good to see you. Your friends are my friends." Again, I failed – it was strictly forbidden to pay.

In 2013 Sinisa and I managed to get the PIN group to Montenegro. My assistant, Sander des Tombe from the Netherlands, and his girlfriend also participated. They had rented a car, and together we visited Budva, while Sinisa remained at the conference. When we were leaving Budva, the police stopped us. They claimed we had missed a zebra crossing and had to pay a fine. Zebra crossing? There was no zebra crossing to be seen anywhere. The policemen pointed at some long-gone paint on the road: "You should have stopped!" "But we did not see the zebra crossing and, anyway, nobody was crossing the road!"

"Give me your driver's license and passport!", the policemen shouted to my assistant, who was afraid of giving it to him. I tried to negotiate: "Okay, let me pay the fine." No way. The policemen told us that Montenegro is a civilized country. We would have to pay the fine tomorrow morning to the judge at ten o'clock, while not being allowed to leave Budva for the night. I called Sinisa, who talked to the policemen. It did not seem to have any effect. I told my assistant to give his license and passport to the police officer and this time he did. The policeman gave it back to him without looking at the papers and said: "Okay; no fine; leave." *Lesson learned: honor is a very important issue in negotiation, especially in the Balkans.*

6.4 Monaco, 2014

Belarus is not the last dictatorship in Europe: it shares this honorable position with Monaco. The prince decides and parliament may advise him. How to govern and pamper such a small but rich country? You need foreigners to do that. For example, Prince Rainier had a French doctor. He was seriously ill, but the doctor cured him. The prince said that he could either pay the doctor or make him a citizen of Monaco. The doctor accepted citizenship and could continue his practice in France as well. The only difference: he did not need to pay taxes to the French, but to the Monegasques instead. Yet Monaco levies no taxes and the doctor's net income thus doubled. Most of the participants in my class were French, hired to do the jobs the Monegasques did not or could not perform. One of the Frenchmen was especially a nuisance for me. He had clearly been ordered to be present, but was not eager to be there. The way to deal with these kinds of spoilers is to ask them questions and give them an important role, for example as the chairperson. In this way, the spoiler will become your most loyal participant. *Lesson learned: if you cannot beat them, let them join you.*

6.5 San Marino, 2015

San Marino is bigger than Monaco, but it is still small and surrounded by Italy. When Napoleon came to the borders of San Marino, his troops halted at the frontier. He sent an envoy up the mountain, who declared that the emperor offered San Marino all the land from their mountain to the Adriatic coast, including Rimini. The councillors of San Marino were wise men. They politely refused the offer. This is why San Marino is still independent today, because the Vienna Congress of 1814–1815 would have taken their sovereignty from them for sure. I was invited to deliver a seminar in San Marino by the Sanmarinese lady ambassador to Brussels, who had participated in my training in Bruges with the entire staff of the embassy, which consisted of two more people. After a two-day seminar for civil servants I was asked to give a presentation to the high school pupils of San Marino.

This was done in the national theatre. The minister of foreign affairs opened the meeting with a short speech. To be a minister was a side show for him, for in everyday life he was a teacher at one of the schools. There were more astonishing job combinations. The permanent representative of San Marino at the UN in New York was also the state archaeologist. Actually, he went to New York only twice a year. At the end of my visit my participants took me to the castle where the two presidents and the parliament reside. We entered through the non-tourist back entrance, attended a session of parliament and visited the room of the presidents. When present, they sit next to each other, each with a telephone, receiving calls from their respective clientele. It struck me that the Sanmarinese knew their Italian allies and opponents extremely well, especially their weak spots. Being small and flexible, the Sanmarinese are able to act much faster than the Italian bureaucracy, thereby being more successful in many instances. *Lesson learned: small people can move faster than big ones.*

6.6 Stepanakert, 2016

Although I travelled to Armenia more than a dozen times, I initially did not manage to visit a region that intrigued me very much: Nagorno-Karabakh. Training diplomats at the Armenian Foreign Ministry in Yerevan still did not bring me one step closer to visiting Karabakh. That was until an Armenian student at the College of Europe in Bruges said: "I know you want to visit Karabakh. My girlfriend is soon taking a group of Belgian parliamentarians through Yerevan to Stepanakert, Karabakh's capital. You can join them if you want to." So I did.

The Belgians were parliamentarians and mayors belonging to the N-VA party, a Flemish nationalist grouping striving for an independent Flemish republic. It made sense that they were interested in the break-away non-recognized republic of Karabakh, and the Karabakhi saw their visit as some kind of recognition. Although my political views are completely opposite to the N-VA party, the Belgians regarded me as kin, a kind of northern Flemish guy. This is not completely untrue, because my family on my father's side originated from Waterloo, albeit in the 19th century. After a four-hour drive from Yerevan to the Lachin Corridor on the Nagorno-Karabakh border we were greeted by a police car to guide us into Karabakh. In the capital, Stepanakert, we were received by the president and the minister of foreign affairs. The Belgians were given the opportunity to address parliament, while I taught at Karabakh University.

Karabakh University was an old-school Soviet-kind university, with a Soviet teaching style, where using a simulation game was quite new to the students. At the end of our visit the Karabakhi offered us supper in the city of Susha/Sushi, on top of a hill next to Stepanakert, which is a special place for both Armenians and Azerbaijani. After several glasses of arak, the host started to sing Armenian songs. Naturally, all of the Armenian speakers joined in. The host then invited the Belgians to sing their national anthem. Of course, they did not sing "La Brabançonne," the Belgian national anthem, let alone "La Marseillaise," which a Belgian Walloon minister sang by accident when asked on television to sing the Belgian national anthem. The Belgians stood up, swapped the Belgian national flag for the Flemish flag of a black lion on a yellow background, and sang the "Flemish Lion," their regional song. After this, the host asked me to sing the "Wilhelmus," the Dutch national anthem. Not being a nationalist, I refused. Immediately the Belgians stood up again, put their flags around their shoulders, and sang the Dutch national anthem faultlessly. *Lesson learned: do not be naïve.*

6.7 Paris, 2017

In 2017 the famous French institute on negotiation, ESSEC IRENÉ (the Institut de recherche et l'enseignement sur la négociation at ESSEC Business School) invited me and my dear friend Taniel Sikharulidze from Georgia to join their team in teaching at the French military academy, the École Militaire. We were with 17 trainers and several hundred military officers. They gave me the class with foreign officers, which was to be given in English. At the end of the spectacle everybody was brought together in the main hall, where the chief of our équipe, Aurélien Colson, entered with the commandant at his side. He then invited the trainers to join him on stage and the participants would ask questions. After one and-a-half hours I was increasingly wondering why we were standing there, because our boss answered all the questions, and none of us was invited to say anything. Being Dutch, this was unacceptable to me. I could understand that the French, being from a collectivistic culture, accepted this, but I, from an individualistic culture, could not tolerate it.

I stepped forward when a new question was asked and demanded the microphone. After I got it and gave my view – in English – on the question, Taniel stepped in to give his response to another question. My French is good enough for discussions, but I was tired and did not want to risk mistakes while speaking French; Taniel, meanwhile, is fluent in French. Understandably, I have never been invited back

to the military academy. In a French establishment like that you have to speak only French, at least in a plenary session. However, other French government institutions happily asked me to run the sessions in English, because this is the language they have to understand in order to negotiate effectively in Brussels. Still, it is helpful if the trainer can speak French in discussions and in the corridors. *Lesson learned: if you want to be invited again, do not irritate the locals.*

6.8 Ankara, 2018

At the beginning of the 21st century my wife and I met with the director of the Diplomatic Academy of the Turkish Republic, Deniz Uzmen, and his Dutch wife. He invited me to teach at the academy. After one of these seminars in the Turkish Ministry of Foreign Affairs, the Dutch ambassador to Turkey invited the class of young diplomats to a reception at his residence. He spoke, the director of the academy spoke, and the trainer had to speak. I explained why it had been possible to have this one-week negotiation seminar at the academy:

After the First World War a Turkish Jew migrated from Istanbul to The Hague, where he married the sister of my Jewish grandmother. He was a carpet merchant and taught my uncles how to mend and sell Persian carpets. One of my uncles was a very clever businessman. He saw the Second World War coming and put 600 carpets in storage in a secret place. When the family had to hide from the Nazis, he sold a carpet a month on the black market, thereby paying for the survival of 30 people, not only his family members. His sister (my mother) and her boyfriend (my father) were also able to go into hiding, my father because he did not want to work for the Germans, and my mother because she was Jewish, of course. They all survived the war. Because of this Turkish Jew I was born in the Netherlands, a free country, and could deliver the negotiation training for you young diplomats from Turkey. In other words, I could train Turkish civil servants thanks to a once-Turkish citizen.

I did not add that immediately after the war the Dutch tax collectors told my uncle that he had to pay taxes on all the carpets he had sold in order to safeguard Dutch civilians.

The last time I taught at the Turkish Diplomatic Academy was in 2018. At a certain moment I put the diplomats to work and went to the toilet. Other than in Amman, I did not have a microphone with me. However, after I did what I had to do, the zipper of my trousers refused to close and got stuck. What to do? I returned to the classroom, entered with my back to the class, sat down behind my desk and debriefed the exercise. I gave the diplomats another assignment and left the classroom with my back to the audience. Because I was very well acquainted with the staff, I told them about my shameful problem. One of the staff members took me to the ministry's basement, where there was a laundry shop and a shoemaker. The shoemaker solved the problem. In which ministry of foreign affairs would they have a shoemaker in the basement?! *Lesson learned: do not despair, there is probably a way out, but you have to think outside the box.*

6.9 Kyoto, 2019

Peter Kesting and Remi Smolinski organize a yearly simulation competition on behalf of INTRA – the International Negotiation Training and Research Association. They again invited me to be one of the judges of this competition for business-school teams from all over the world. We have had wonderful gatherings in the past in places like Reykjavik and Munich. In 2019 the meeting would be at Will Baber's place at Kyoto University. Because I had never been to Japan, I immediately decided to join in.

The conference went very well, and at the end I was invited to join the jury to decide the winning team: a Dutch team from Twente University or a team from a Washington business school. The jury had three members: Steve Gates (Gates 2016), who made his millions through his British company, The Gap Partnership; Remi Smolinski; and me. Steve said: "The Americans are the winners, they got more out of this simulation exercise than the Dutch." I said: "The Dutch are the winners because they were creative, and they nurtured the relationship because they showed empathy towards the other party." Steve did not agree with me: "You should not be empathetic," he said, "as you will yield too much content." He clearly perceived negotiation from the perspective of business culture, while I looked at it as a diplomatic process. *Lesson learned: perception determines reality.*

6.10 COVID, 2020

The rise of COVID-19 blocked all international travel. In January and February 2020 face-to-face teaching at Leiden University in The Hague was still possible, but after that even seminars in the Netherlands had to be held online. A small number of three international zoom courses in Budapest, Cluj-Napoca and Tallinn followed. The disadvantage of online seminars is, of course, the lack of direct contact between the negotiators and a lower level of intensity, especially at the emotional level. The advantage for the trainer, however, is the clear overview of the group: each student can easily be identified by name and addressed individually by the teacher. Students and civil servants who could not have been present at face-to-face training could now participate. *Lesson learned: online training has a wider outreach than in-class training, and is more efficient in terms of time and more economical.*

6.11 Epilogue, 2021

There are, of course, more anecdotes to be recited here. Like the one from Washington, for example, where US diplomats at the training institute of the US State Department were wondering about the relationship between NATO and the European Union (EU). This was during the time of the accession of neutral states to the EU. How, they asked me, was it possible for these countries to get EU membership if they were not (yet) members of NATO? Or the anecdote from Moscow, where I asked the students "Who are the best negotiators in the world?" No answer. I said: "They are small, and you will find them everywhere." I meant children, but they shouted: "The Jews!" Which reminds me of an incident in Zimbabwe, when the director (Mandaza 1997) of the Diplomatic Institute in Harare, who owned several hotels and lodges close to Victoria Falls, took me there for a trip. On the first evening we discussed the situation in Zimbabwe. He said it was not good. I asked why not, expecting him to criticize Zimbabwe's President Mugabe. "Well," he said, "you know who is really in charge in the world and thereby in Zimbabwe: the Jews." This black man took me by surprise, and I decided to avoid further discussion on the issue.

In Oxford, where I was invited to dinner at Christ Church, I was completely surprised by dining on stage in front of all the students in the hall where the Harry Potter films had been shot. In Phnom Penh, Cambodia's minister of foreign affairs, Prince Rhannadin, invited me for talks and asked me: "Will you stay for lunch? The ambassadors of the US and Australia will come and visit me." I gladly accepted and he invited me to sit next to him when the ambassadors entered. Lunch was quite an experience, because the ambassadors harshly criticized the prince for Cambodia's human rights track record. I had already experienced quite a dangerous situation before that. When the Malaysian Airways plane landed at Phnom Penh airport, Malaysian policemen surrounded the plane to protect it. After being well received by the director of the institute where I would be teaching, he stressed the importance of the location of his organization, next to a Buddhist temple. He explained why this was so important: "If they come to arrest me, I can flee to the temple. They are not allowed to drag me out of there."

At a meeting of deans and directors (IFDT) in Cairo, a row arose about the name of the Falkland Islands, mentioned by Ralph Feltham, one of the founding fathers of the meetings. The Argentinian lady ambassador demanded that the name of the islands should be noted in the minutes as "Malvinas." Meeting participants then decided to tell the rapporteur, who was me, to skip the whole sentence, which I did.

Nobody present at Cairo in 1990 will forget the impeccable reaction of the rapporteur when, following a request from the floor, the Chairman directed: 'Mr Rapporteur, delete that remark from the record'. Dr Meerts [note: I was not yet a Dr at the time] at once nodded and ostentatiously erased a whole line on his pad with emphatic scratches of his pen, even though, still several sentences behind, his page was quite blank (Kappeler 1998: 11).

The same Argentinian ambassador went on a private Nile cruise after the conference and demanded that the Egyptians should keep her hotel room in Cairo during and after her trip because she had to take the plane back to Buenos Aires. The Egyptians, wanting to avoid diplomatic problems, gave in and paid for her hotel.

I have focused here on my experiences outside the Netherlands, while I worked at Dutch universities and, of course, at my own Clingendael Institute for 40 years. The bulk of my training was, of course, at Clingendael Institute and universities, ministries and military staff schools, and the like. Let me highlight just one observation of a "secret" meeting between the Chechen leadership and Russian Duma members in the Peace Palace in The Hague. Ruud Lubbers, former Dutch prime minister and in 1997 president of the Board of the Clingendael Institute, wanted peace talks between the Russians and the Chechens after the first Chechen war. We worked together with the US non-governmental organization Search for Common Ground.

The talks would be held in the Peace Palace with William Ury (Fisher, Ury and Patton 1991) as chairman and mediator. The problem arose when the Chechens landed at Rotterdam Airport, but refused to show their Russian passports, arguing that Chechnya was now the independent Republic of Ichkeria. No problem: Ruud Lubbers took a car to Rotterdam airport and told the border guards: "They showed their passports in the Dutch Embassy in Kyiv in order to get visas. We don't need to see them again." And so the Chechens came in. The talks went quite well, but failed anyway, because the Chechen leadership felt that the Russians did not show enough empathy for the sufferings of the Chechen people during the war. *Lesson learned: you cannot separate the people from the problem if the people are the problem.*

6.12 In Conclusion

Politics and diplomacy are too complex for simple recipes. It is important to find a balance between simplification and utter complexity. Participants need clear guidelines, but these guidelines should help them to understand reality. Exercises and discussions will have to clarify the complexity of negotiation processes and behavior, but they should not lead to uniformity. As has been said before: every trainer and every participant have their own approach, and these approaches are equally valuable as long as they enhance the insights into the question, What happens and how can I be effective? These conclusions should be drawn by the people themselves and should not be forced on them. A teacher telling participants what to do and what not to do is not a good trainer. Participants will have to feel how they should navigate, and learn by doing.

It should be noted that training in itself is not enough. Training should be supported by research, otherwise, training will become one-dimensional, only repeating and not renewing itself. Alfred van Staden and William Zartman helped me in publicizing my thoughts on international negotiation (Meerts 2014), which gave me new insights into international political negotiation processes. Innovation is the

key to successful and enduring training; research is the way to discover new insights, keeping training alive and kicking.

References

- Fisher, R., W. Ury and B. Patton (1991), *Getting to Yes*, New York: Penguin Books.
- Gates, S. (2016), *The Negotiation Book: Your Definitive Guide to Successful Negotiating*, Hoboken: John Wiley.
- Kappeler, D. (1998), *History of the Annual Meetings of the International Forum on Diplomatic Training*, Vienna: Diplomatische Akademie.
- Mandaza, I. (1997), *Race, Colour and Class in Southern Africa*, Harare: SAPES Books.
- Meerts, F. and T. Coulaloglu (2011), *The Impact of the EU Enlargement Process: OSCE Influence on Minority Politics in Prospective EU Member States*, in: *Canadian Studies: Proceedings of the First Bi-Annual Conference on Canadian Studies*, 26–28 February 2010, Chernivtsi National University.
- Meerts, P.W. (2014), *Diplomatic Negotiation: Essence and Evolution*, The Hague: Clingendael Institute.
- Meerts, P.W. (2019), *Workbook on International Political and Diplomatic Negotiation*, 31st edition, The Hague: Itchan Institute.
- Scharr, K. (2007), *Die Bukowina: Erkundigungen einer Kulturlandschaft*, Wien, Köln and Weimar: Böhlau Verlag.
- Vukovic, S. (2013), *Analysis of Multiparty Mediation Processes*, doctoral dissertation, Leiden University.

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