



The foreign chiefs of Germany, China, the UK, the EU, France, USA and Russia gather for Iran nuclear talks (Vienna, 24 November 2014)

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## “HOPEFUL AMBIGUITY” IN NEGOTIATION CLOSURE<sup>1</sup>

This article looks at the role of ambiguity in the closing phase of negotiation. For our purposes here, ambiguity stands for the lack of clarity about the meaning of an important aspect of a negotiated agreement—whether substantive or procedural or both. I argue that sometimes ambiguity in the negotiated agreement does not prevent a constructive closure of negotiations. On the opposite, once embraced, ambiguity can facilitate closure and form the basis for a viable solution to the negotiated problem. If the sides agree to leave some aspects of their agreement to chance—how these

aspects get resolved will depend on the future developments that are difficult to predict at the moment of closure—they may be able to bring negotiations to a close and portray the final agreement as their common victory.

### THE PROS AND CONS OF INCONCLUSIVE ENDGAMES

Quite often the appearance of a win-win outcome is what negotiators actually seek to achieve—either from the beginning or from a later stage in their engagement. However, it is also thinkable that good-faith negotiations, in which the sides are genuinely trying to derive benefits from a voluntary agreement that they believe is possible, end in “constructive ambiguity”—consent by all negotiating parties not to try and clearly define all conditions related to the uncertain future. For example, Japan and China

attempted several times since the early 1970s to declare their Senkaku/Diaoyu islands dispute “shelved for future generations to resolve.”<sup>1</sup> This allowed the stakeholders to leave the negotiation table (in which the islands dispute usually played a minor role) with their own vision of the future and hope for the desired outcome eventually to materialize even if their negotiation counterparts were reluctant to guarantee that outcome in the final agreement. Equally viable appears a more “short-term” approach to ambiguity whereby the final contours of the negotiated solution are supposed to transpire within months or a few years.

In many instances, the quest for certainty can derail the agreement because it would reveal differences in expectations among the parties about the end result of the negotiations, the distribution of benefits, and possibly even the very rationale of

<sup>1</sup> This article is based on the chapter titled “Leaving It to Chance: Ambiguity in Closure” written for the forthcoming volume on “Closure in Negotiation,” edited by I. William Zartman.

<sup>1</sup> Cf. O’Hanlon, Michael E. and James Steinberg, *Strategic Reassurance and Resolve: U.S.-China Relations in the Twenty-First Century*, (Princeton and Oxford: Princeton University Press, 2014), pp. 139-143.

negotiating. On the contrary, allowing for ambiguity can tamper down fears among the parties involved of being forced into an unfavorable deal. If the sides can put up with ambiguity in the final agreement, flexibility in their positions increases and the chances of resolving their dispute go up.

## “allowing for ambiguity can tamper down fears among the parties involved of being forced into an unfavorable deal”

As has been widely noted, the whole process of negotiation becomes useful and therefore possible because of the uncertainty surrounding the bottom lines of the negotiating parties. If they could openly put their utility and preference structures on the table, and agree on the principle guiding them to an optimal outcome, negotiation as a process would become unnecessary. In such context, negotiation can then be seen as the business of mutual signaling and ground-testing by the parties. Their signals are intended to communicate to the other side the configuration of their respective ZOPAs and the extent of commitment to particular solutions within that zone. Parties enter negotiation assuming that the outcomes that they announce as preferred can evolve as the parties engage and that at some future point in this process the gap between their preferred outcomes can narrow down.

This being an accurate rationalist description of the purpose and essence of the negotiation process, the clarity of the final agreement

can supposedly differ. Negotiation can end with enough ambiguity surrounding the deal. For example, the language used to spell out some of its terms may allow for more than one interpretation, or the number of ways to implement the agreement may not be limited to one. The key to closure in ambiguity is the readiness of the negotiating parties to rely on the flow of subsequent events as the force that will determine the final solution.

Two factors play a key role in enabling “constructive ambiguity.” The first is the difference in projections of the future by the negotiating parties. Reaching an agreement becomes easier if each party believes that, while the exact outcome still remains unclear, the future flow of events will be favorable to its interests. This would imply that the parties’ expectations of the future are contradictory, if not mutually exclusive, but each party is nevertheless confident in its respective projection and willing to test it. The second is discounting of the future—underestimation of possible losses in the distant future. If finalizing an agreement immediately provides tangible benefits to the negotiating parties while the costs of doing so are only expected to materialize in quite a while, those costs tend to be discounted by the negotiators. This reconciles them to the ambiguity contained in the agreement and uncertainty with respect to the ultimate results of its implementation.

### PRACTICING AMBIGUITY

*Three cases illustrate the way “hopeful ambiguity” can work during negotiation closure.*

Dragging occurred in the process of searching for a sustainable

solution to the conflict surrounding the breakaway parts of Ukraine between 2013 and 2015. Domestic political turmoil in Ukraine started in November 2013 over the country’s association with the European Union and morphed into a full-blown international crisis by spring 2014. Citing defensive motives but acting opportunistically, Moscow moved to take over the Crimean peninsula and facilitate armed resistance to Kiev in the east Ukrainian region of Donbass. Three major rounds of multilateral top-level negotiations in Normandy, France and then Belarussian capital Minsk were conducted, respectively, in June and September 2014 and February 2015. Backed up by lower-level talks, each Minsk agreement was expected to put an end to the armed conflict in eastern Ukraine. The warring sides and several mediators, including Russia, Germany, France, and the OSCE, agreed twice on a ceasefire and a line of control. They also developed roadmaps charting political and legal measures needed to reach a permanent settlement.

The first Minsk agreement collapsed late in 2014 with the resumption of heavy fighting in the conflict zone. Minsk I was then superseded by a second accord that altered the line of actual control in rebels’ favor, but contained a more clear-cut and detailed, yet ambiguous, roadmap. While at the time of signing both Minsk I and II were hailed by all the parties as successful outcomes, virtually all of their terms allowed for multiple (usually two opposing) interpretations.

Despite persistent contradictions, both rounds of Minsk negotiations lent themselves to closure largely because the blueprint for conflict resolution embedded in the signed agreements was



Russian President Vladimir Putin, French President Francois Hollande, Ukrainian President Petro Poroshenko and German Chancellor Angela Merkel (Minsk, 11 February 2015)

ambiguous. Successful closure was in the highest interest of the two mediators—German Chancellor Angela Merkel and French President Francois Hollande—while the conflicting sides—the presidents of Russia and Ukraine and the rebel commanders—were not as keen on reaching an agreement. At least one of the parties believed that time was on its side. However, their intransigence was reduced to a level allowing for a deal by ambiguity in the final document. Under ambiguity each conflicting party expected its interpretation of the agreement's uncertain terms ultimately to prevail and therefore agreed to a closure.

Even if there are reasons to consider Minsk II a failure, its fate, as anything else in the world, was not pre-destined—considerable chances existed of the agreement being clarified and implemented. As the sides were facing an increasingly painful stalemate on the ground after signing the Minsk documents, they could have opted for a compromise

on the most controversial issues of local elections and control over the separatist enclaves' border with Russia. In the absence of major breaches of the ceasefire, the Minsk process could have drained the resources of both Kiev (facing the constant threat of a financial meltdown) and Moscow (suffering under western sanctions) and eventually dragged them to a lasting political solution.

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Another illustrative case of ambiguity as a facilitator can be

found in the negotiations on the reunification of Germany that took place between January and September 1990. At initial stages in these negotiations, both top German and US diplomats floated the idea of imposing restrictions on the future enlargement of NATO. Such promise was then officially withdrawn, with the United States instructing allies to stop any discussion of the prospects for NATO enlargement with the Soviet leadership. Moscow, however, preferred to believe that the pledge of NATO's non-enlargement beyond unified Germany had actually been made and tried to invoke it as NATO began its expansion later in the 1990s. Whether the Kremlin was deceiving itself or had legitimate grounds to demand that NATO should not enlarge to Central and Eastern Europe, such ambiguity helped to seal the deal of German reunification by September 1990. Soviet Communist Party Chairman Mikhail Gorbachev and others in the Soviet leadership were hard-pressed

by the manifold economic challenges the Soviet Union was facing at the time. However, while they were interested in reaching an agreement on relocation of the Soviet troops withdrawn from East Germany, they could have bargained much harder rejecting the deal that eliminated the last material obstacle to the reunification. Signing the final document between the four former occupying powers and Germany was made easier by Moscow's belief that its security interests would be honored in the post-Cold War Europe. The West and the Soviet Union were mainly driving each other towards a solution. The most interested party—West Germany and its leader Helmut Kohl—was ready for major concessions, including the 12 billion deutsche marks (\$7.7 billion in 1990) to pay for the return home of the Soviet servicemen. However, recent research points to possible attempts by Western powers to mismatch Gorbachev's cooperative strategy by the bid to extract maximum possible concession from the USSR.<sup>11</sup>

A final twin case of an “ambiguous closure” is found in the negotiations between six world powers (China, France, Germany, Russia, the United Kingdom, and the United States) and Iran on Iran's nuclear program. These talks dragged for more than a decade—from 2003 to 2015—and passed through two closure stages: in 2004-2005 and 2012-2015. Comparison of these

two sub-cases provides important insights into the role of ambiguity in successful termination of negotiation. Unwillingness of the six powers to allow for sufficient flexibility in the final deal prevented them from reaching an agreement with Iran early in the talks. The full ban on enrichment activities turned out to be unacceptable to Tehran and delayed a compromise for about a decade. When it was finally reached, it came under criticism for failing to achieve such ban.<sup>12</sup> The agreement did not leave the six powers and the world with uncertainty about Iran's ultimate intentions in the nuclear field. And yet such ambiguity allowed to break out of the impasse and reap significant benefits, including a strengthened nuclear non-proliferation regime and—potentially—a host of regional security issues in the Middle East being resolved. Tehran obtained a long-sought sanctions relief that is likely to influence its calculations should it ever contemplate walking out of the agreement and acquiring a nuclear bomb.

While at the time of this writing some of the deals examined above—primarily, the Minsk agreements and the Joint Comprehensive Plan of Action on Iran's nuclear program—could still unravel—or at least were not being fully implemented according to the initial design—they did come to fruition at the time of their making, with all negotiating parties taking away the sense of success. The collapse of any of the discussed agreements was in no way pre-determined. If it happens, that would occur largely for the reasons unrelated to the “hopeful ambiguity” inherent in the deals.

The cases examined above demonstrate that ambiguity in positions of the sides during negotiation closure and in the resulting agreement can sometimes be sustained until a final resolution of the unsettled issues is shaped by external developments. For many disputes, especially those involving an armed confrontation, an ambiguous agreement is better than no agreement.

Aside from putting an end—even if temporarily—to a conflict, an ambiguous agreement can provide a number of benefits to the sides. First, it can help negotiators to convince second-level (usually, domestic) constituencies that no significant concessions have been made to the opponent. Second, the availability of a number of interpretations of the negotiated agreement can send the needed signals to the third parties—for example, the regional competitors of negotiating countries in whose eyes the negotiators may not wish to appear weak. For example, Iran's preserved enrichment capability showed its regional rivals that Tehran would be able to acquire a nuclear weapon should its vital interests come under threat.

In the meantime, having reached a deal, even if an ambiguous one, negotiators will be in the good position to claim credit for removing a disturbing and potentially costly dispute from their respective countries' agendas through peaceful and costless negotiations. For example, by signing the Minsk agreements, Russia sought to convince the West that it was not opposed to Ukraine's territorial integrity (minus Crimea) while shifting the (potentially unbearable) burden of restoring that integrity to Kiev.

<sup>11</sup> Cf. Sarotte, Mary Elise, 1989: *The Struggle to Create Post-Cold War Europe*, (Princeton, NJ: Princeton University Press, 2014).

Cf., for example: Kroenig, Matthew, “Why

<sup>12</sup> *Is Obama Abandoning 70 Years of U.S. Non-Proliferation Policy?* Tablet, June 15, 2015, <http://www.tabletmag.com/jewish-news-and-politics/191479/obama-iran-nonproliferation>