

NEGOTIATION - THE KEY TEST OF DIPLOMATIC COMMUNICATION

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Abstract : *The content and the nature of diplomatic negotiations represent an extremely important topic, with a wide range of approaches, on the one hand this being a branch of international studies, on the other hand being a branch of diplomatic communication, and by this, a part of social, economic and political life. Starting from these fundamental elements that can form the definition of the notion in question - diplomatic communication - as a process aiming to send out a message and to back the public image of a person or an institution, by direct reporting and timely adaptation to the nature of diplomatic activities.*

Keywords: *dilomacy; negociation ; communication*

For a better understanding of the nature of negotiation in this complex set of determining factors, one must begin with the broad definition of negotiation, which is widely agreed upon in the literature, and according to which negotiation is a form of communication involving a communicative, dynamic, adjustment process which, in case of a conflict of interest arising between two or more parties pursuing their own goals and nuancing their views, may be the process of reaching a mutually satisfactory agreement.

In his book "*The propaganda Menace*," H.L. Childe analyzes negotiations according to the following main coordinates:

- a) the origin/the source of the message;
- b) the goal or the goals, meaning the interests involved;
- c) the methods used;
- d) the content of the message;
- e) the results of the impact.

In his turn, Christophe Dupont considers that there are five elements that can and should be taken into account when one talks about negotiation in general and that one must always pay heed to when tackling the issue of diplomatic negotiation. These elements are: 1. the object of negotiations; 2. the context of negotiations; 3. the stakes ("les enjeux") of negotiations; 4. the

asymmetric proportion of power, also called the balance of power, during negotiations; 5. the negotiators themselves. According to the author, these five elements are gathered under the acronym O.C.E.A.N.

In order to define negotiations as "the key test" of diplomatic communication, we should start from the experience, arguments and dates imposed by reality itself. We see thus that, in diplomatic practice, the stakeholders, the subjects participating in negotiations in international relations express themselves, support their own arguments against each other's, collaborate and become engaged in debates, yet they actually seek solutions, they seek consensus or mitigation in case of a tense relation, each of them being true to the interests of their state or institution. In the interview given for the benefit of this paper, which is about diplomatic communication, former Minister of Foreign Affairs Sergiu Celac, said about the specificities of diplomatic dialogue and negotiation that "negotiation on a written text is the ultimate diplomacy test, be it the content of a press release, which is not special in any way, and which is public, be it a more elevate case of a Treaty, which requires a more engaged negotiation, from the legal and the political point of view, and where negotiators drive a hard bargain and debate upon the use of every comma in the text. (...) the essence of diplomatic negotiation is in fact the negotiators' ability to sense, in a rational and verifiable way, what are the interests of their interlocutors in this exchange of arguments, and the negotiators' ability to see how far they can go themselves in defending their cause, without making the other look like giving in or suffering defeat. This is the essence of the diplomatic duel, a friendly duel, which makes diplomatic communication fundamentally different from human communication in general.¹"

In order for these conditions to be met, all subjects, all stakeholders look for allies, be they long-term or circumstantial allies, they attack foes, they carefully observe their foes' moves, so that each of them may be able to anticipate and to alleviate or to counter the potential effects of the opponent's next move. Such a remark is especially valid in the stage which in diplomatic practice is called the proto-negotiation stage (which is carried out without the parties taking contact and during which communication is done by mutual observation).

After setting the fundamental rules and the general goals and stage-specific goals, all participants convey their own message, directly or through a third-party, and by this message they help create the desired image of the institution/the state they represent and whose interests they support.

¹ *Interview with Sergiu Celac*

In essence, "negotiation is a competitive process, carried out by means of peaceful talks between two or more parties who accept to collaborate in order to fulfill certain goals in the most optimal and certain manner, the goals being set as explicit solutions, agreed upon by everyone"¹.

However, diplomatic practice has proven that along with negotiations carried out based on the rules and traditions on international law, based on mutual trust and good faith, there also are *foul negotiations*. This category includes negotiations where one or more parties resort to methods and practices beyond or in contradiction to general diplomatic use and legal rules, in order to influence the outcome, to ensure a certain outcome before the negotiation process is completed. In this respect, eminent diplomat and diplomatic phenomenology researcher Mircea Malița lists the use of "imminent force, pressure, threat, fraud (bluff), with their specificities."

The distinguished Romanian diplomat supports his statement by the following argument: "The effects of this kind of negotiation (foul negotiation) are toxic for all participants, but on the long run especially for the ones who started it." To conclude: "They cannot be considered as regulation means because of ethical considerations and also because of the instability of the solutions that such negotiations give rise to²."

It goes without saying that in this case there is a focus on double speak, ambiguous, equivocal language and on every negotiator's effort to "read between the lines," to see what "the other" is saying by the words they are using. Such practices have been put in place in order for one to be able to reply to a message that would either counter the interlocutor's effort, or at least curb the negative impact of the other's message, to block the other from gaining the advantage they were hoping for.

Considering that by this paper I intend to highlight the constructive, legal and fair nature of diplomatic communication, I would not like to dwell upon this type of communication (which is actually false communication) and I would like to focus on a few key elements through which I will try to demonstrate the consistency and legitimacy of negotiations as a special, optimal, efficient and desirable form of diplomatic communication.

One bit of truth that the practice of diplomatic negotiation has confirmed and is still confirming is that the chances to obtain the desired

¹ According to Lall, Lickle and Kauffman

² Mircea Malița *Teoria și practica negocierilor* (The Theory and Practice of Negotiation), Editura Politică, 1972 (I consider that this work surpasses the ideological phase which is inherent to its date of publication, Professor Mircea Malița's ideas being still viable and topical due to the meticulous and practical analysis and to the majority of the premises and judgments illustrated in this work);

outcome and this way to confirm the efficiency of diplomatic communication through negotiation directly depend on one's awareness and observance of the basic negotiation rules.

The very definition of negotiation as a special, primary form of seeking consensus on a solution is a consequence of the fact that negotiation is carried out based on the mutual agreement to use this sole communication channel and not to resort to other means to convey one's message, such as generating distrust or, in worse cases, exercising psychological, military, economic pressure or any other kind of pressure.

This is also the reason why the use of non-conflictual language and communication is required, based on the rule of argument-and-demonstration. This is also why it is necessary for all negotiation partners to define clearly the general and/or stage-specific goals. It is natural and necessary for each negotiator to be completely free to choose the solutions and negotiation venues they want, and this is why they cannot impose on another negotiator to accept their one, non-negotiable solution.

However, a certain imbalance has been observed lately, or rather it has recently reappeared, regarding the freedom of negotiation of mega states versus small/medium-sized states. This is why I consider that the time has come to speak in less general terms of the need to ensure the observance of the freedom of decision, not only from the point of view of principles and/or theoretical approaches, but also from the point of view of diplomatic practice, for each negotiator, which also implies the full freedom to express themselves and to communicate freely their positions and decisions.

When I wrote "the full freedom to express themselves and to communicate freely their positions and decisions," I based my statement on the absolute prevalence of another fundamental principle referring to the equality between parties and mutual respect, a principle which is very well defined by Malița: "No negotiation can develop enough in a climate of one partner's superiority or in a climate of complete distrust."

Another essential rule, and by this, a basic condition of efficient diplomatic communication through negotiation, is that of mutual cooperation and advantage. Irrespective of the negotiation formula, there is a need for understanding, for a common communication and negotiation channel allowing for "mutual advantages," as they are called in the specialized diplomatic language.

A third basic rule of negotiation, therefore of diplomatic communication, applied through this channel, is "*pacta sunt servanda*," as in a contractual relation. This rule refers to the principle of consensualism, which is an agreement of their own will (or an agreement reached by

parties/negotiators in this case), of legal effect by itself, being sufficient for closing a contract (or a legal document in general) irrespective of its form in practice. In international law, this means that the obligations entailed by international conventions (or by international law documents in general), and the obligations resulting from international law principles must be fulfilled in good faith.

Another essential condition to maximize the chances for diplomatic communication through negotiation is "adjustment." This condition is thought as the expression of each negotiator's sincere wish to obey the rules of the communication process, which refer to seeking to reach and to actually reaching an agreement.

In the same line of demonstration, the first rule is the rule of keeping to the agenda that has been agreed upon previously. This rule also imposes two basic conditions:

- a) the parties should agree upon the agenda, upon the topics that are to be discussed and negotiated on;
- b) the parties should have previously agreed on the order of the topics to be negotiated.

A relevant remark, repeatedly and significantly insisted on by analysts, is that the negotiators' (the communicators') act of agreeing/*ipso facto* on an agenda and on a certain order of topics to be negotiated positively influences the course of discussions. On the other hand, ignoring these rules, fully or partially, generates uncertainty and even turns negotiations into highly risky discussions, which can only lead to negotiation failure. Of course, this category does not include the changes or exemptions requested by negotiators depending on certain unforeseen accidents along the way, which can determine or vitiate the content of the actual negotiations.

Moreover, when analyzing diplomatic negotiations as a special, distinct form of diplomatic communication, it is necessary to take into account the third-party entities that follow the process in light of their own interests. This way, agreeing on an agenda has multiple advantages, because on the one hand, if the third parties have positive interests, and if the negotiators agree on including a topic on the agenda, then this will be a sign that the parties agree that this topic should be discussed. On the other hand, if the third parties have negative interests, the agreement of parties to exclude a topic from the negotiation agenda may mitigate and curb the suspicion of third parties regarding the potential damage to their interests caused by discussing that respective topic.

The second rule of adjustment refers to the obligation of all contracting parties to fulfill partial agreements. More precisely, this is about the fact that

treaties are negotiated article by article and each party gives their consent closely depending on the other party's consent or under the condition that the other party also gives its consent of the following article. This way, partial agreements, negotiated and completed, can and must be a guarantee that everything that was built in a previous stage (a previous negotiation round or a previous day) will not be destroyed in a future stage, by reinitiating discussions on that topic. It goes without saying that any violation of the terms already agreed upon will lead to delays or even to blocking the negotiation and, implicitly, to serious disruptions in the communication process.

Concerning this second rule, I believe that mention must be made that, as compared to the first rule, for which the consensus of all parties was required, for the second rule reciprocity is no longer mandatory and essential, so that each party has the freedom to fulfill their partial commitments, even if the other party were to be at fault¹.

As any other communication process, the negotiation process is a creation process, and it is on this capacity that the third rule is based: the rule of maintaining flexibility. This rule implies four particular implementation methods: a) by expressing the respective standpoints in a broad, general manner; b) by offering the other party a set of clear alternatives; c) by expressing availability and determination to take into account any alternative proposed by negotiation partners; d) by changing one's own standpoint in response to the opponent's request.

Obviously this is a play of interests, which may change during negotiations, but this can occur only depending on the circumstances and opportunities that arise in the diplomatic communication process through negotiation (the flexibility of negotiations also being determined by the nature, characteristics and context of negotiations).

Another rule of adjustment in the process of negotiation is the rule of mutual concessions, which derives from the very nature of the parties' intention to negotiate, which implies their will or availability to make concessions. In order for the negotiations to be successful, it is recommended that concessions be mutual. In the current diplomatic language, a concession is defined as a unilateral review of one's standpoint in a negotiation process, in order to satisfy the wish of those who negotiate from other, generally opposite standpoints.

In their turn, concessions, if they are mutual concessions (those related to one or more negotiation goals) may lead to compromise, as it is called in the

¹ Ibid. p. 232

diplomatic language. Compromise is the way or the method that can lead to an agreement, through concessions made by both negotiating parties related to the essential goal that they pursue.

Adjustment rules also include the rule of good faith in negotiation, a rule which experts in the field consider as being completely different from the notion of "bona fide" in legal matters. The theory of negotiation says that good faith does not generate rights for any of the negotiating parties, and it does not exonerate any of the parties from the consequences of acting in good faith. As it is more of a rule of conduct than a rule for negotiators/communicators, it does not have its own assessment criterion for action efficiency. Despite this, there may be enough indications that one of the parties "negotiates falsely," meaning that it participates in negotiations only with the undeclared intention to stop others from reaching an agreement.

Another significant situation in this category is that of one party deliberately imposing conditions that are unacceptable to the other party, which leads to blocking negotiations or to temporary or permanent dialogue failure.

There is also the situation where one of the parties applies or prepares to apply forceful constraint during negotiations, but also outside the framework of the agreement that represents the outcome of negotiations. Obviously, this would be an example of a violation of the purpose and techniques of diplomatic negotiation, among others, or rather especially of this kind of negotiation. Furthermore, it goes without saying that whenever such things occur, the very idea of the need for and the appropriateness of negotiation, dialogue and fair and honest debate is no longer valid.

This is why the rule of good faith is and must remain a fundamental adjustment rule, so that any attempt to violate or change it may be immediately sanctioned, thus ensuring its constant observance and implementation. This can be done by determining the opponent to give up such practices, even if this requires reporting such incidents to third parties.

One last rule of adjustment is the one that Karl Deutch considered as being the need to define the validity scope of negotiations¹. According to this approach, an essential phase and a fundamental condition of adjustment is the effort that the negotiator has to make in order to detect the arguments that their opponent's speech is based on, be it a persuasive or a dissuasive speech, also detecting the kind of facts that these arguments are valid for. Actually, this

¹ *Ibid*, p. 234

rule is the basis for the possibility to formulate certain negotiation instruments or the order of negotiation topics, established in mutually acceptable ways.

From what has been presented so far, we may gather that any deviation from this set of principles will seriously, even irreversibly alter the negotiation process so that such violations can only turn negotiations into "degenerate negotiations" which I have referred to previously.

Nevertheless, I will come back to this topic starting from an observed state of affairs: even if vitiated negotiations, or rather the manipulative techniques used in such cases, are in principle disapproved of, at least publicly, they persist under various forms and with various degrees of intensity.

As the scope of the paper does not allow an extensive presentation, I will briefly talk about two ways to practice the technique of vitiated negotiations which, in my view, are directly related to diplomatic communication: bluffing and fraud.

Bluffing is defined as a degenerate type of negotiation which consists in issuing threats based on thin air made by one of the parties to the diplomatic communication/negotiation. In this case, there still is one risk, seen by many analysts of the phenomenon, that the effects of bluffing are produced only if the opponent takes measures to act against the bluffer's requests. This implies the idea that during the negotiation process, the diplomatic communication process, the threatened party should be able to correctly estimate the threatening party's capacity to act on its threat. Therefore, it is important to remember that the parties' capacity to anticipate the hidden or (formally) half-declared intentions of negotiation partners may reduce the risk of unwanted effects that could eventually compromise the negotiation.

Another branch of vitiated negotiation is fraud, which some authors compare to bluffing, considering that it also entails a threat that is not backed up by anything, whose purpose is to obtain certain advantages from the opponent. Fraud is generally a promise made without the intention or possibility of being kept, or a distorted piece of information communicated to the negotiation partner in ill faith, in order to deceive them, and they thus turn from a partner in "good faith" into an opponent that must be secretly manipulated.

In the event where such fraudulent techniques are detected, there arises a problem which is essential to diplomacy and implicitly to the accuracy and fairness of international relations: the reputation of states or of bodies which resort to such infamous practices. It is widely thought, and quite legitimately, that the states or bodies that are found guilty of making use of such vitiated techniques suffer far more serious negative consequences than the natural persons who make use of the same techniques. The international

prestige of a country, an institution or a body is not only a matter of diplomacy or of international law, but also a component of international morality and at the same time it entails a large number of practical and unwanted consequences for a negotiator who is fair and acts in good faith.

Professor Mircea Malița, having analyzed degenerate, vitiated negotiations, formulated a few relevant conclusions which are still valid today and which I would like to share wholeheartedly¹. His first remark is that such negotiations have toxic effects in all cases, and for all parties involved, meaning both for the one who initiated them, and for the one who is the target of manipulation techniques.

Secondly, even if such techniques may produce the intended effect for one brief moment or on a "medium" term, let us call it that, they actually cannot generate but destabilization, distrust, crises and even conflicts. They cannot be the basis of any agreement whatsoever and they cannot generate stability and predictability for diplomatic efforts, and, as a consequence, they cannot generate stability and predictability for international relations.

It is just as important to keep in mind that sooner or later such immoral and illegitimate procedures will be judged by history and sanctioned accordingly. This is more of a wish, an ideal representation than a possibility that will unconditionally become a fact.

Moreover, vitiated negotiation techniques are but chimerical practices, having neither consistency, nor value, rejected by the accepted rules of diplomatic practice. The very implementation of such techniques or rather their frequency is a clear indication of the state of international relations, characterized by certainty or uncertainty, trust or distrust. This is why diplomacy, and its component of diplomatic communication, can and must ensure the prevalence of peaceful, open, sincere relations, and the good faith of all parties to the strategic play on a global scale.

Vocabulary, a crucial element to successful diplomatic communication through negotiation

I will discuss the particularities of diplomatic vocabulary briefly, and even so, I am faced with a paradox: although there is almost general agreement that "negotiation is weaved by communication," and that in the absence of communication "we can speak of invertebrate forms of negotiation," the issue of diplomatic language has not yet been tackled comprehensively. Certainly,

¹ *Ibid*, op. cit. p. 245- 247

considering the limits imposed by this paper, I will only refer to verbal language, although I consider that this topic also may also include non-verbal language. This means gestures, facial expressions, appearance, and conduct, all that Professor Septimiu Chelcea meant by saying "words are not enough"¹.

Coming back to the nature and particularities of verbal communication, I have started my brief analysis from the idea that the most rational and efficient form of negotiation is and will always be verbal communication. This being, of course, the best form of communication to further support, in a rational, articulate and convincing way, the completion of diplomatic negotiation by agreements and treaties with strong legal value.

The importance of verbal communication, and as a consequence, the importance of carefully studying diplomatic vocabulary, directly derives from the negotiator's professional circumstances. The professional negotiator is the one who has to know how to convey a certain message, in a logical, articulated, coherent and convincing way, always at the right moment, although maybe the receiver is not always able to understand, to receive and to decipher the message correctly and even in good faith.

A neutral observer, "not involved in the events," but especially not always and not sufficiently familiarized with the traditions and strict rules of diplomatic negotiation, might consider that negotiations, because of their general long duration, are more of an endless series of replies, parallel monologues and even a waste of time, a "dialogue of the deaf."

Actually, diplomatic negotiations are both the effort to find "the true expression" (to use the classic excerpt from a poem by Mihai Eminescu), and the opportune moment to utter those words (which reminds me of the now classic witticism by Konrad Adenauer: "being right is not everything, what is important is to be right at the right time").

The main issue that one must consider when approaching diplomatic language is the choice of words. Voltaire's axiom is perfectly valid here: "Gentlemen, if you wish to converse with me, define your terms." That is why the accuracy of language, the clear definition of the proximate genus and of the specific difference of each notion that the negotiator employs and uses in order to communicate is the sine-qua-non condition of the success of their demarche. In addition, because participants to each negotiation intentionally or unintentionally retain a small dose of distrust or of reserve, it is fair and it is

¹ Chelcea Septimiu *Comunicarea non-verbală (Cuvintele nu sunt de ajuns)* (Non-verbal Communication. Words Are Not Enough), Editura comunicare.ro, 2008

recommended for each participant to make clear the main terms and constructions they use, from the very beginning.

Time pressure and the rapid flow of information through various channels have generated the impression that repeating the same themes, theses and words during one and the same general statements may be considered tedious and may render the talk uninteresting. On the contrary, intelligently repeating certain key concepts at important points in the discussion will help the participants form a clear mental image of the concepts in question. In its turn, such a mental image has clear rules itself by which a certain order is achieved.

This discussion could the risk of approaching the matter superficially, if not in an idealized form, if diplomatic language were seen only as a way of naming things. By the nature of things, both the awareness of the fundamental negotiation rules, and of adjustment rules imply in the most serious way each negotiator's communication capacity, their ability to persuade (meaning to convince others of the righteousness of their cause) and, thus, to fulfill their interests, or to dissuade (meaning to convince others of the lack of grounds for, or the illegitimate nature of the opponent's interests), which is nothing but a way to fulfill one's own interests.

The so-called "trial balloons" are used to this end, by long perorations, marked by well-prepared and lucidly-intended expressions of emotion. Such speeches are generally meant to hide or to minimize certain diplomatic arrangements or to mitigate their impact.

On the fact that words do not always have a value in themselves, but that their value is also given by the way they are used, I believe it is necessary to study the discourse-building techniques separately. Words express, or, as the case may be, hide interests and this is why the negotiation vocabulary also needs to be assessed depending on certain expressions that have become a slogan, they are repeated in a speech or during the negotiation process.

I believe that equal importance should be given to the analysis of the way in which diplomatic vocabulary is used when third parties step in during negotiations. All the more as they are allowed direct or indirect messages, they are referred to, they are targeted as alternative partnership solutions, in order to "keep at close quarters" those who participate in direct negotiations. Ultimately, the problem that arises, be it declared or undeclared, is the veracity and credibility of messages. The statements or speeches are mere bearers of information, but in its turn this information is or may be considered all the more important as the uncertainty is bigger.

This is the essence of the major challenge of diplomatic language and of negotiation technique and I believe that this is what makes it a very topical

research issue. An open and captivating topic, which may run the risk of becoming the object of unilateral or simplifying studies.

Furthermore, I consider that there is a need for a concrete and nuanced approach to this topic, and the lines before your eyes are meant to be a dialogue invitation, and, to the same extent, an invitation to a debate where viewpoints and potential scenarios may be presented.

The following main ideas sum up, in the most natural and sufficient way, the analyses of the quality of diplomatic negotiations as the key test of diplomatic communication:

1. Given the fact that the sufficient reason of diplomacy lies in the will of states, in the situations arising on an international level, and in the challenges of the developments of today's world.
2. By this, diplomacy and first of all diplomatic communication and more precisely diplomatic negotiation, are determined by the need to contribute to the optimal coordination of the international system and, through it, to maintaining peace and security.
3. Even though it operates with certain means specific to modern civilization techniques, and it develops its own specialized procedures, diplomacy, ipso facto diplomatic communication, remains a science and an art which cannot dispose of direct contact, of communication between people who represent the interests of their states or of their interstate bodies.
4. Ultimately, diplomacy, diplomatic communication, will always consider negotiation as the only possible way for states or regional or international bodies to reach an agreement, by achieving consensus on their respective will and interests.

Thus, in searching the desirable balance between confrontation and negotiation, one may say that reassessing and relaunching the principle of the contribution of each state can and must generate a diplomatic solution to the issues of today's world, a situation where Romanian diplomacy should bring its own specific and efficient contribution, so that Romania may become more and more cooperative in Europe and in the world.