

## Introduction

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“How do negotiations end?” is a subject that has eluded any systemic research attention.<sup>1</sup> Yet it is, after all, the basic question in the study and practice of negotiation. How negotiated outcomes are determined is the underlying concern of negotiation analysis, and the question of negotiators’ behavior in obtaining closure focuses on the last lap in the race. Closure is the point where Ikle’s (1964) three-fold option – Yes, No, Keep on Talking – is collapsed into the first two; talking will continue until the end but is now focused – like Oscar Wilde’s hanging – on the immediacy of yes or no. This study focuses on that final phase of the negotiations or the endgame. It seeks to understand how and why negotiators act when they see themselves in a meet-or-break phase of the negotiations in order to bring about a conclusion (successfully or not).

“Endgame” (like “ripeness”) is a frequently used term, the title of some 250 books, half of them on Chess, where the term has a special meaning, another half on Go, and one by Samuel Beckett (1957) that is of little help in understanding closure. Like “love” and “war,” everyone knows what it means but can’t easily define it. In diplomacy, it is often invoked in a general sense, but with some hints at specialty. In the collective account of the Iran hostage negotiations in 1979–1980, Robert Owen (1985, 311) picks up “Final Negotiations” as “one last crash campaign to resolve the matter within the thirty days remaining,” creating a deadline before the passage of presidential powers. “The process . . . during those final two weeks . . . was essentially that of amending and supplementing” (314), the endgame that McManus (1981, 205) calls “the final dickering,” as the parties drove toward a joint declaration (314). Warren Christopher said of that period, “I think they finally

<sup>1</sup> The best treatment, of use in the present discussion, is, as usual Pillar (1983, 119–143), looking at concession rates. The penultimate chapter in Ikle (1964) concentrates mainly on behavior in the main part of the process. Shell (1999) examines closure tactics. Gulliver (1979, 153–168) also looks at concession behavior. What is remarkable is that none of these approaches has been pursued into a fuller analysis, or followed by any literature in the past thirty years.

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developed a willingness' to end the crisis" (McManus 1981, 206). The same mode of activity characterized the twenty days at Dayton in 1995, although Richard Holbrooke's account (Holbrooke, 1998) does not seem to identify any moment when he sensed that an end was ever likely, only (as in Iran) necessary. Chester Crocker (1992, 397–398) in "Reflections on the Endgame, 1988" of the Namibian negotiations recalls that "by July and August, we had established our rhythm, . . . engaged in nearly round-the-clock improvisations, bending with the moves and signals." In the Sudanese negotiations, Norwegian Minister Hilde Frafjord Johnson (2011, 139, 141) notes that in April 2004 "the break had been useful . . . Both sides felt that they were very close to agreement" and John Garang mixed his images: "We have reached the crest of the last hill in our tortuous ascent to the heights of peace," to which Johnson adds, with a different geography, "the road ahead was flat; the Protocols marked a paradigm shift." All of these elements – anticipation, deadline, turning points, trimming, rhythm, break, reframing, direction – will come up in the following analysis. Although they do not always appear with the punctuality of an alarm clock, the fact that they do sometimes and are generally identifiable indicates the usefulness of the concept of an endgame.

This inquiry is particularly relevant to some exciting instances of major negotiations that have recently taken place. Of major significance in international politics are the negotiations between the P5+1 and Iran over nuclear disarmament that drove to an agreement, the Joint Comprehensive Plan of Action (JCPOA), analyzed here by Ariane Tabatabai and Camille Pease of Georgetown University. Once total and immediate withdrawal of sanctions and total elimination of enrichment capabilities were seen as unlikely to be attained, the endgame hung on how much of each was necessary for an agreement. Of major significance in international economic relations were the negotiations between the EU and Greece, a clear case of dueling over two conflicting economic philosophies before our eyes in the headlines, analyzed by Diana Panke of Freiburg University. On the level of intrastate conflict, equally significant was the peace process between Colombia and the FARC, which was, after many previous tries, brought to fruition during the four years after 2012. It was only in the last year that the endgame appeared, when the parties sensed that each was ready to attack the two remaining issues of accountability and transitional justice that stood as a stone wall before agreement. But then a second endgame was forced by the rejection of the agreement in a national referendum, and the parties then rapidly completed an acceptable outcome, an analysis developed by Angelika Rettberg and Carlo Nasi of Los Andes.

While these are the headline cases that make the inquiry so timely, other instances stand out as well to attract attention. In negotiating friendship treaties with Algeria and with Germany, a recall of the deep scars derailed the process at the end in the first case but not in the second, as analyzed in Chapter 5 by Valerie Rosoux. Closure is a major issue in Chinese–Western business negotiations, where the relation is the key and the agreement itself is incidental and epiphenomenal, and is marked by typical but personal behaviors, as Guy Olivier Faure shows in Chapter 4. Larry Crump shows that endgame in trade bilaterals is sharpened by deadlines and taken over by political decision-makers.

Endgame, or the closure phase of the negotiations, occurs when the parties, after having taken stock of where they are in the process, come to the conclusion that an end – positive or negative – is in sight and they need to address their behavior to making it happen. The upcoming round(s) will move to a conclusion, and holding out thereafter for further major gains would be costly and unproductive (Pillar 1983; Gulliver 1979). This phase is usually introduced by a Turning Point of Closure as the negotiations turn from formula to details; as usual, the point may be sharper in concept than in real time but nonetheless is of relevance. It is sometimes preceded by a break in the negotiations to take stock and produce a reframing of the issues, or by an important concession that breaks the deadlock and opens the way to lesser, reciprocal concessions. At this point negotiators sense an acceptable end toward which they are driving, still trying to inflect it in a jointly or separately preferred direction or otherwise bring the negotiations to an end, although they may also be engaging in a dueling or Indian wrestling game for competing outcomes.<sup>2</sup>

There is no telling when that realization will arrive; it is a sense that the negotiators come to during the process, alluded to using the same term “sense” by Faure in Chapter 4. The conflict/problem and relevant proposals have been thoroughly aired, the preliminaries are out of the way, diagnosis and pre-negotiations have been handled and the negotiations

<sup>2</sup> Pillar’s (1983, 119, 128) identification is “The first transition [Turning Point of Seriousness] occurs when the bargainers come to view an agreement as possible; the second [Turning Point of Closure] marks the moment they begin viewing it as probable. At the end of Phase Two, the gap between the two positions has narrowed to where they can now see the conclusion of the negotiation – most likely a successful one but a conclusion in any case. The slack is gone from the negotiations, the remaining differences are as clear as they will ever be, and the parties see their subsequent decisions as resulting possibly in the breaking off of talks but not in their indefinite prolongation. Phase Two usually ends with one side making a major concession that ends the waiting game and makes the overall shape of the agreement clear for the first time . . . There will be overall reciprocation which was largely absent in Phase Two.”

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have been going on for a while, the positions and interests have been made clear, the formula (or competing formulas) have been established, everything is on the table, and the dimensions of a Zone of Possible Agreement (ZOPA) are clear and shared, although these understandings may be revisited during the ensuing process. That sense of closure can come as a prospective view, looking forward from where things stand and the direction in which they lean: “there gradually emerged a sense that a moment of new opportunity might be presenting itself” in the words of Harold Saunders (1985, 289) on “The Beginning of the End” of the Iran hostage negotiations. But it can also come retrospectively, counting back from a deadline that would close the process: “A great agreement is within their [Bosnians’] grasp . . . We must give everyone a drop-dead time limit. I mean really close Dayton down. This should not be a bluff,” said Secretary Warren Christopher, and Richard Holbrooke (1998, 304–305) told them as he left, “We must have your answer within an hour . . . Not suspend – close down. In an hour.”

If there is an agreement it will be overall less than the parties wanted but enough to justify conclusion, either by signing or by leaving. Closure situations come in two types: negotiations that reach an agreement when Not Enough in comparison with original hopes and demands is still enough to make an agreement (Type I), and those that do not reach agreement because Enough was not enough (Type II). In the successful cases (Type I), the parties agree even though they do not reach their stated goals or bottom lines; a partial agreement was deemed sufficient to provide a positive outcome. In the unsuccessful cases (Type II), the parties settle important issues but even that amount of agreement is not sufficient to warrant a final positive outcome. Under what conditions do parties agree to agree on what (and what not) to agree on and under what conditions is the progress insufficient to constitute the basis for an agreement, and how do they behave in the last round?

Obviously the situations are on a spectrum, with extremes at either end. There may be situations where both parties can get all they came for; it is assumed that such situations are rare and, for present purposes, uninteresting. There may also be situations where what they came for is something else than an agreement, that there is no agreement on anything, the parties are not ready to negotiate, and may be acting for side effects (time, publicity, reputation, etc.) (Ikle 1964). These too are outside this inquiry. But the assumption is that most cases of negotiation are in the big gray area in the middle, where the parties cannot get everything they want or thought they deserved, where red lines have to be breached in spots, and yet they sense that the/an end is near and attainable, where the rising question, as the end approaches, is whether

there is enough to constitute an agreement and how do they behave to attain it? Why stop here, now? Should one continue to negotiate to try to get more, would pushing further push agreement out of reach, is there just or not quite enough to make for a positive outcome? As indicated, there is no way of knowing that the end is really available or how long it will take to get there, but, as the accounts testify, the sense that it is there is usually palpable. Nor is there any way of telling – not even the seriousness of the remaining issues – how long the endgame will take, although it is generally short compared with the previous phases of the negotiations.

### Patterns of Closure

Once the negotiations enter into this final phase, how do they proceed? The initial quotations and others' analyses indicate that specific behaviors appear to be associated with the move toward closure, which are different from behaviors during the previous course of negotiations (Douglas 1962; Gulliver 1979; Zartman & Berman 1982; Pillar 1983; Bartos 1976). Endgame behaviors look ahead toward the conclusion to which they are aiming or heading and act strategically in order to get there, a characteristic shared with endgame strategies both in Chess and in Go (Frey 2016; Shotwell 2005). Such behaviors of course relate to the basic process (as also in Chess and Go), to distributive and integrative bargaining, to conflict management and conflict resolution, to payoff maximizing or satisficing, etc. But whatever the particular outcome pursued, the negotiators select various patterns of behavior to move them to closure. What behaviors are typical and required to get the parties to Yes (to refer to the title of a book that does not focus on this point in the process)? What variables are helpful in analyzing the situation? In a word, how do negotiators behave when they feel that they are close to the end of negotiations, and why? Are there common dynamics and identifiable patterns of behavior in the endgame? These are the questions that this study addresses.

Some such modes stand out; others may appear less prominently, but several predominate. Five different patterns of behavior appear very clearly in model form (and muddily but nonetheless distinguishably in reality): *dueling*, *driving*, *dragging*, *mixed*, and *mismatched*.<sup>3</sup> The first two patterns are reciprocal; the parties react to each other in the same terms and expect that reciprocation: toughness leads to toughness, as in

<sup>3</sup> Somewhat similar modes from different angles have been advanced in Pruitt (1981), Shell (1999), and Ury, Brett, & Goldberg (1987).

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dueling, and softness leads to softness, as in driving (Pillar 1983, 101; Zartman 2005). The other patterns are not reciprocal or matched: toughness leads to softness and vice versa. The first two are related to Rubin & Brown (1975): High Interpersonal Orientation (competitive) and High Interpersonal Orientation (cooperative), taken as behaviors rather than as personality types, with similar results identified for mismatching (see also Shell 1999, although there is relevance but less of a direct equivalent with his five styles or Thomas–Killmann categories); dragging may be related to Low Interpersonal Orientation behavior if it covers the whole endgame and not just a single issue. The behaviors may appear in parts before the Turning Point of Closure; in the endgame they tend to become focused.

Three of the patterns can be appreciated by their behavioral characteristics, sometimes a bit caricaturally:

Dueling	Driving	Dragging
Confrontation	Cooperation/ convergence	Disengagement
Cliff hanging	Regular progress	Don't like where this is heading
Hanging tough	Hanging positive	How can we end this gracefully?
End in doubt	End in sight	Approach–avoidance
Steely nerves	Creative mind	Soft landing
Hold out, face it off	Move ahead, wrap it up	Prepare LCD outcome
Classical chicken	Creative chicken	Chicken stalemate
Uncertain information	Exploring information	Uncertainty
Harden support for position	Prepare support for outcome	Prepare for failure or LCD
Threaten	Warn: If not, I'll have to . . .	Disengage
Ball is in your court	Ball is in our court jointly	Ball is in the net
Deal is far	Deal is attainable	Deal is avoidable
Bad cop	Good cop	Backing out
Late compromise, if at all	Early compromise	LCD compromises
Demand more	Reciprocate	Second thoughts
Emphasize bad collapse	Emphasize good agreement	Emphasize gentle collapse
Re-examine BATNA/security point	Explore ZOPA	Strengthen BATNAs
Entrapped in commitment	Caught up in dynamics	Slow down dynamics
Deadline	Extend deadline if progress	Time running out
Prepare home for failure	Evaluate success so far, crest	Cut losses, make best of it
Concession	Compensation, construction	Set issues aside

The choice of the pattern is path determined by the previous bargaining behavior of the parties. Thus the patterns capture both the individual parties' behavior and also the behavioral pattern of the encounter if shared. The patterns of behavior are not sealed trains in a tunnel; the parties can shift, probably inducing a shift or at least a strain in the other's behavior, but they cannot shift very often without destroying the engagement of the other. A shift can occur at the very end: dueling in the crunch after almost complete agreement by driving, or driving at the edge of the cliff after the dueling has run its course, but such shifts probably require a shift in negotiating or deciding personnel as well.

One pattern is *dueling* (Kitzantonis & Alderman 2015; de Gaulle 1962), also known as cliff-hanging and brinkmanship, in which the parties face each other down to the wire until one of them blinks. This is a pattern of reciprocal behavior, in which toughness has led to toughness, and a low critical risk on the part of both parties leads the process either to confirmed deadlock or to a prolonged shoot-out before one side gives in (Bishop 1964). In critical risk terms, each side bets on the chances of the other side's capitulation and of the acceptability of a deadlock if it does not capitulate.<sup>4</sup> This is a hardened version of a Chicken Dilemma Game (CDG) (only portrayable in a cardinal, not ordinal, depiction), which incorporates the capitulation calculation but not the relative cost of deadlock. Thus dueling parties attempt to persuade the opponent that they will not move and that a deadlock would be quite acceptable to them, that is, to each the "expected cost [of break-down] equals [or is less than] the expected benefit [of victory]" and each party is indifferent between the two, and they also try to convince the other that its calculation is wrong and that deadlock is indeed costly to the other (Pillar 1983, 92–93). Expressed as security points, the Best Alternative to a Negotiated Agreement (BATNA) for each is – or at least is portrayed as – equivalent to or higher in value than an agreement, so the parties are equal in power and work to reinforce their indifference rather than seeking an accommodation with the other party's position, thus setting up a situation of deadlock or surrender. As a result, an interesting aspect of the dueling pattern is that it drives the parties to bargain on their security points rather than on the terms of a possible agreement, pointing out quite publicly how acceptable for them deadlock

<sup>4</sup> There are a number of calculations for critical risk; the most complete one is the ratio of the difference between victory and losing (the southwest and northeast corners in a Prisoners' Dilemma Game matrix) and the difference between victory and deadlock (the southeast corner) (Zeuthen 1930, 147; Pillar 1983, 93; Snyder & Diesing 1977, 49–52). Critical risk is a useful heuristic but more difficult to calculate than its definition would suggest.



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is as an alternative and how unbearable the concessions needed to come to an agreement, especially on the other party's hard-line terms, and how awful deadlock would be for the other, without doing much to improve the terms of an agreement. In other words, both parties proclaim that they really don't need an agreement, at least on the other's terms.

Another characteristic of dueling is that there is no agreement on a Formula going into the endgame. The parties still hold different notions of the nature of the problem, the terms of trade, and the notion of justice underwriting the negotiation and hence the agreement. The parties never got out of the competitive stage into a cooperative frame of mind (Pruitt 1981, 133–134; Zartman 1997a). Hence the duelers have an overcharged agenda with little to have built up in preparation for cooperation. If there is finally an agreement among duelers, it is most likely to favor one of the parties.

Decisions in each pattern will have their characteristics. Decisions in dueling will be strategic, i.e. determined by examining (intrapersonal) or comparing (interpersonal) BATNAs, or personal/political, i.e. determined by the strength of commitment to oneself or to the home audience, portraying the offers, deadlines, and BATNAs as fixed reference points. Strategic decisions depend on uncertain information about what one's and the other's security point really is; political decisions depend on a judgment of what one can get away with without breaking commitments. Dueling may take place over a single issue but is more likely to occur over an entire agenda or general concern or relationship that is not subject to decomposition or fractioning, making compensation more difficult. Even when a single issue is, literally, the stumbling block, it tends to take its importance from its representation of the entire relationship. Parties will run down to the wire (and push the wire if possible) to show their unshakability, strengthening their position by public commitments, throwing away the steering wheel in their chicken course while underscoring the catastrophe in the other party's security point (Schelling 1960; Coddington 1968). Thus, the cost of capitulation increases as the parties move toward a decision.

Dueling is done before a public audience and is used to enforce commitment; negotiators are always looking over their shoulder to create a public opinion that then holds them prisoner. There is no question of handling the major issues or any others early to create a positive bargaining atmosphere; the Big One stands to the end as the symbol of the confrontation. Various devices of presentation and misrepresentation as highlighted by prospect theory will be employed (McDermott 2009; Kydd and Stein in Chapters 11 and 12 of this volume). Parties are unlikely to have similar purposes in the negotiation; concessions are the only alternative to one side's giving in completely, but the posture of the parties makes concessions difficult;



compensation may be worth exploring and construction (reframing) is uninteresting. Furthermore, there is no room for mediators in a dueling encounter. They are not welcome, and if they do perchance appear in the hope of being helpful, they are ignored, or worse, by one or both parties, as the fate of Romeo reminds us.

Not surprisingly, the best examples of dueling come from failed encounters, although the Cuban Missile Crisis negotiations were a concise case with a positive outcome. The 2015 Greek debt negotiations, including some interesting manipulation of the public to back the dueling, are a sharp case of dueling examined by Diana Panke in Chapter 2. Negotiations over Kosovo at Rambouillet in February 1999, over Syria in Geneva I and II in February 2012 and February 2014, and negotiations in Sri Lanka in 2006 through 2008 were all cases of dueling. In the first two cases talks were later revived when the situation on the ground (including the disposition of external players) had changed. For this reason, the choice of the EU–Greece case is particularly instructive; one side finally capitulated. Negotiators can of course stop dueling any time they want, but they have to make sure that the decision to change is reciprocated, i.e. that both sides agree to change, or else one party's move will simply be seized upon as capitulation. So duelers can come to an agreement, since their mode is reciprocation if they snap, after appropriate and delicate soundings, to an outcome that takes the best of both positions into account. This may involve selected concessions or, better yet, compensation through an exchange of items to which they assign different values (Nash 1950; Homans 1961). The breakout of the deadlock in the first (2005) Iranian negotiations was accomplished this way and permitted a pattern of driving in the second (2013–2015) round. Examples are also to be found in Chapter 6 by Crump. An unusual, well-executed reciprocated change from dueling to driving occurred after the opening of the Israeli–Palestinian talks at Oslo in 1993 (Zartman 1997b). Like all the others above and below, illustrations are illustration, not perfect fits.

The second pattern is *driving*, in which the parties push and pull each other gradually toward a convergence point, matching concessions and compensations, as the parties work on each other down toward an agreement. This too is a pattern of reciprocal behavior, in which softness has led to softness and a high critical risk on the part of both parties leads the process toward agreement, although only a comparison of the critical risks can tell how long the concession game will go on or which side the outcome will favor (if at all). In critical risk terms (Zeuthen 1930; Pillar 1983), each side bets on the chances of the other side's concessions and of the acceptability of a deadlock if it does not concede. This is an enlightened version of a Chicken Dilemma Game (CDG) where the parties want

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to avoid a deadlock and so see the situation as an incitement to create a mutually enticing outcome (MEO) (Goldstein 2010) (again only a cardinal depiction of the CGD can show which side the MEO will favor, if any). Thus driving parties attempt to establish an ethos of requirement, persuading the opponent that they will reciprocate any positive move and expect the other to do the same, and also that a deadlock would be quite unacceptable to them; that is, the expected cost of breakdown is much higher than the expected benefit of agreement (Pillar 1983, 92–93). In terms of security points or alternatives, when the alternative to a negotiated agreement (BATNA,  $X_{Slo}$  and  $Y_{Slo}$  in Figure I.1) is – or at least is portrayed as – lower in value than an agreement and both parties are

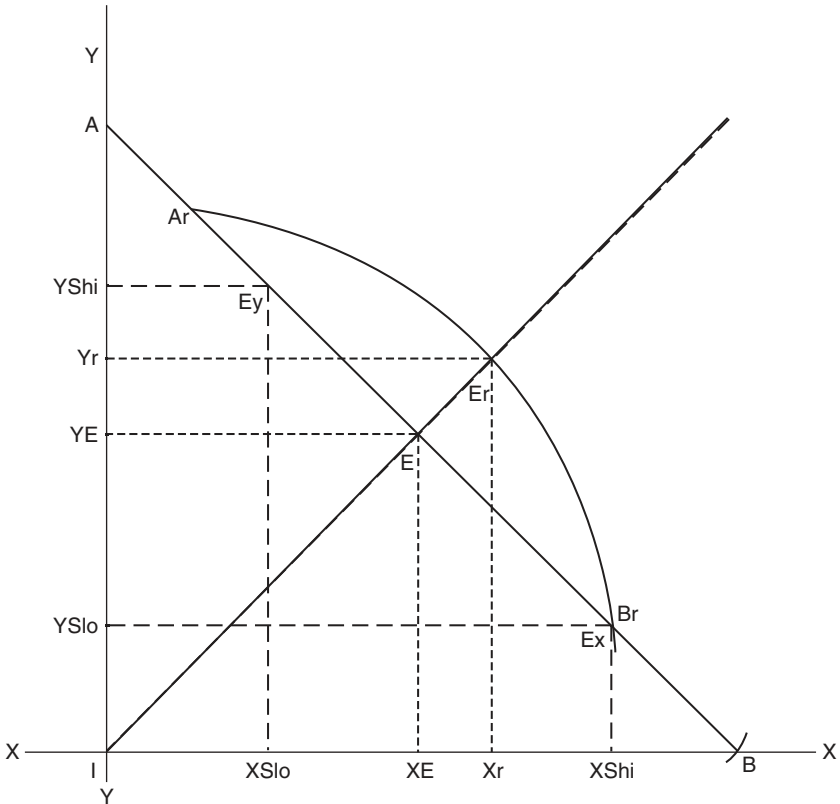


Figure I.1. Effects of reframing and of high or low security points (BATNAs).  $AEB$  = zero-sum frontier;  $ArErBr$  = reframed positive-sum frontier;  $Y_{Shi}$  or  $Y_{Slo}$  =  $Y$ 's high or low security levels/BATNAs;  $X_{Shi}$  or  $X_{lo}$  =  $X$ 's high or low security levels/BATNAs.