

Negotiator's Risk: The General Case

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Introduction

Negotiation comprises a series of risky choices made by interactive agents. The choices are risky because: 1) the agents are interactive; 2) the situations are complex, involving potentially intricate issues; 3) there is a variety of contexts; and 4) the outcomes are uncertain. The nature, sources, and intensity of risk in negotiated situations are as diverse as the situations themselves. Certain situations merit particular attention because they are associated with special difficulties or because the topics under negotiation have a particular significance for society, for example, negotiations in which risk itself is negotiated. That is the theme of this book. Negotiation in the general sense, however, considers all types of negotiations, whatever their context, domain, or actors, and irrespective of whether they are bilateral, plurilateral, or multilateral. This chapter explores the “general case.” The general case offers theoretical and (mainly) practical observations, from which certain assumptions can be drawn and applied to negotiated risks.

The chapter first deals with a few theoretical considerations. The rest is divided into three sections: 1) the negotiator's exposure to and perception of risk and the way he/she communicates it; 2) risk assessment and evaluation; and 3) the risk management and strategies used by the negotiator.

Theoretical Considerations

Theories on risk, as they currently stand, cannot be separated from the more general theories that have been designed to describe, explain, or (hopefully) predict societal behaviors in all their diverse dimensions, including economic or social events and

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institutions. Risk theories diverge in many descriptive and, even more so, normative aspects; there is, however, a dominant paradigm that Jaeger et al. call the “rational actor paradigm” (RAP) (Jaeger et al., 2001). This line of thought posits that, both descriptively and normatively, a coherent and far-reaching theory of rational choice can apply to a large variety of societal phenomena, perhaps most visibly in the field of economics and finance.

The foundation of this theory rests on four key propositions (Jaeger et al., 2001, p. 52).

- Rational actors can choose among different possible actions;
- Rational actors assign (objective or subjective) probabilities to various outcomes;
- Rational actors can order actions as well as their outcomes according to their preferences. Preferences for actions involve some degree (positive, zero, or negative) of risk aversion for specific choice situations;
- Rational actors try to choose an action that is optimal according to their own preferences.

These propositions mean that the main risk issues (perception and communication, assessment, evaluation and management) can be explored and explained by the application of a procedure for, and a model of, rational choice. It is worth noting that the procedures and the model comprise the main steps of option selection, precise assessment (in terms of consequences of outcomes and probabilities), and unambiguous evaluation (in terms of optimization). From these, appropriate strategies can be developed.

This dominant paradigm, inspired fundamentally by a “mechanistic” view of decision making (Jaeger et al., 2001, p. 243) and by the prevalence of utilitarian premises, has proved to be particularly appropriate for applying to “processes that lead to a stable structure of decision makers with mutually consistent expectations, stable preferences, and reasonably well-known decision analyses” (Jaeger et al., 2001, pp. 260–261) such as “market economies,” a “society of nations,” and “kinship systems” (Jaeger et al., 2001, p. 261). In these situations risk analysis can—and, according to the authors, should—be applied in accordance with the principles underlying the approach.

The paradigm has, however, been the subject of a number of criticisms, covered comprehensively in (Jaeger et al., 2001). Risk analysis thus appears to be more complex and more open-ended than assumed by the largely technical analyses that dominate this sphere. Contesting theories that draw upon research results and apply different presuppositions or axioms regarding human behaviors have flourished (e.g., systems theory in sociology, cognitive theories in psychology, critical or post-modern theories in the social sciences), and this provides a fertile ground for at least questioning the current approaches to risk, and even for proposing a way of reconstructing them.

To what extent then has the approach to risk inherent in negotiation theory been influenced by this situation? A first observation is that, to date, risk does not seem to have been a privileged theme of many negotiation textbooks or contributions. Not that the concept, or the word, is absent from these works (there are, for example,

mentions in the index of Lax and Sebenius, 1996). However, it appears in the subject index of neither Kremenyuk (2002)¹ nor Peyton Young (1991). The reference to risks in negotiation ("the general case" in the sense of this book) is often either implicit or limited to the presentation of game theory (as it applies to negotiation) or to the question of the risk aversion of negotiators.

Yet several strands in negotiation theory have explored, some in great detail, the question of risks in negotiations, in other words, negotiators' risks. In fact, it is instructive to note that these various approaches can be classified in relation to their connection or direct linkages to the more general theories mentioned above. One group of these negotiation theories adopts (and ultimately adjusts) the rational choice model. This is the case in the literature that looks at negotiation as a decision analysis problem. Some major contributions on negotiation draw on the traditional model(s) of actor rationality (e.g., Raiffa, 1982, 1997) and the classic game theory approach applied to negotiation (e.g., Avenhaus, 2002, pp 202–228).

In parallel with this development, a number of important contributions on negotiation and risk have departed from the main assumptions of the rational actor paradigm (with its corresponding rational negotiator paradigm or RNP). Perhaps the most convincing assault is that of Pruitt and Carnevale (1993) who show the limits to the maximization of self-interest (one of the foundations of RAP) as the exclusive motivation of negotiators. Many points made by the theories that compete with RAP-based theories can be transferred from general theory to the negotiation arena. Some of these—regarding perception, communication, assessment, and management—are mentioned in the sections to come.

Another strand of negotiation theories that restrict the use of RAP in studying negotiator behavior where there are risks in the negotiation is represented by the cognitive school of psychology (notably, Tversky and Kahneman, 1974; Kahneman et al., 1982). These authors, dealing with judgments under uncertainty, have clearly demonstrated the existence of non-rational behaviors and the possible interference of certain factors that question some of the assumptions of RAP, for instance, the phenomenon of preference reversals.

One conclusion that stems from these preliminary remarks on the theory of risk in negotiations is that, from the negotiator's point of view (in practice), the study of risks should attempt to capture the phenomenon from a plurality of angles. In this chapter, this idea will be applied to the "general case." The lesson is even more imperative when one considers negotiations where the issue involved is the negotiation of the risk itself, which is the topic addressed in subsequent chapters of this book.

Exposure of the Negotiator to Risk: Perception and Risk Types

In practice, most negotiators are aware that any negotiation exposes the participants to risks: their degree of awareness of those risks, however, depends on several

¹ However, one chapter deals with game theory, and risk is examined in various other chapters.

factors. Of particular significance here are risks linked to: 1) context and issues (“situational risks”); 2) the person (attitude toward risks in general, experience, cognition, feelings, and emotions: “negotiator’s profile risks”); and 3) anticipation and expectations regarding the impact of the behaviors of opponent(s) when engaged in interactive processes in a negotiation (“others’ behavioral risks”). Hence, awareness of risk exposure can be said to be variable in respect to both circumstances and individuals (or groups). Awareness is closely connected to perception, and it influences the communication patterns among participants.

The way negotiators perceive risks combines awareness of: 1) exposure to risk in negotiations in general; and 2) the process of identification of the characteristics of risk in a particular case. Negotiators may perceive the particular negotiation as being more or less “risky” (a problem of intensity) or as tending to substantiate some sources of risk rather than others (a problem of “quality” or “differentiation”). In many negotiations (especially in simple or routine encounters and probably for a large number of professional negotiators), risk is implicit and considered inherent to the process. This derives from experience and judgment rather than from a specific concern, as long as it is perceived to be within reasonable bounds, that is, within some notion (largely empirical and rather imprecise) of “acceptability,” such as in a game in which the stakes are not too high. But the question turns out to be quite different in more complex or unusual negotiations. Perceptions—and, ultimately, communication about risks—are much more precise (less hazy), more intellectualized, and more troublesome for the negotiator. Perception is focused on possible—but not predetermined—hazards or surprises that may have harmful consequences and that place the negotiation in a world of uncertainties.² The negotiators feel (somewhat) insecure about their anticipations (to what extent do they now make sense?), expectations (how will the process and outcomes turn out?), and strategies (how do we deal with and adjust flexibly to fully or partly unknown phenomena?). In these circumstances the risk dimension needs to be more explicit, but at the same time explicitation is more difficult to express.

The crux of the matter is that negotiation is a time-related activity. It develops in sequences, sometimes well delineated, sometimes not. Deciding to negotiate—the start of the process—involves risk; there may be alternative ways of solving the problem, of which negotiating seems to be the best option available as long as preconditions are met to make it a workable (in RNP: the most workable) proposition (in RNP: in cost–benefit terms).³ After the decision is taken to negotiate, a series of sequences and moves are initiated, in which risk exposure may take a variety of forms (see below); but while these seem to be dissolved at the moment of

² A distinction is made between “risk” and “uncertainty” in the discipline of statistics, with “risk” referring to events that are subject to probabilities because the actors are able to establish a probability distribution; “uncertainty” refers to “non-statistical events,” that is, events that are unique or may be considered as such (see, for instance, Hertz and Thomas, 1983). Probabilities may be objective or subjective (“Bayesian”). In the former, the probability distribution refers to magnitudes to which the axioms and calculus of statistics are applied (Kahneman et al., 1982). However, there is a tendency in the literature not to be too precise in the use of the terms “risk” and “uncertainty.” Risk is then immediately linked to “associated uncertainties.”

³ These issues are generally dealt with in the literature by reference to “negotiability” or “maturity.”

agreement (or of failure to agree), this may well be an illusion because problems of interpretation, and chiefly of implementation, give rise to new sources of risk.

Inventorying the large variety of risk sources with which negotiators are confronted may be a useful approach to risk perception, as follows:

Situational Risks: Issues, Context, Stakes, and Power

Issues: These may not be particularly clear and unambiguous in a number of situations. Sometimes the negotiations (or pre-negotiations) are one way of making the issues relevant and explicit. In an international conference, agenda setting is one of the most important activities. In many negotiations where negotiators decide to set an agenda, "another" or a "miscellaneous" item is often included to leave the way open for additional, perhaps unexpected, items to be added. Even if the identification of issues is agreed by all parties, the question of interpretation remains, all the more so when issues are predefined in both general and abstract terms. Moreover, the more pragmatic attitudes in some cultures tend to prevent issues from being codified too early in the process.

Against this background, several aspects of the issue-related uncertainty problem turn out to be crucial. One is the importance of perceptions. Parties see itemization and the substance of issues through their own eyes and often project their interpretation or visualization on to the opponent. The resultant gap between perceptions and reality can lead to a danger of making misjudgments. Communication, depending on how it goes, can help (or hinder) the process of reconciliation. Avoiding the perception gap, however, always proves extremely difficult.

Another point is that negotiations are not something that happen instantaneously. They develop over time, allowing changes to take place: new issues may emerge (sometimes as part of a strategic game; sometimes in response to external factors that are exogenous to the actors; sometimes merely as a result of the process). Issues that have already been defined may change as a result of new or modified information, natural or forced linkages arising between issues, transformations in substance and language, etc. The longer an encounter lasts, the greater the probability of the issues having to be reconfigured: the ability to reconfigure is a factor that is core to the negotiating activity, as it provides whatever flexibility is needed to progress toward an agreement.

Of course, there are cases where one cannot really talk about uncertainties in respect of issues, for example: 1) in negotiating a routine commercial contract, where issues are explicit, unambiguous, and fall within known limits; 2) in situations where perceptions are close to reality; and 3) in circumstances where the time factor is well managed by the participants. In a number of negotiating situations, however, this is not the case: the negotiator should be aware that any uncertainty in the future begins with the way issues are structured and the impact of actors' differing perceptions. What is true of issues also applies to context and to stakes, which are the basic constituent elements of negotiations.

Context: This comprises a myriad of volatile elements covering numerous fields: historical, political, administrative, economic, cultural, etc. Not all these background factors are stable in the short term: abrupt, unexpected changes can occur; the opponent's chief negotiator may be unexpectedly replaced; new elections may produce a different result from that "predicted" by the media and even political experts; an important customer or supplier may default; and the stock exchange may crash unexpectedly. Many of the events that make up the negotiation are subject to abrupt changes, providing no certainty that future conditions will be as stable as they may be now—a perception that is often quite wrong. As with other elements of the negotiation process, the saying, "It ain't over till it's over" also applies to contextual factors.

Stakes: A crucial element of a negotiation, stakes may be evaluated by measuring what has been sanctioned by the negotiation process and by the negotiation's outcome in terms of the interests and values of the negotiators. Uncertainty in respect of the stakes comes from at least two sources. One is, of course, the uncertainty about what the end result of the negotiation will be and its consequences, both now and later: this affects each negotiator on an individual basis. It would be natural to assume that each negotiator is perfectly clear in his own mind about the stakes of the negotiation; however, an assumption of this sort is often unrealistic, especially if one also tries to make a concrete determination as to how important the stakes are, or to assess "what is at stake" in the negotiation based on any number of complex factors. To give just one example: the impact of parallel or unconnected developments in other areas. But the greatest uncertainty is the difficulty a party has in assessing not only the nature of the stakes but also the importance accorded to them by the opponent. This failure or inability to know in advance of, and even during, the process, the nature or size of stakes internalized by opponents, is a major uncertainty for both parties because this knowledge is instrumental in the development of strategies. Furthermore, the degree of convergence (or divergence) of stakes predetermines, at least to some extent, the chances of an agreement being reached as well as what the substance of the agreement will be.

Power: There are many competing theories regarding the role of power in negotiations (see for instance, Ury, 1991). Power is not a given; the power balance in the bargaining situation is subject to change over time, sometimes quite abruptly. Negotiators not only face this uncertainty (uncertainty due, for instance, to the unexpected intervention of external factors or actors) but they are also confronted with difficulties, over and above those already mentioned, in trying to correctly assess the relative power balance at any given moment. Misperceptions by negotiators regarding their own power and that of their opponent are a major cause of failure in negotiations. Such misperceptions are due to the complexity of the factors involved in the substance of power, while some can be either intangible or result from negotiators' interactions.

Attitudes and Behaviors

Risks associated with uncertainties resulting from specific elements of a negotiation are operationalized by the actors. Each actor has his own in-built sensitivities and subjectivity which he implicitly confronts with his own attitudes toward risk and incorporates into his personal behavioral blueprint.

Attitudes and behaviors influence the negotiation process in several ways, and they are influential in terms of the strategic and tactical choices that the negotiator will use. These choices, which are at the core of the negotiation process (and may be deliberately planned or decided opportunistically) are a function of many factors. But, whatever their origin, they will reflect the perceptions of the negotiator on his "position" and on that of his opponent(s). Cognitions, risk attitudes, and personality traits have an important impact on this phenomenon.

Mental and cognitive factors: Mental mechanisms that generate thoughts and judgments are instrumental in framing perceptions; one negotiator will not frame an issue identically to his opponent(s). Divergences may apply to facts, their interpretations, the evaluation of their relevance to the problem, and the assessment of their consequences. These gaps should ideally be bridged by exchanges of information, but that presupposes the ability on the part of the negotiators to communicate appropriately, plus a willingness to participate fully in the process without resorting to concealment or, worse, misrepresentation.

Cognitions are another difficulty and make for additional uncertainties, of which negotiators may or may not be aware. These uncertainties occur because mental processes often lead to biases, and biases result in a reduction in the overall visibility of the encounter. It is because of these biases that, over the last decades, the "cognitive school" of negotiation (e.g., Jönsson, 1991; Neale and Bazerman, 1991; Bazerman and Neale, 1992, among many others) has attracted such considerable attention. Decision analysts have also dealt with this problem in terms of its impact on the negotiating activity (Raiffa, 1999).

Uncertainties are also created by the complexity of attitudes toward risk. The degree to which a person reacts to risk (from aversion to tolerance to risk taking) can be fairly accurately measured for a given individual (risk attitude scales are incorporated, for instance, into experimental designs). Research does, however, show that: 1) an individual's attitude to an issue can depend on how that issue is framed (see, for example, Kahneman and Tversky, 1979; Tversky and Kahneman, 1981; Kahneman et al., 1982; Bottom, 2001); 2) there is no certainty of stability; and 3) in groups, coalitional processes may interfere with attitudes to risk, and vice versa (Bottom 2001). Hence, negotiations have to confront the uncertainty of how perception, communication, risk assessment, behaviors, and strategies are, or will be, affected by attitudes to risk, all the more so because the impact may vary from phase to phase during the negotiation. Cognitive processes are also involved here, as negotiators may be inclined to base their judgment on precedents or on more recent events.

The variety and virtual instability of negotiating behaviors adds to uncertainties in several important ways. One is the very obvious difficulty of accurately decoding and, still more, predicting an opponent's behaviors, given the additional risk of misperceptions. Another uncertainty is the problem of how far appearances and posturing should be trusted; (for instance, gestures or facial expressions can convey the wrong message or interpretation to a negotiator with limited international experience). Still another issue is the uncertainty created by an opponent's negative attitudes, a phenomenon that has been identified and studied by authors writing about "negotiating with difficult people" (Ury, 1991).

Negotiating behavior is also affected by the fact that many encounters are conducted by negotiators who are actually "negotiating on behalf of others" (see, for example, Mnookin et al., 2000). Uncertainties are increased by the various two- or multi-level games representing the relationships between the actor and his constituencies.

Behavioral problems can, to a large extent, be summed up by the concept of trust, which a negotiator may extend to his opponent and that may be extended to him. Trust as a cause of uncertainty is an issue that is increasingly being researched in terms of its impact on negotiating. Among the major themes studied in the literature are the forms and conditions of trust, trust building, reciprocity, and stability. According to the studies, trust cannot be taken for granted and trust building is an essential facilitator of an agreement. In other words, the expectations of negotiators regarding the role of trust in the negotiation expose them to risk.

Consequences for the Negotiator of Exposure to Risk

Ultimately, the extent to which the negotiator has been exposed to risk will find concrete expression in the outcome of the negotiation. In that sense, the more the outcome differs from the negotiators' expectations, the more risky the negotiation can be said to have been. This type of situation occurs if negotiators believe that the outcome has failed to meet their minimum objectives or, worse still, if the final outcome falls short of their best alternatives to a negotiated agreement (BATNAs). Actors would not negotiate if, at the beginning of the process (the pre-negotiation phase), they thought that the outcome would be lower than their respective security points (which would then lead to each actor either winning or losing in a post-negotiation situation). They may, however, feel that this development can be avoided by proper handling of the process; thus, they are willing to "take a chance," which is clearly an indication that they recognize the existence of uncertainties and at the same time the possibility that unwelcome consequences can be avoided.

The risk that the negotiation will be assessed as a success or failure is what really matters to the negotiator. This "global risk" encompasses all other risks, whatever their source. Risk at this higher level is therefore closely linked to the problem of expectations and objectives. The uncertainties inherent in risk—for instance, the fact that issues are ambiguous, the context is unstable, the stakes are difficult to

assess, power is difficult to decrypt and appears to be volatile, or actors' attitude and behaviors are perplexing—are important because they impact the process and the outcome of a negotiation and they may produce an end result that falls short of expectations.

Risk Assessment by Negotiators

As outlined in the previous section, negotiators' perceptions of risks (in the general case) can be very diverse: risks may be ignored, partly or vaguely perceived, or clearly recognized as potentially troublesome. The reason for this variety of perceptions is a combination of the causes of risk (situation, self, and expected interactions with others) and the specific sources of risks (as just described). The range of the possible states of risk perception by negotiators has a direct bearing on the way they assess the phenomenon.

The risk literature provides a number of cues as to how a negotiator might handle risk assessment. Some models, for instance, for risk assessment based on the rational choice theory, may be seen as mainly theoretical and normative. As applied to negotiation, this theory proposes: 1) models (absolute rationality, bounded rationality, etc.) of procedures (a sequence of logical steps from identification of alternatives through optimization to selection); 2) measurement formulas (using concepts of probabilities based on frequencies of occurrence); and 3) preferences in conditions of uncertainty, for example, subjective expected utilities. In its simplest form this approach can be called a technical analysis of risks, with negotiators acting rationally and expecting opponents to do the same. Game theory and decision analysis theory provide illustrations of how this could work in the planning and conduct of negotiations. Cases in which this approach has been applied have provided interesting, intelligent, and instructive guides to negotiations in which risk is embedded and assessed in the decision procedure.

One of the best illustrations of this is in Hammond et al. (1998). If the sequential steps taken by the decision maker are developed, decision analysis can: 1) determine the alternative solutions that would be available if one assumes the certainty of events; and 2) rank them according to a given value (generally defined as "utility" or "preferences"). Risk is then introduced as a supplementary procedure, and that may modify the ranking of solutions. This procedure consists of appraising two different dimensions: 1) identifying uncertainties within the risk context as the consequences of outcomes multiplied by the probability of occurrence of the said outcomes, leading to a "certainty equivalence"; 2) attitudes toward risk and possible linkages among immediate, timely decisions and future decisions.

Raiffa's reference to several cases of negotiation demonstrates that, in practical negotiation analysis, this procedure can be conducted in quantitative terms (e.g., through recourse to formulas such as "even swaps" that permit qualitative elements to be translated into numerical terms) (Raiffa, 1999).

The point here, however, is whether professionals follow such semi-sophisticated procedures in their daily practices. This may, exceptionally, be the case for complex negotiations (especially when specialized consultants and software are needed). But most negotiators assess risk differently (e.g., in more of a behavioral than quantitative way). The most likely approach would seem to be (and this conforms to the first part of decision analysis) to start looking at events as if there were no or few uncertainties and then adjust this no-risk evaluation by, intuitively, lowering the likely benefits and increasing the likely costs so as to prepare expectations for less-than-optimal consequences. This often-subjective analysis (sometimes enlarged to simple quantitative expressions) is likely to identify the various specific risks separately, as mentioned in “Theoretical Considerations,” (above) and then to encompass these in a global subjective judgment on their likely impact on outcomes.

Decision analysis does, however, have the great merit of clarifying the mental and practical processes of the impact of risk on decisions, notably, in separating the sources of uncertainties (i.e., distinguishing between the consequences of events and how frequently they occur), the additional impact of attitudes to risk, and the linkages between present and future decisions.

While, in some cases, a rational negotiator’s paradigm can represent the observed “reality” (the realm of descriptive analysis) and computer-aided negotiations (CANs) can facilitate the procedure in the future, one cannot presume that most negotiators are going to approach the problem of risk in a negotiation in such an outcome-maximizing and risk-minimizing way. As mentioned in the Introduction, the RAP (and thus the RNP) faces a number of constraints, if not full-frontal criticisms. Negotiators, like decision makers in general, probably have in the back of their mind that they will have to face risks but realize just how complex any procedure that enables risks to be assessed correctly will be. Some of the major constraints are as follows:

- The time and costs incurred in evaluating the basic components of risk exposure: 1) the probabilities (although, frequently, the evaluation of these has to be subjective because of a lack of information or the expense of collecting, interpreting, and organizing it), the negotiators’ preferences, their own sets and orderings, the abstract character of lotteries, and still more, others’ preferences, all of which comprise the associated consequence of “ambivalence” in expectations; and 2) the measurement of the consequences of outcomes in the short and longer terms;⁴
- Conceptual limitations: stability of preferences; impact of emotions, judgment biases, social pressures, contextual variables, etc.;
- The fact that: 1) any given action can influence whether a given outcome may or may not occur; 2) hazards with undesirable consequences may fail to be captured by a rational model; 3) each negotiation has every chance of not being similar to any other; and 4) side events or side-effects cannot be excluded;
- The observed fact that even if negotiators intend to act rationally they may unconsciously or explicitly be prevented from doing so;

⁴ A quantitative illustration is given in Jaeger et al. (2001, pp. 263–264), for a situation akin to a real-life negotiation.

- The delusion of being able to separate means from ends;
- The importance of cultural factors and the difficulty involved in “measuring” and interpreting them.

These constraints may limit rational, mainly quantitative, risk assessment to a small but, in the future, probably increasing number of situations in which risk can be either circumvented or reduced to more manageable proportions. It would seem, however, that the methodologies used by most negotiators in most situations are based more on heuristics and rule of thumb; they rely on intuition and are not rationalized analytically but in a general almost impressionistic way. As quoted by Jaeger et al. (2001, p. 225), “Managers [negotiators] often operate under conditions of great uncertainty. They make decisions that are not well grounded in any rational analysis of well-defined alternatives, but rather as an intuitive use of unreliable knowledge . . . like chessmasters that plan only the next moves,” their concern is to “leave (their) ability to act flexibly intact.” Thus, grounds for observing that “because there are costs to acting rationally, it is rational not to do so” (Jaeger et al., 2001, p. 155) may exist.

In sum, the rational assessment of risks (under certain conditions) is a prescriptive rather than descriptive methodology for negotiators because of structural constraints and behavioral characteristics (given that “human beings are not good calculating machines but skilled taxonomists” Jaeger et al., 2001, p. 84). Negotiators seem to assess risks mostly in an intuitive, gradually learned way based on various experiences (good or bad) that occur in the course of their negotiating life. One could see their key precept as being prepared to face “reasonable risk,” that is, a situation that they consider to be tolerable in a broadly based rather than specifically calculated way. This becomes quite clear when one investigates the strategies of negotiators observed from the viewpoint of risks.⁵

Management and Strategies of Risks by Negotiators

Negotiators need to know how to cope with uncertainty and therefore with the risks inherent in all negotiations; in other words, they need to acknowledge the possibility that there may be a “bad” outcome. Awareness of planning and implementation strategies is therefore considered highly relevant for negotiators. However, as seen in the previous sections, strategies are not applied uniformly in negotiations. Negotiators either ignore risk or consider it to be a routine practice that does not need to be specifically planned for. However, when risks are perceived and assessed in a certain way, knowing how to anticipate hazardous consequences, and even react in advance to them, becomes a valuable asset for the negotiator. In fact, a variety of different risk strategies in terms of both their contents and intensity is needed, rather than a single standard strategy.

⁵ In other terms it is difficult to describe them as RREEMM decision-makers (resourceful, restricted, evaluating, expecting, maximizing men) (Jaeger et al., 2001, p. 257).

The strategy chosen will depend on a number of factors:

1. The situation itself—notably its degree of complexity and the impact it has on the actors' stakes, in other words, the degree of difficulty involved in evaluating the probability of risks and, in particular, the magnitude of the consequences.⁶ Key aspects of this issue are the motivation of the actors and their ability to: 1) collect and interpret information; and 2) anticipate future developments. These routines and procedures may take time and incur costs.⁷
2. Personal attitudes toward risks—the more sensitive a negotiator is to risk, the more likely he is to accept additional costs in terms of time and expenditure, and the more specific and detailed the planning is likely to be. The past experience and group culture of negotiators will play a key role in this respect, especially with regard to the question of mutual trust.
3. How negotiators view interactions with opponents or participants in the encounter to come. A particular aspect of this question is whether unveiling the risks patterns of each participant regarding issues, process, and outcomes should be viewed as appropriate or opportune and should be communicated jointly. Understandably, these factors are likely to vary widely for negotiators, as there are often more asymmetries than not in many negotiations.

These differences do not prevent the available strategies being regrouped into a few main classes, for instance: avoidance, defensive, and opportunistic.⁸ Avoidance as a strategy for negotiators implies one or the other of two choices: 1) defining the agenda so as to preclude or delete elements that carry a risk beyond an acceptable and predefined level, a question close to that of “non-negotiability”; or 2) leaving the agenda open while avoiding (or strictly limiting) commitments, before and during the negotiations, on issues or procedures that could result in risks that the negotiator does not wish to assume. Avoidance strategies are an extreme case because they are intuitively contradictory to the very concept of negotiation. Hence, a second type of strategy—more compatible with the concept of negotiation, yet responding to the need of protection that the negotiator may feel essential—emphasizes defensive or precautionary actions and behaviors.

The contents of these strategies have been presented by, among others, Hammond et al. (1998, p. 157 *f*). Several options are possible (see also footnote 12):

- Risk sharing. For instance, in commercial contracts, conditional clauses (contingency or limiting provisions such as the “hold harmless clause”); or risk trade-offs;

⁶ Evaluation of consequences is likely to be more important than setting probabilities. In practice, negotiators will probably be more concerned by an evaluation of the “worst scenario” rather than frequencies.

⁷ There are theoretical tools to clarify this point, for example, risk curves linking “gains” and “frequencies” or recourse to the concept of “criticality.”

⁸ Somewhat similar categorizations are found in the literature, for example, Dan Borge (Borge, 2001) who advocates six possible strategies in risk-exposed situations: prevention, creation, diversification, hedging, leveraging, and insuring.

- Compensation for any damage resulting from the agreement;
- Coverage (a basic principle of the insurance industry which can be adapted to negotiation such as, for instance, provision of penalties or the transfer of risks to a third party);
- Judiciary protection (e.g., recourse to contractual guarantees).

Prudential strategies involve the need to be well informed on the situation and on the visibility of actors (for instance reputation, styles, etc.). The list of prudential strategies in negotiation can be extended to mediation and arbitration as means of reducing or mitigating the risks that would result from judiciary procedures.

Defensive strategies tend to privilege certain negotiation techniques or tactics. One is the preference for a step-by-step style of negotiating; another is systematic fragmentation. Attitudes are also important in such strategies, for example, preventing escalation, maintaining self-control, particularly when opponents make attempts to destabilize, and distrust of diversionary maneuvers. Defensive strategies also impose the adoption of appropriate communication: a need for explicitness and clarity, frequent use of reformulations. The risk-defensive negotiator must also show an ability to be creative and a capacity to convince an opponent to substitute lower risk options for higher non-acceptable ones; hence, the appropriateness of planning for several alternatives.

These precepts are essentially applicable to dyadic encounters. When the negotiation is plurilateral or multilateral an additional aspect has to be considered. Coalitions and alliances are elements of such negotiations, and they may be used as a protection for a group, for instance, to ensure that decisions do not entail unacceptable risks. This means that risk assessment and tolerance levels should be discussed and agreed by members acting in a coalition and that the issue be included in the common platform.

A third type of strategies can be called "opportunistic" or "dynamic" in the sense that, unlike defensive strategies, they are based on a high level of risk acceptance. Such strategies regard risk as an opportunity because its counterpart is the possibility of higher rewards: potential gains are visualized and evaluated as more than compensating for possible losses. These strategies are linked to optimistic views of the future. They also place great weight on innovations and tend to discount the view that the past is an indicator of how the future will be. They also tend to privilege flexibility.

As with defensive strategies, they tend to favor certain ways of negotiating: enlarging the number and scope of issues; exploring a large number of options; looking at problems in wider contexts; linking present issues to future developments; arguing flexibly; avoiding a too detailed or too explicit discussion/drafting of decisions; systematically adopting a "why not" or a "what if" communication style, etc.

Rather than these three generic strategies, negotiators often choose a mixed solution: the "calculated risk" option. This is a combination—subject to different variants—of defensive and opportunistic strategies. The "calculation" may be qualitative and crude. In complex, high-stakes negotiation procedures are more refined and sophisticated and may range from rational choice formulas to more subjective or broader concepts.

In matters of strategy the point should also be made that professional actors (managers, negotiators) will rely a great deal on intuition and feeling, drawing from experience and trying to combine art and science (Borge, 2001, pp. 95–96).

Conclusion

To what extent does the study of the “general case” provide clues to the specific case of “negotiated risks”?

With regard to risk exposure, striking differences clearly abound. In situations in which risk itself is negotiated, risk exposure is part and parcel of the negotiation itself; it is the “what, why, and how” of the encounter. This is not the case with “ordinary” negotiations where the issues themselves are not risks but problems (conflicts, projects, interpretations) that negotiators intend to solve and where it is the structure and process of the negotiations that entail risk taking or risk avoidance. Thus, here, the “what, why, and how” of the negotiation is not risk but problems; risk is a complicating factor, it is not the substance of the negotiation.⁹

Negotiating behavior reflects these characteristics. As there are general (and, indeed, professional) rules and limitations, behaviors are less uncertain than in the more unusual case of negotiators actually searching (first individually, then collectively) to identify the rationale behind the negotiation and the rules to be applied in this search. Whereas in “ordinary negotiations” some predictability is possible because there are precedents, references, constraints, and some degree of cultural convergence (at least as regards professional conduct), in “negotiated risks” these factors are present less, or not at all, making behaviors prone to be less stable and thus adding to uncertainties. Another reason for increased uncertainties is the impact of external factors, for example, political or value-based issues, that may make each negotiator more autonomous, hence reducing the “conviviality” zone which is to attitudes what the bargaining zone is to positions and interests.

Thus there are substantial differences between the two situations:

- Differences in the degree of predictability (high or moderate in one case; low or nil in the other);
- Differences in the magnitude of consequences (seldom irreversible in one case; with a high level of irreversibility in the other);

⁹ One example may illustrate the point. A commercial negotiation, even if complex, is centered on certain issues, for example, product or service specification, price, delivery, guarantees, etc. Each of the specifications on the agenda entails uncertainties (including the fact that some items are not yet on the agenda); however, negotiators have a commonly shared understanding of what, why (and perhaps how) these issues should, and will, be negotiated. Even leaving a margin for uncertainty, there is common (perhaps implicit) agreement about the content of the issues being negotiated. As shown elsewhere, although uncertainties may be present (specific as well as outcome-linked), they have no bearing on what, for negotiators, constitutes the substance of the negotiation. This does not mean that the substance will not be altered by the process, as it will lead to reconfigurations as shown by both theory and practice. This surely creates an uncertainty, but negotiators take it as a necessary rule of the game within known and circumscribed limits.

- Differences in the potential for actors to agree on a common definition of the problem (generally manageable in one case; extremely difficult in the other);
- Differences in the degree of information availability and exchange (variable but rarely non-existent in one case; confronted with specific obstacles in the other);
- Differences in the degree of impact of political and value judgments (possible in the first case, but at least easy to identify and often explicit; quite usual and often implicit in the other);
- Differences in the degree of "objectivity" of interests and issues (often accepted as a rule in one case; often necessarily more subjective in the other); and last, but far from least
- Differences in the degree of expectations (stated or, even if hidden, a visible need to make satisfactory gains in one case; a more fuzzy visibility in the other).

It is therefore not surprising that these differences might influence behaviors and strategies. One way of analyzing them is to concentrate on the threefold aspect of perception, communication, and assessment (as proposed in this book). It is likely that uncertainties relative to issues, stakes, contexts, power, and actors' personalities, attitudes, and styles and, finally, outcomes will be perceived differently by the negotiators in every negotiation. All negotiators have a particular life experiences of their own, specific personality characteristics, a repertoire of adapted behaviors, etc. Anxiety is linked to uncertainty, and as psychology studies have shown, anxiety is a function of self-esteem; judgment biases also influence perceptions of uncertainties. The attitude toward risk may finally be influenced by external factors (such as the framing of the situation), and this may lead to further differentiation of perceptions.

While these facts will play in any negotiation (although at a different intensity), negotiated risks add complicated elements. It is likely that the gap between interests as perceived by the parties will be larger than is the case in most negotiations taking place today, which generally focus on more specific, timely, and immediate issues. Perhaps more important is that the actors' interests are colored by different or even separate judgment and value systems. This may also mean that actors will have different views on access to and exchange of information. Frequently, in negotiated risks the relative weight given to the probability of occurrence and the magnitude of consequences may not be the same for all negotiators, which is another reason for the gap.

It is the complexity, the difficulty of overcoming the fuzziness of the problems, and the perception gap that make negotiated risks a less easy way of generating effective communication channels both before and during the negotiation. Uncertainty (thus anxiety), in addition to the possibility of differing perceptions, could induce, at best, more cautious attitudes and, at worst, reliance on misinformation. There may, in addition, be real semantic discrepancies when highly technical problems are being negotiated, and negotiators' dependence on experts may create communication difficulties at several levels.

Assessing the occurrence and magnitude of consequences is obviously more difficult, almost by definition, in negotiated risks; a solid foundation (statistical or otherwise) is generally lacking (no data from the past or scattered data), and consequences may often be described or calculated only in very hypothetical terms.

This is different from most negotiations where parties are generally aware or able to have a fairly accurate idea of both degree of predictability and magnitude of consequences, as postulated by decision analysis. Even if those are only “educated guesses,” they tend to reduce the scope of uncertainty for negotiators who can adjust their positions and strategies in a qualitative and sometimes quantitative way (Raiffa, 1999).

To conclude, the differences between the two “cases” (general/specific) are therefore significant. They can be summarized as follows :

1. *Perception*: The general case shows the wide differences (due to situational, individual, and interactive factors) revealed in the course of negotiations; the “negotiated risks” case emphasizes that the risks linked to those uncertainties involve a still higher degree of difference in perceptions. In the general case, actors may be assumed to be relatively aware of the types of risks involved; they frequently share the same negotiating culture and thus a common, or sufficiently common, view of the negotiation activity, its “givens,” codes, and objectives. This is much more ambiguous and complex in the negotiated risks case. A major difference is that in the general case actors know what should, and will, be negotiated (even if interpretation and agenda problems occasionally makes this somewhat hazy or not exempt from future surprises) —this is different when it is risk itself that is to be negotiated.
2. *Assessment* is not always undertaken with care by negotiators. When they need to, however, negotiators may rely on certain procedures and quite well established and useful methodologies. In the special case, assessment is a much more difficult problem (Jaeger et al., 2001). To take just one illustration: assessing norms and values is a key issue in this case. In the general case this question may also be raised (e.g., reciprocity, fairness, etc.) but it just does not have the same implications as in negotiated risk situations.
3. *Strategies*: True strategies can be compared only in general terms—in the negotiated risk situation, there are also strategies of avoidance, mitigation, or opportunism. The main distinguishing aspect of the specific situation of negotiated risks, however, is that the impact of the strategies is intended to be viewed within their own worldviews and longer-term dimensions, and this is rarely the case when the broader set of negotiations is being considered. Hence, more refined definitions of strategies may be called for in negotiated risk situations, and this is exactly why this book will make such an important contribution to the negotiation field.

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