

GETTING TO YES: NEGOTIATING AN ARMENIA-AZERBAIJAN AGREEMENT. PRINCIPLED NEGOTIATION VERSUS POSITIONAL BARGAINING

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Abstract. The article studies the application of basic provisions of ‘principled negotiation’ method to the on-going Armenia-Azerbaijan negotiation. The method was developed in early 1980s at the Harvard Negotiation Project. A distinctive feature of the method is the attitude towards negotiations as a mutual search for a solution beneficial to the parties. Cooperation between parties is vital to negotiation process. Considering each other’s interests is indispensable part of negotiation process. The author argues that ‘principled negotiation’ method could bring the security and long-lasting peace to the region of the South Caucasus.

Keywords: Azerbaijan, conflict, negotiation, Armenia, principled negotiation.

«ИӘ» ДЕГЕН ЖОЛ: АРМЕНИЯ МЕН ӘЗЕРБАЙЖАН АРАСЫНДАҒЫ КЕЛІСІМ БОЙЫНША КЕЛІССӨЗДЕР. ПРИНЦИПТІ КЕЛІССӨЗДЕР ҮСТАНЫМДЫҚ САУДАЛАСУ ОРНЫНА

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Аңдатпа. Мақалада Армения мен Әзербайжан арасында жүргізіліп жатқан келіссөздерге «принципті келіссөздер» әдісінің негізгі ережелерінің қолданылуы қарастырылады. Бұл әдіс 1980 жылдардың басында Гарвард келіссөздері жобасының аясында әзірленді. Әдістің айрықша ерекшелігі – екі жаққа да тиімді шешімді өзара іздеу ретінде келіссөздерге қатынасы. Тараптар арасындағы ынтымақтастық келіссөздер үдерісі үшін өте маңызды. Бір-бірінің мүдделерін ескеру келіссөздер процесінің ажырамас бөлігі болып табылады. Автордың пайымдауынша, «принципті келіссөздер» әдісі Оңтүстік Кавказ аймағына қауіпсіздік пен ұзақ мерзімді бейбітшілік әкеле алады.

Түйін сөздер: Әзербайжан, жанжал, келіссөздер, Армения, принципті келіссөздер.

ДОСТИЖЕНИЕ «ДА»: ПЕРЕГОВОРЫ ПО СОГЛАШЕНИЮ МЕЖДУ АРМЕНИЕЙ И АЗЕРБАЙДЖАНОМ. ПРИНЦИПАЛЬНЫЕ ПЕРЕГОВОРЫ ПРОТИВ ПОЗИЦИОННОГО ТОРГА

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Аннотация. В статье рассматривается применение основных положений метода «принципиальных переговоров» к продолжающимся переговорам между Арменией и Азербайджаном. Метод был разработан в начале 1980-х годов в рамках Гарвардского переговорного проекта. Отличительной чертой метода является отношение к переговорам как к взаимному поиску решения, выгодного для сторон. Сотрудничество между сторонами имеет жизненно важное значение для переговорного процесса. Учет интересов друг друга является неотъемлемой частью переговорного процесса. Автор утверждает, что метод «принципиальных переговоров» может принести безопасность и долгосрочный мир в регион Южного Кавказа.

Ключевые слова: *Азербайджан, конфликт, переговоры, Армения, принципиальные переговоры*

Introduction

In early 1980s professors Roger Fisher and William Ury developed the method of “principled negotiation” at the Harvard Negotiation Project. Authors argued that traditional form of negotiation ‘depends upon successively taking — and then giving up — a sequence of positions.’[1] The contest of will in such scenario may produce agreement but it will not be long-term. The reason for this is that both parties do not feel totally content with the result. They had to give in at some point. When giving in they may perceive a concession as a forced measure and wait for the moment to return the concession. The agreement is not durable then. The hard positional negotiator wants to win; he sees any situation as a contest; he treats his opponent as an enemy not as a partner. A partner to reach an agreement that reflects mutual interests. In this contest of wills the side that takes the more extreme positions and holds out longer fares better. However often he ends up facing an equally hard response which exhausts him and his resources and harms his relationship with the other side. Roger Fisher and William Ury judged any method of negotiation by three criteria: ‘it should produce a wise agreement if agreement is possible. It should be efficient. And it should improve or at least not damage the relationship between the parties.’[2] The agreement that meets the legitimate interests of each side is wise. According to the authors this is impossible in positional bargaining. Because meeting the interest of the opposite side is not the goal. Moreover, positional bargaining is not efficient since

extreme opening positions and smaller concessions demand more time and effort to discover whether or not the agreement is possible. Inefficiency of this method of negotiation is well described by the scholars: 'Decision-making is difficult and time-consuming at best. Where each decision not only involves yielding to the other side but will likely produce pressure to yield further, a negotiator has little incentive to move quickly. Dragging one's feet, threatening to walk out, stonewalling, and other such tactics become commonplace. They all increase the time and costs of reaching agreement as well as the risk that no agreement will be reached at all.' [3] In addition, arguing over positions damages the relations between parties and destroys any friendly atmosphere.

Principled negotiation versus Positional bargaining in Armenia-Azerbaijan Negotiations

Armenian-Azerbaijani negotiations have always been a positional bargaining for Armenia. The negotiations can be divided into two stages: pre-2020 war and post-2020 war. The first period negotiations failed the second one is failing so far. In our opinion, to change this trend the method of American scholars should be applied. The method offers four rules of successful negotiations. We think that the most important of all four is the second rule - focus on interests, not positions. The position is something about which a side has made a decision. Interests are something that made a side decide so. So, the interests are behind the positions. "What do you want?" is a question to find out the position. Ask "Why do you want this" to learn about interest that motivated this position. In the book 'Getting to Yes: Negotiating Agreement without Giving in' Fisher and Ury explained the difference between position and interest by example of negotiations between Egypt and Israel in Camp-David in 1978 [4]. Both of them wanted Sinai Peninsula. Israel gained control of the peninsula in 1967. Egypt wanted it back. So, the positions were incompatible. Compromising was unacceptable to both parties. Appealing to their interests rather than their positions made it possible to reach a solution. Egypt's interest lay in sovereignty. Israel wanted to provide its security. Before Egypt used to build up its military forces on the peninsula and attack Israel. Now Israel wanted to turn Sinai in a sort of buffer between Egypt and its main territory. In order to meet these interests, the peaceful plan offered Israelis the security through demilitarization of Sinai which was supposed to be returned to Egypt. The question "why do you need Sinai?" put to Israeli Prime Minister Begin helped to find out Israeli security concerns and afterwards meet them by making the peninsula demilitarized.

'Reconciling interests rather than compromising between positions' [5] is the main formula that any negotiator should keep in mind while trying to reach a durable peace. In order to be able to think about reconciling interests not compromise arithmetically counting concessions one should follow the first rule of this method of negotiations. It says - Separate the People from the Problem. While implementing this rule the participants become problem-solvers which have common goal. They abandon their adversarial behavior which is characteristic of positional bargaining. A change in attitudes from negative to positive or at least to neutral is the main condition for changing the behavioral model: from hostile to partner.

How do we identify interests? Fisher and Ury say ask 'Why?' first of all. Before asking Armenians and Azerbaijanis 'why?' it is necessary to recall their

positions. They differed a little pre and post the war. Pre-war the Armenian side was demanding the implementation of self-determination principle of international law. Azerbaijani side was insisting on the principle of territorial integrity. To get an answer to the question ‘why?’ one should look to Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of United Nations (2625, XXV) adopted in 1970. The resolution answers to the question why States need those principles. Peoples may demand self-determination for themselves when they are interested in determining ‘their political status and to pursue their economic, social and cultural development’ [6]. Armenian people determined its political status in 1918 by creating First Republic of Armenia. In 1920 it was transformed into Socialistic Republic of Armenia. Later it became the part of USSR. In 1990 Armenian people determined their political status by creating independent state. In order to meet the interests of Armenian people living in Azerbaijan which lied in ‘economic, social and cultural development’ [7] the Azerbaijani government had been offering them an autonomy. The Armenian side has always categorically rejected this proposal insisting on only one form of political status - full independence. Principled negotiations failed – one party tried to meet another one’s interests while the latter one dug in to its position. The war in 2020 completely changed the status quo. Azerbaijan restored its territorial integrity by regaining the control over occupied lands. The fourth rule of principled negotiations says that parties should insist on objective criteria. The UN Declaration on Principles of International Law № 2625 (XXV) is an objective criterion. It does not depend on the wishes of Armenians and Azerbaijanis and it says that ‘nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.’ [8] Azerbaijan’s territorial integrity was impaired. Now it is not. Now Armenia and Azerbaijan negotiate the possible peace treaty. On May 14, 2023 in Brussels the President of European Council Charles Michel following the trilateral meeting with President Aliyev of Azerbaijan and Prime Minister Pashinyan of Armenia said that ‘The leaders confirmed their unequivocal commitment to the 1991 Almaty Declaration and the respective territorial integrity of Armenia (29,800 km²) and Azerbaijan (86,600 km²).’ [9] So, Armenia does not have territorial claims to Azerbaijan anymore. What stalls negotiations now? The Armenian side wanted to add in peace agreement a clause on the creation of international mechanisms that guarantee the security of the Armenians who remained to live in Karabakh region of Azerbaijan. Armenian Prime Minister Nikol Pashinyan in May 2023, announcing the recognition of Karabakh as part of Azerbaijan, added that Baku should go to full negotiations with the Armenians in Karabakh in order to give security guarantees to them. President Ilham Aliyev answered to this speaking with Azerbaijanis returning to previously occupied city of Lachin, ‘we sent a delegation there. My representative went and held the first meeting with them, and then we invited them to Baku to talk. They refused. After that, we invited them to Baku for the second time, i.e., representatives of the Armenian minority living in Karabakh.

They refused again.’ [10] Is it dragging one's feet? Walking out or stonewalling? Typical positional bargaining technique. It is been the fourth year of negotiations. Issue of ‘international mechanisms that guarantee the security of the Armenians’ was introduced by Armenian negotiators. Azerbaijan attitude to this is based on the same objective criterion - UN Declaration on Principles of International Law № 2625 (XXV). It possesses ‘of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.’ [11] There is no evidence to the contrary. Azerbaijan is home to more than ten ethnic groups. That government will provide security for the Armenians as well. The peacekeepers deployed in Karabakh was a concession that Azerbaijan had made in order to demonstrate its goodwill. Azerbaijan hoped that the peaceful agreement would have been signed by the end of the 2023 year. The president Ilham Aliyev at Shusha Global Media Forum said that, Armenia ‘already accepted that Karabakh is Azerbaijan publicly. Now they need to put their signature under the document. This is one of the final steps and there must be some more. But if that step is made - ... - if Armenia will agree on that paragraph, where they totally refrain from any territorial claims to Azerbaijan, I think, the signing of a peace agreement can be realistic by the end of this year.’ [12]

Fisher and Ury introduce the term BATNA which stands for the Best Alternative for a Negotiated Agreement. They say that ‘people think of negotiating power as being determined by resources like wealth, political connections, physical strength, friends, and military might. In fact, the relative negotiating power of two parties depends primarily upon how attractive to each is the option of not reaching agreement.’ [13] What will happen if we do not reach an agreement even in the current year? Then President Aliyev continued that ‘if they don't want to have a peace agreement with us, we cannot force them. ... But in this case, there'll be no peace. Well, it's not the best scenario for the region. It will not add stability, security.’ [14] Obviously, this is not the best alternative to a negotiated agreement.

According to Fischer and Ury, if attempts to move the switch game from positional negotiations to principled negotiations are unsuccessful, a third party must be invited. President Ilham Aliyev noted in July 2023 that “we have three mediators. They all have enough international mechanisms to operate independently. We hope that we will see progress on one of these three areas.” [15] However, the Armenian side gradually began to use some of these platforms to put pressure on Azerbaijan, while it began to abandon others. Thus, it again became obvious that the Armenian delegation did not view these platforms as an opportunity to reach a mutually acceptable agreement, but only as a tool for their chosen bargaining strategy. Observing Armenia's behavior, Azerbaijani President Ilham Aliyev said in October 2023 that in this case, direct negotiations between the foreign ministers of Azerbaijan and Armenia could be an alternative [16]. As a result, two weeks after the meeting of the presidents of Azerbaijan and Armenia on the sidelines of the Munich Security Conference in February 2024, negotiations were held between the foreign ministers of Azerbaijan and Armenia. In May 2024, regular peace negotiations between Azerbaijan and Armenia were held in Almaty by the heads of the Foreign Ministry on a completely new platform, which does not intend to be a mediator. On the day of the negotiations, the Azerbaijani Foreign Ministry published a release in which it indicated the name of the draft peace treaty - “Bilateral Agreement on the Establishment of Peace and Interstate Relations” [17]. The word “bilateral” probably

emphasizes the fact that Baku and Yerevan were going to dialogue with each other directly, without intermediaries in the person of any third party. The Azerbaijani side was encouraged by the fact that the Armenian side was abandoning attempts to include a clause on Karabakh in the text of the peace treaty. In parallel, the parties began the practical process of delimiting the border. In Almaty, ministers welcomed progress in border delimitation and agreements reached in this regard, namely the transfer to Azerbaijan of four villages that have been under Armenian occupation since the 1990s. The only obstacle to the conclusion of a peace treaty remains the presence of political forces that oppose a compromise settlement. Their influence remains a key factor that complicates the achievement of sustainable peace between the countries.

Conclusion

The strongest interests are the basic human needs say Fisher and Ury. First two basic human interests are security and economic well-being [18]. If Armenians have security concerns the Azerbaijanis have them as well. They still remember how they were expelled in late 1987 and early 1988 from Armenia. ‘To reconcile interests rather than compromise between positions’ formula can work because behind opposed positions lie more interests than conflicting ones. Those interests are shared and compatible. Both people want to live a prosperous and safe life.

In our opinion, the main recommendation here is to follow the second rule of the “principled negotiations” method, namely to concentrate on interests, and not on position. If the national interest of the Armenian people is security and prosperity, they need to agree to the following five points in negotiations:

- Mutual recognition of respect for the sovereignty, territorial integrity, inviolability of internationally recognized borders and political independence of each other;

- Mutual confirmation of the absence of territorial claims against each other and acceptance of legally binding obligations not to raise such a claim in future;

- Obligation to refrain in their inter-State relations from undermining the security of each other, from threat or use of force both against political independence and territorial integrity, and in any other manner inconsistent with the Purposes of the UN Charter;

- Delimitation and demarcation of the state border, and establishment of the diplomatic relations;

- Unblocking of the transportation and other communications, building other communications as appropriate, and establishment of cooperation in other fields of mutual interest.’ [19].

Asking question ‘why?’ during any conflict is fundamental for principled negotiations method. It has two quite different meanings. The authors write that ‘one looks backward for a cause and treats our behavior as determined by prior events. The other looks forward for a purpose and treats our behavior as subject to our free will. ... In either case, we make choices. We can choose to look back or to look forward.’ [20]. Today, Armenia and Azerbaijan have unique chance to look forward and build safe and prosperous South Caucasus.

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