

ASSESSING HIDDEN DANGERS OF PRENEGOTIATIONS

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The purpose of this essay is to analyse the hidden dangers of prenegotiations based on the conducted cases and practical experiences of different authors and try to explain the causes of those dangers from different perspectives. The essay will initially present theoretical perspective with practical examples and try to illustrate the hidden dangers of prenegotiation in each of its stage, the impact of existing dangers on the process of negotiation as a whole and whether there are positive outcomes from presented dangers.

The importance of negotiations has been widely discussed by scholars and practitioners for over the years. Different aspects stages and functions of this field based on the numerous practical cases have been identified and set as a guideline for further research. Among those in the field of negotiation are Harold Saunders, Geoff Berridge, Janice Gross Stein, William Zartman and others whose concepts and ideas are presented in this essay to support the main argument. Prenegotiation stage differs from other stages of negotiation in its low exit cost, distrust between conflicting parties and critical consequences of failure. According to Zartman, prenegotiation begins when one or more parties consider negotiation as a policy option and communicates this intention to other parties. It ends when the parties agree to formal negotiations (an exchange of proposals designed to arrive at a mutually acceptable outcome in a situation of interdependent interests) or when one party abandons the consideration of negotiation as an option [1, p. 4].

The process of prenegotiations is the first stage of the whole and complicated development of dispute settlement. Parties to the conflict meet with each other around a table for the first time to consider the options and possibilities of negotiation. The process is complicated as the parties have distrust toward each other; the dispute itself may be complicated so that neither party is ready for concessions. Moreover, during this first stage each of them is confident that the dispute would be solved in favour of one party. There are different definitions of this

phase provided by scholars in the field. Zartman defined prenegotiation as a “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.” [1, p. 4] The parties to a conflict have to accept that there is another solution for their dispute which is negotiation. Once they mutually accepted it, the prenegotiation stage could be marked as started. According to Zartman and Berman “the moment is propitious for negotiation when both sides perceive that they may be better off with an agreement than without one.” [2, p. 52] The main idea of this stage is to bring the parties to negotiate, persuade them to talk about the dispute and eliminate as much obstacles as possible to start the negotiation itself. The importance of prenegotiations lies in its name as the stage will set general guideline for forthcoming negotiation. To achieve a peaceful settlement for specific conflict one should think about the dangers to the first stage that requires understanding of the parties in the dispute, identifying the reasons of their unwillingness to start communication around the table [3, p. 249]. How it will be conducted, what methods would be employed and how successful would it be depend on the outcome of prenegotiation process. Thus, prenegotiation stage could be considered as the most important among other stages of the whole cycle of negotiation.

This stage as other stages of negotiation has its phases as well. From the beginning to the end, the prenegotiation process is divided into several stages. The first stage, “agreeing the need to negotiate” [4, p. 29], incorporates the parties mutual acceptance of stalemate and that the negotiation is the best way to solve the conflict. As a starting point, it requires delicate approach. Moreover, Saunders claim that this stage “in many cases, persuading parties to a conflict to commit to a negotiated settlement is even more complicated, time consuming, and difficult than reaching agreement once negotiations have begun.” [3, p. 249]

When the major points mentioned in the first stage are considered and accepted, the prenegotiation may start its detailed proceeding, defining the agenda. Berridge points out that this stage includes discussing the major aspects for negotiation in agreed order which may cause difficulties being harmful for one or another party to the conflict.

The last stage of this process is agreement on procedure which includes the format of meetings, the place, the composition of participating members and the schedule of activities [4, pp. 35-44]. This stage may also create obstacles as all aspects are preconditions for successful negotiations. The venue, format and composition of participants are those delicate issues that set the basis for future settlement.

However, it would be more precise to estimate the hidden obstacles of prenegotiation process according to its stages. Although the parties’ initial approach

to negotiation may be different, it includes several dangers that would break the whole settlement process even without starting it. Parties in the conflict usually have distrust toward each other. This aspect along with the rejection to negotiate over the issue of conflict and “identification of the problem” [5, p. 22] makes the first and foremost obstacle in the cycle. They have different reasons to reject. As Berridge argued, parties in the conflict will try to change the balance of power or political situation in its favour by suspending the time for negotiation [4, p. 29]. It is still unclear whether the parties in the conflict over Nagorno-Karabakh are trying to prolong the time. Although the negotiations continue for twelve years there is still a question of who are the parties of the conflict. Thus, we can assume that the process either too complicated or the parties are suspending time, naively believing that the dispute would be solved in favour of one of the parties. Along with the agreement to negotiate parties should accept the fact that there is a deadlock and that the best way to overcome is negotiation. If not, it would be a real danger for stability in the specific region. The other example is North America free Trade Negotiations, where parties to the dispute were incapable to define the initial problem which as a result brought the prenegotiation to an end [5, p. 40]. However, there are specific issues to the conflict that are non-negotiable [2, pp. 43-45]. Usually such issues related to the sovereignty and self-determination when interests of one party coincided with the interests of the other or both parties consider specific aspect of the conflict as of prior importance for them. As *New York Times* reported, (January 30, 1978) “President Mohammed Siad Barre of Somalia said that he saw no chance of a negotiated settlement with Ethiopia to end the war over the Ogaden region in the horn of Africa ... control of the fighting had passed from Ethiopian hands to the Soviet Union. No one will be able to convince the Soviet Union to stop the war.” [6, p. 43] The issue may be non-negotiable even when they do not accept that they will gain more with agreeing to negotiate than refusing it. Thus, the non-negotiability of the specific issue is one of hidden dangers of prenegotiation phase that would lead to disastrous consequences for both parties in the dispute.

One of the major dangers in prenegotiation is the unwillingness to accept the equality of the opponent arguing the fairness of the facts and objectivity of statements avoiding the aspect of stereotype or perception. Zartman and Berman pointed out that “the United States and the Vietcong, France and the FLN, the Greek and Turkish Cypriots, and the Egyptians and Israelis long refused to recognize the equal right and power of the other side to participate in determining a solution to their common problem.” [2, p. 58]

In fact, unwillingness to move from original position is also affecting the

process of prenegotiation. This factor is related to the non-negotiability of the issue, when parties to the conflict consider the importance of the same aspect equally. However, the changes in the perception toward specific issues occur while parties consider the “present and future possibilities” [2, p. 52] of the dispute thus making the moment favourable. Nevertheless, in the initial stage rarely parties do ready to accept that the time is favourable for negotiations because, as Berridge pointed out, “the suing for peace is usually a sign of weakness.” [4, p. 30] The reasons are that conflicting parties have usually distrusted toward each other. If I agree, he would think that I consider him a winner, and am trying to hide my weaknesses.

But, if the parties successfully overcome these issues, the prenegotiation moves to its second stage where the parties are defining details of agenda. As in the previous stage, there are hidden dangers as well. First, the parties may consider the agenda harmful. There may be several reasons for that. For example, during negotiations over Nagorno Karabakh (NK) conflict from 1994 on, Armenian part insisted on NK delegation participation as a part of the conflict. Accepting this proposal from Azerbaijanis part de facto would indicate recognizing NK independence¹. Furthermore, as Berridge pointed out, “a proposed agenda may imply a proposed deal. As a result, accept agenda and, in principle, one accepts the deal.” [4, p. 33] A clear example for that argument is proposed package agreements when one issue of dispute linked with another one for certain stage. It was an Armenian part that rejected to discuss the status of NK together with withdrawal of all armed forces from the territories of Azerbaijan proposed by OSCE Co-chairs in 1997². Once they agree, the NK status would be discussed only within the state of Azerbaijan which is crucial point for Armenian side. Moreover, because of its openness, the agenda may be used by conflicting party to promote its own political option which may be harmful for another party. This tool is usually used by proposing an agenda which is unacceptable for another party. Being aware of that beforehand, the party could have some sort of media success against opponent party.

However, the agenda itself can be poorly prepared without clear definitions on major issues, which is also harmful to the parties in dispute. Stein indicated that “the process of prenegotiation differed not only in whether the agenda was

¹ N. Tavitian, “A Irresistible Force Meets an Immovable Object: The Minsk Group Negotiation on the Status of Nagorno Karabakh”, Woodrow Wilson School of Public International Affairs, WWS Case Study 1/100, 2001, <http://www.wws.princeton.edu/cases/papers/minsk.html> assessed January 9 2007.

² N. Milanova, “The Territory-Identity Nexus in the Conflict Over Nagorno Karabakh: Implications for OSCE Peace Efforts,” *Journal on Ethnopolitics and Minority Issues in Europe*, Issue 2, 2003, http://www.ecmi.de/jemie/download/Focus2-2003_Milanova.pdf accessed January 12 2007.

narrowed or expanded but also in whether it came to be inclusive or indeterminate ... as long as it is set it reduces uncertainty and risk for participants.” [7, p. 256] They may reject to negotiate or even find the negotiator biased having such unclear agenda for talks. It may raise suspicious and not only break the prenegotiation but also cause the conflict to start again. Although parties in the conflict agreed on the peaceful settlement, they also recognize that there should be some concessions as well. Thus, eliminating all mentioned dangers beforehand will create more open atmosphere to discuss such delicate question. In fact as Berridge pointed out, none of the parties in the conflict ready to make concessions first [4, p. 34], which is obvious. He further argues that “the significance of order in which agenda items are taken is reduced if it is possible to make the grant of early concessions conditional on receipt of later once.” [4, p. 35]

Hidden dangers follow the whole prenegotiation phase from the beginning to the end not avoiding the last stage of prenegotiation, details of the process. During this stage parties are going to define the format of future meetings, place, composition of participating members and the schedule of activities [4, pp. 35-43]. From initial point of view, there couldn't be any danger within this stage, because the parties have already agreed over major issues and the last one supposed to be the easiest. However, many prenegotiation attempts were either failed or brought large discussions in this stage. Examples include Armenia-Azerbaijan conflict over Nagorno Karabakh, Arab - Israeli conflict etc. While discussing the format of Geneva Meeting in 1977, Carter Administration was trying to find a solution over Palestinians representation whether within a unified Arab delegation or separately which takes several months of discussions. Israelis were against having any dialogue with separate Palestinian delegation while Egypt supported this proposal [8]. Moreover, even the place of each participant around the table has to be confirmed in this stage, as it may cause additional dangers to break the entire process [3, p. 260].

The other aspect which affects the prenegotiation outcome is a schedule of agreed activities. Although the parties in dispute have already committed to negotiate, there would be a need to schedule activities as parties, while making concessions, will try to extend the time as much as required. Kim Young-ho in his article called this method a “stalling tactics” He further argues that during North and South Korea Talks, the North part while presupposing any shift from their interest line was deliberately postponing discussions on major issues [9, p. 68]. Moreover, the exact timetable will enable parties to escape some procedural and technical difficulties as well. The argument is that specific dates may coincide with national holidays or special days or other important conferences and meet-

ings [4, p. 35]. For example, Turkey recently announced the day of opening of Armenian Church, Akhtamar in Van City – 24 April¹. In fact it would become a first attempt to restore relations between two countries. Nonetheless, April 24 is an Armenian Genocide Commemoration Day, which makes unable Armenian part to participate in the opening ceremony. Thus, avoidance of certain historical or meaningful dates is of prior importance during the prenegotiation stage.

Hidden dangers presented so far aim to understand the fragility of prenegotiation stage. The consequences could be disastrous. Obviously, if any of presented dangers has taken place, the whole process of prenegotiation may collapse. Moreover, the distrust between parties will increase tremendously so that further attempts to start negotiation may be unsuccessful. If prior the start of prenegotiation the ceasefire was achieved, it is highly possible that fighting would start again after the collapse of prenegotiation which possibly would be much more extensive. If the dispute involves economic issues such as that of GATT or NAFTA, the consequences of dangers may lead to economic crisis. An example of prenegotiation if economic dispute may be recent Russia Belarus dispute over gas supply. Being in close economic and military relation with Belarus, Russia suddenly rise the price of gas by 100%. After negotiation the supply of the gas with increased new price was restored but after few days Belarus cut Russian oil supply through its territory to Eastern Europe claiming that new increased price should be set². Here, despite existing trust and communication experience some of above mentioned dangers during prenegotiation stage have taken place. First, none party have willingness to make concessions. Second, Russia was not going to accept the equality of Belarus having a monopoly of gas supply not only for Belarus but possibly for the larger part of Europe. Even though Belarus agreed on the price, but it was not the end of the dispute but the start of new and more serious one. Thus, for the first glance, there couldn't be any confrontation during the prenegotiation between Russia and Belarus as the only so called defender of Belarus state in international arena is Russia. But clearly, as was presented above, there are hidden dangers during the prenegotiation that lead parties to crisis.

However, are there any positive outcomes from existing hidden dangers? Taking into consideration the fact that prenegotiation stage is an initial stage of

¹ H. Sassounian, "Who Publicizes the Genocide More? Armenians or Turks?", *Azg Armenian Daily*, 10 January 2007, <http://www.azg.am/?lang=EN&num=2007011102> assessed January 11 2007.

² CNN International, "Belarus Fights Back in Oil Dispute", 9 January 2007, <http://edition.cnn.com/2007/BUSINESS/01/09/gas.belarus.russia.ap/index.html> accessed January 9 2007.

the whole process of negotiation, parties in the dispute would have a chance to know each other better. Moreover, once any of hidden dangers affect prenegotiation, conflicting parties as well as negotiators would have much clearer understanding on the nature of both the parties and the conflict. It would be useful for further meetings and for methods to be employed for specific dispute settlement. Conflicting parties would further consider other options, alternatives or new solutions on their own without outside intervening because they already know the opponent's interests and preferences. Zartman and Berman point supports this argument as "Negotiation is appropriate when new solutions have to be invented to replace unacceptable old once or new once have to be created when new problems arise." [2, p. 47] Thus, facing dangers during prenegotiations would lead parties for new solutions.

In conclusion, the essay has illustrated the existing hidden dangers of prenegotiation according to its stages. Each stage involves several dangers that are unseen for the first glance. Distrust toward each other and the issue of the conflict itself may lead parties to reject to negotiate. Even if they agree to negotiate they could express unwillingness to accept the equality of opponent party. All mentioned above aspects would reflect on the process of supposed concessions. Having unclear and weak agenda for talks and its publicity would create critical situations for both parties in the dispute. Necessity of specific and exact timetable would make parties back to starting point that will affect the process of prenegotiation per se. The analysis has showed that despite numbers of dangers in this stage, there are several positive outcomes as well. Parties to the conflict as well as negotiator(s) become much more familiar with each other, are able to consider the opponent interests and anticipate their further actions in specific situations. Moreover, negotiator(s) would be able to construct appropriate strategy and use correct methods for further negotiation. With its all dangers, failures and difficulties the prenegotiation stage could be considered as explorative and requires more examination as it forms not only the specific part of the process of negotiation but also the contingent stability in the certain region.

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