Ethics in Negotiations: The Confrontation between Representation and Practices

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Abstract—While in practice negotiation is always a mix of cooperation and competition, these two elements correspond to different approaches of the relationship and also different orientations in term of strategy, techniques, tactics and arguments employed by the negotiators with related effects and in the end leading to different outcomes. The levels of honesty, trust and therefore cooperation are influenced not only by the uncertainty of the situation, the objectives, stakes or power but also by the orientation given from the very beginning of the relationship. When negotiation is reduced to a confrontation of power, participants rely on coercive measures, using different kinds of threats or make false promises and bluff in order to establish a more acceptable balance of power.

Most of the negotiators have a tendency to complain about the unethical aspects of the tactics used by their counterparts while, as the same time, they are mostly unaware of the sources of influence of their own vision and practices. In this article, our intention is to clarify these sources and try to understand what can lead negotiators to unethical practices.

Keywords—competition, cooperation, ethics, negotiation, power

I. INTRODUCTION

NEGOTIATION has been considered for a long period as an activity quite impossible to study therefore to learn; it was described as an art with a clear distinction between talented and non- gifted practitioners.

But, as explained by Dupont [1], research contributions may assist the negotiator. A global view of the process might help to understand the effects and influence of key variables on the determination of the outcome. This knowledge could enhance the negotiator's capacity and contribute to a better understanding of the interaction.

As a purely human activity used in order to solve conflicts or in a more positive way, to build projects, negotiation is a complex interaction involving participants with different visions of what is or should be a proper one. From the vision of the relationship as a pure competition, focusing only on interests, to cooperation based on trust, the negotiators will position themselves in terms of tactics and ways or means which are, to them, appropriate in order to succeed. This positioning depends on many variables linked to the specificity of the situation, like the level of power, stakes and interests, the context and participants or even the nature of conflict. These choices can sometimes be in opposition with the negotiator's initial representation of what should be the interaction, based on his own values, beliefs that are usually

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expressed in society.

But are people acting in negotiation like they do in real life? Our intention in this paper is to clarify the influence of some fundamental elements of negotiation over the use of unethical practices in an attempt to figure a model of confrontation between visions of negotiation and practices.

II. DEFINING NEGOTIATION

As with many concepts, there are different angles and ways of defining negotiation. The following definition presents three essential aspects of any negotiation: the idea of a specific process, the presence of conflicting aspects, and the finality involving the participants.

"Negotiation is a joint decision-making process through which negotiating parties accommodate their conflicting interests into a mutually acceptable settlement" [2]

The driving force of this specific situation is a common need for agreement because of an expected gain, leading the participants to a certain level of interdependency.

Two or more parties with conflicting interests and a certain control and decision making on each side are trying to reach an outcome that is initially undefined through means of communication.

Negotiation is a voluntary process involving different actors with different interests or goals, different attitudes and strategies leading to a situation were people are trying to adjust these differences in order to reach an agreement. The willingness to find a solution despite the divergence regarding the decision implies that negotiators must carefully fix their objectives with certain flexibility.

Each party in the relationship must cooperate to reach his or her objective and each party can block the other one from attaining his or her goal [3]. This interdependence sets up a mixed-motive relationship in which both parties cooperate by competing for divergent ends [4]. During the process participants can become adversaries or partners due to the quality of the relation, the nature of the conflicting issues, of information exchanged but also because of behaviors, attitudes and perceptions.

One of the key aspects of negotiation is the presence of both conflicting and cooperative aspects. The negotiators have to find the right balance between these two poles in order to attain a mutually acceptable solution. These two poles refer to what is called "distributive and integrative" dimensions.

III. DISTRIBUTIVE AND INTEGRATIVE DIMENSIONS

Distributive refers to the division and distribution of a specific "pie" considered as the outcome of the negotiation

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process, for which each participant is fighting over the largest part. It is a win-lose situation or a zero sum game where everything earned by one of the parties is lost by the other. Everybody wants to maximize his share of the resources which are somehow limited or fixed.

Negotiation is understood as a competition where opposition is quasi-permanent and each participant seen as an opponent or enemy in a conflicting context.

Walton and McKersie [5] call this type of negotiation "distributive bargaining" and they define it as a "construct referring to the complex system of activities instrumental to the attainment of one party's goals when they are in basic conflict with those of the other party" To them, this type of negotiation is "bargaining" in the strictest sense of the word.

On the opposite side is the integrative dimension, in which negotiators are not only concerned with their own objectives but are also interested in the other party's interests and aspirations.

Also called "cooperative" or "collaborative", this kind of negotiation sees both parties trying to maximize the joint outcome, assuming that the size of the "pie" can be increased if the participants collaborate.

The situation here is a win-win type or a positive (non zero) sum game. The negotiators seek solutions which can benefit either party, or at least when the gains of one party do not represent an equal loss or sacrifice by the other.

Integrative bargaining, as named by Walton and McKersie [5] refers to "the system of activities which is instrumental to the attainment of objectives which are not in fundamental conflict with those of the other party and which therefore can be integrated to some degree".

More than a pure conflict resolution, it supposes a "problem solving approach" where the participants consider negotiation as a process to find a solution to a common problem which is beneficial and acceptable for both sides. They look for a jointly optimal outcome.

Understanding the process through this dichotomy seems unreal as, in practice, negotiation is always a mix of cooperation and competition. As shown by Lax and Sebenius [6], any negotiation includes both "value creating" (integrative) and "value claiming" (distributive) features. The interdependence between these two poles creates a dilemma for the negotiator in his decision making process.

For Walton and Mc Kersie [7] dilemmas arise because the tactical requirements of one sub process (i.e. distributive bargaining) are opposite to those of the other sub process (i.e. integrative bargaining); managing the dilemmas between these two sub processes present a central challenge to negotiators.

These dilemmas consist in fixing the objectives, deciding on the level of cooperation, honesty and trust but also on the ways and means and toughness.

Zartman [8] makes several propositions in order to solve the toughness dilemma depending on the initial orientation or strategy of the other's party, the structure of negotiation and the asymmetry of power, the analysis of the process or the

tactics used. These propositions sometimes incompatible are at least descriptive of the situations that a negotiator can encounter, but barely prescriptive in the sense that each negotiator has supposedly a free will in the interaction and cannot always be predictable.

Nelson and Wheeler [9] studied how negotiators experience these tensions in practice, revealing that mostly the tension is between assertiveness and empathy. According to Sebenius [10], one of the common mistakes made by negotiators is to neglect the other side's problem or even, when they see the other side's concerns, to dismiss them.

Allred prescriptive advice [11] on how to manage the tension between creating and claiming value, demonstrate the difference between "best practices" and "strategic practices". While strategic practices, like "sharing information" can lead to dilemmas, best practices like "listening" contribute to maintaining a relationship and creating value.

Nevertheless, since negotiators in the process are evolving from competition to cooperation and reverse, they reveal in the interaction the relative power that they have over the acceptance from the other party of options or decisions. But the power position is never definitely fixed as one of the characteristics of negotiation is to make it shift during the course of the arguments used.

IV. SOURCES OF POWER

A first approach regarding power in negotiations may consider resources that permit a party to punish or reward another one for its behaviour. For Zartman [12] power can come also from elements that determine the vulnerability of the other party to such punishments or rewards.

Lewicki & al [13] assume that power in negotiation must not be considered as absolute and coercive even if it is mostly a capacity to influence or the ability to bring about outcomes that are desired. They prefer to separate the power revealed in negotiations from the influence processes used in interpersonal relations.

In that sense they join the relational definition of power given by Deutsch [14] that emphasises the specificities of each situation. The power of an actor in a given situation (contingency approach) can be evaluated as the "degree that he can satisfy the purposes that he is attempting to fulfil". Therefore power depends also on the relationship rather than purely on the resources of each participant. The characteristics of the situation as well as the characteristics of the participants determine the balance or the asymmetry of power.

According to Deutsch [14], some elements of power derive from the situation or the context instead of being only attributes of each actor. As he suggests there is a clear distinction between the *environmental power*, the *relationship power* and the *personal power*.

Boulding [15], considering that power is the ability to get what we want, divides it in three major categories from the point of view of its consequences: *destructive power*, *productive power* and *integrative power*. The last one has a

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destructive and productive aspect depending on the relationship and its origin.

The *power of commitment* was originally exposed by Shelling [16] who identifies power with the ability to commit to a position from which your counterpart cannot be expected to withdraw. A commitment functions by restricting the bargaining range in favour of the one who is committing.

Fischer [17] distinguishes two different kinds of commitment: affirmative and negative.

An affirmative commitment is a decision about what the negotiator is willing to do. It can be considered as an offer. This offer can be formulated in a way that maximizes the impact of the other categories of negotiating power. An affirmative commitment (offer) can be justified by a specific knowledge or expertise or take into account alternatives leading to the best possible offer.

On the other hand a negative commitment is a decision about what the negotiator is not willing to do or accept. It represents the limits of what is negotiable but can be controversial in the sense that it can lead to threats or ultimatum and damage the quality of the relationship.

Dupont [1] separates personal factors like skills or credibility from "objectives" factors like the latitude of choice, the capacity to sanction or the importance of the opponent.

For Dupont [1], the level or degree of dependency has an obvious effect on the asymmetry of power in the sense that the more dependent an actor is relative to opponent, the weaker is the negotiation strength. But this dependency has to be considered on two different aspects; the existence and potential of alternatives but also the importance of interests, stakes, objectives or expectations.

V. INTERESTS AND STAKES

Interests are considered by Lax and Sebenius [6] as the element that can measure negotiation. According to them, it is the raw material of negotiations and can take many forms including tangible but also intangible elements. Although negotiators focus on their interests and must take into consideration the other party's interests they have a very narrow conception of it.

Lax and Sebenius [6] make a clear distinction between intrinsic and instrumental interests leading to three misunderstood aspects of negotiation: interests in the process, the relationships and in principles.

Intrinsic interests are independent of any subsequent deals while instrumental interests are influential on following deals or outcomes. The first ones are objective and can be mostly quantified on a short term basis while the other ones are more long-term oriented and can be totally subjective.

Both can be present in the three aspects mentioned before: even if negotiators evaluate agreements by measuring the value obtained from the outcome, the way the negotiation process was carried might have an importance as well. The relationship brings intrinsic interests because of the trust established between the parties but sometimes they may find no instrumental interest in keeping the relationship. Finally, negotiators can share or develop common values or norms that can provide immediate or future effects.

Leroux [18] talks about instrumental or fundamental stakes; the visible, material, tangible part (instrumental) made up mostly of economical aspects is sometimes less important than the invisible one (fundamental) which refers to notions like self esteem, status or reputation.

As Dupont [1] shows, there is a clear link between interests and stakes. Every negotiation implies expectations, objectives, interests, consequences (positive or negative), risks, probabilities (chances). The stake of the negotiation is the impact of the outcome on the interests, tangible or intangible ones. Stakes will, therefore, contribute to put pressure on each negotiator while creating a strong motivational effect.

The participants count on resources that they possess which are of interest to their opponent, but they have different expectations regarding the interests provided by these resources.

As a result, because stakes and interests are unequally evaluated and can have immediate or lasting effects, the negotiators are confronted to a balance of power that reveals mainly during the process, placing the interaction as the most difficult phase to manage and leading sometimes to an escalation of conflict.

VI. RISING CONFLICT

From all the elements that contribute to increase conflict and creates destructive consequences and image over the sometimes "simple" existing conflict of interests, Deutsch [14] refers to:

- Misperception. Participants have a tendency to view things consistently with their own perspective in a very stereotypical manner; rejecting systematically what is opposed to their position.

- Emotionality. Emotions have a tendency to dominate ways of thinking and decision making if satisfying solutions are difficult to find. The participants become less rational, logical and more intuitive.

- Decreased level of communication. Participants exchange less relevant information or only information that can put pressure on the opponent.

Wall and Callister [19] in their review of conflict literature show that within the sources of conflict, communication can have a double effect. A low level of communication and exchange of information puts the emphasis on perception and the risk of bias while extensive communication can lead to misunderstandings and contradictory elements.

The increase of conflict will have an immediate effect on the quality and quantity of information exchanged creating therefore a spiral or a vicious circle in which participants will rely even more on their perception of the situation.

In that sense, the use of specific information like threats or false promises will have sometimes underestimated effects that can annihilate the chances of succeeding.

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VII. UNETHICAL PRACTICES

A. Lying, deceiving or bluffing?

Since Carr's paper [20] on bluffing and the analogy between negotiation and poker, the question of the legitimacy of the use of deception has been widely discussed and remains the source of many debates. For many authors, deception is a component of bargaining which can advantage the deceiver or protect him.

To Allhoff [21], bluffing is morally acceptable in negotiation because both participants endorse this practice and also because in the bargaining process there is no other reasonable procedure. Bluffing, if not one of the fundamental elements of negotiation is however considered as the essence of bargaining.

This vision is based on the idea of role-differentiated morality. In that case, certain roles make acts permissible that would otherwise be impermissible.

As explained by Varelius [22], if bluffing is similar to lying and deception it should be considered as morally condemnable. More than this, the legitimacy of bluffing as a totally endorsed practice by negotiators, a part of the game, might reveal false in situations where the adjustment between the parties doesn't require it.

Provis [23] argues that we are in negotiations "subject to the same ethical constraints as we are in other social interaction". To him, the use of bluffing and deception is not necessary for self-defence and these practices do not guarantee a redistribution of power between the participants or compensation to the lack of specific skills or resources.

Smithey Fulmer & al [24] make a clear distinction between deception regarding the informational elements and the emotional elements. While most of the studies put an emphasis on the manipulation of information only few consider the motivation of a negotiator to engage in emotional deception. In that case, the intentional use of emotions in order to deceive becomes a tactic, a stratagem that can change the outcome.

Olekalns and Smith [25] show that the usual models of ethical decision making are based on both characteristics of the individuals and context. In considering the interaction between the negotiators, they introduce a third element which is the adaptation to the other party. Deception, in that sense, can be initiated or elicited. Therefore, they tested the use of deception depending on several variables: the perceived trustworthiness of the other party, the level and mutuality of dependency, and high positive or negative affect.

Triandis & al [26] have studied the link between culture and the use of deception. They show that even if the situation and the level of stakes will influence people in their tactical choices and that cultures are never static, the appreciation of what is a lie or to what extent it can be used differs from one culture to another. Further searches regarding the exchange of specific information in the negotiation process in regards to cultural differences should also concentrate on how cultural values influence the level of intangible stakes and therefore lead to the use of threats.

As expressed by Kluckhohn and Strodbeck [27], Culture is a set of solutions to specific and universal problems. By providing unconsciously answers to the uncertainty of new situations it becomes a powerful decision making tool in order particularly to divide between what is good, bad, acceptable, tolerated or not. Culture is a strong link between individuals and society. In this social process, negotiators evaluate their own actions in reference to the groups they belong to but most of the negotiators are quite unaware of how much their cultural norms and values influence their own vision and practices.

A study by Olekalns and Smith [28] shows that referent groups (cultural groups) are very important in the decision regarding the use of deception.

The anticipation of moral approbation is therefore fundamental in the use of information that could be considered as unethical.

More recently, Rivers and Lytle [29] explain that being confronted to unethical practices is especially difficult when the other party is from a different culture. They demonstrate how culture impacts upon each negotiator ethical decision making.

B. Threatening

Threats can be considered in three different approaches: decision making, communication and commitment.

In the first case, the most important task is to evaluate the costs and results of the use of threats with their probabilities for both sides in the negotiation. Participants will then decide on the use and the force of threats depending to their expectations and the consequences of using it.

The second approach considers the interpersonal relation and specially the exchange of arguments.

Watzlawic [30] describes three conditions for the use of any threat:

The threat must be adequately serious, plausible in order to be taken into account by the other party. Then it must reach the target, must be understood by the other party. Eventually, the receiver must be able to comply.

Eventually, according to Schelling [16], threats reveal the commitment of the negotiator. The more the threat needs the actor to be committed in order to execute it the more it is going to be credible.

Schelling [16] distinguishes two types of threats: compelling ones which require a specific action to avoid punishment or deterrent threats which tend to prevent the target from doing something. Sinaceur and Neale [31] bringing the question of the effectiveness of threats in negotiations consider two dimensions: the degree of implicitness and the timing (the time when the threat is expressed).

For most actors in negotiation, threats are considered as a possibility linked to a specific interaction and as a tactic of pressure that brings effects. Threats and promises can be considered quite similar in the sense that they are both conditional and two sides of a same reality: forcing a decision. But depending on how things are formulated, a positive impact

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will follow the use of a promise while a negative one will be the consequence of a threat.

VIII. PERCEPTIONS, VISIONS AND PRACTICES

A study made by Lewicki & al [32] demonstrates that the use of a specific tactic depends on each negotiator's perception of the ethical appropriateness of it. This perception differs depending on personal characteristics like gender, nationality, ethnic origin but also personal orientation towards a conception of negotiation as a competitive or cooperative process.

As shown in figure n°1 in what we call a "world of interpretation", the sources of influence of a negotiator's choice in terms of practices and tactics are numerous. Within these elements, the balance of power and the nature of stakes as we described it in the previous sections are probably fundamental.

Still the confrontation between these practices and the initial vision of how to manage conflict through negotiation can reveal sometimes many contradictions.

The choice of unethical practices even if leading to more conflict and poor results is often justified by the uncertainty of the situation and the moves or ways of the other party.

Yet, it places the negotiator in a difficult position in regards to his own set of beliefs and values unless it is based on a total absence of morality. But the "world of representation" as we display it in the following figure is the one that we share with other members of the groups we belong to. Considering that negotiation is the only situation with its own rules where people can be different from any other social activities might be wrong.

The remaining question is about deterring unethical tactics. In a recent study, Cohen [33] shows that there is a difference between "perspective taking" and "empathy". Completing Sebenius' advice to take into consideration the other side's problem [10], Cohen explains that empathy which is "an emotional response that involves considering the feelings of others" encourages cooperation and stimulate moral action.

People with a tendency for empathy are more likely to disapprove unethical tactics such as manipulating emotions or lying about the progress of negotiations and using deception in order to weaken the opponent.

While perspective taking can be viewed as an integrative tool, enlarging the outcome by taking both participants' interests into consideration, empathy seems to be a tool for preventing at least oneself to unethical moves. As explained by Cohen, these two practices can be complementary.
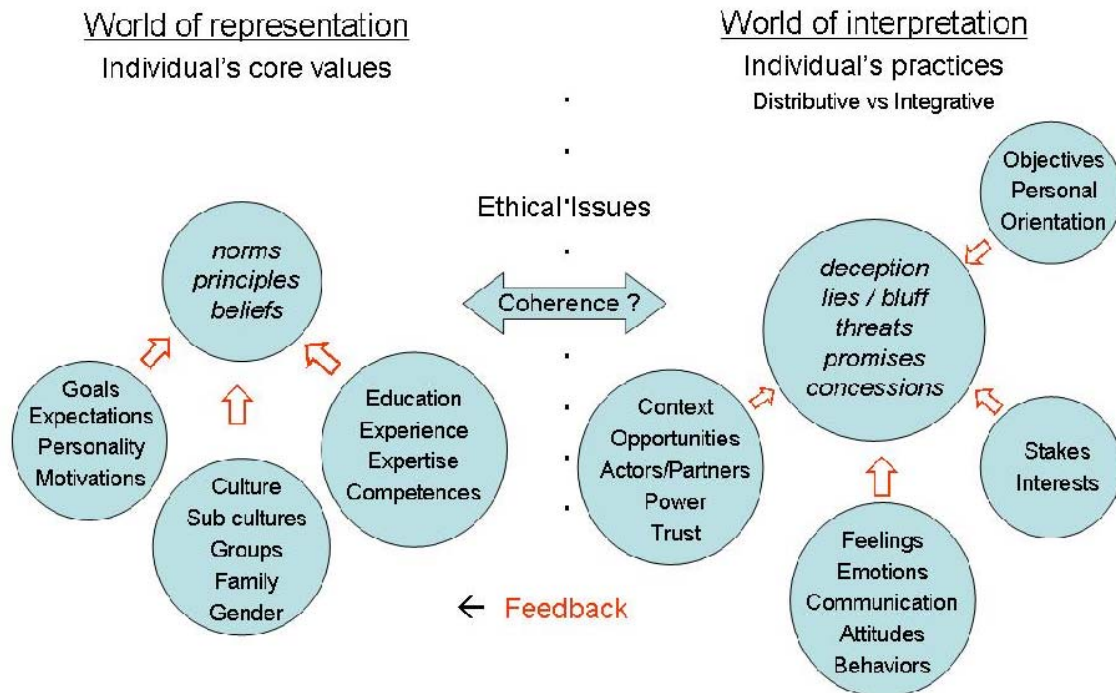

Fig. 1 The confrontation between values, visions of negotiation and practices

IX. CONCLUSION

Even when they consider that negotiation is a situation where being amoral and using practices usually classified as unethical are permitted, negotiators can still be confronted to a counterpart that is pushing the limit of what is tolerable to them.

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Participants bring to the table of negotiation more than strategies and tactics in response to a specific situation with clear goals and objectives. They also enter the process with norms, values and beliefs that can differ from the other party but will influence their perception of the situation. The confrontation between these values and the practices that they feel they should use or the ones used by their counterpart, is sometimes adding to the common negotiator's dilemmas.

What could be considered as an "ethical negotiation"?

A proposed answer would be: When participants are willing to find a fair solution with honesty by exchanging information in a moral and social acceptable manner without abusing their power.

The vision of what is negotiation and what are the rules is based on each participant perception. Negotiators evolve in a world of meaning shaped by context and culture and in a very constructivist approach these meanings are elaborated in action, when the negotiators interpret the reality they are facing.

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