

# Negotiate



Michael MacArthur Bosack

# NEGOTIATE





*Korean People's Army & United Nations Command  
Armistice negotiators in Panmunjom, 1951*

# **NEGOTIATE**

*A Primer for Practitioners*



Michael MacArthur Bosack

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*FIRST EDITION*

*Yokosuka Council on Asia Pacific Studies*  
*Parley Policy Initiative*  
ISBN #9781387938650



*For my children, Tilly and Mikey—  
the world's toughest negotiators.*



*Russian & Japanese treaty negotiators in Portsmouth,  
1905*

## *PREFACE*

**H**umans are in a constant state of negotiation. Our lives are made up of thousands of micro-negotiations every day, whether it's deciding where to go to dinner with our families, coming to an agreement with colleagues on a project, or haggling over the price of a purchase. Oftentimes, we're unconscious of it in our personal lives, and the same tends to apply for many of us in our professional interactions.

For government officials, negotiation occurs more often than many realize, especially for those who deal with foreign governments. The fact is that almost any interaction between government officials is tantamount to negotiation. Those intergovernmental negotiations—both big and small—have long lasting impacts, but alas, governments don't tend to train most of their personnel on how to conduct negotiations. Worse yet, there aren't many resources that are written with government officials specifically in mind. Most literature on negotiation has a business-slant, and that makes sense, because there isn't much money to be made writing for a government audience on the open market.

Thankfully, there are organizations like the Yokosuka Council on Asia-Pacific Studies that share the objective of developing the current and future generations of practitioners. When I pitched the idea of this book to John Bradford, the Executive Director of YCAPS, there didn't seem to be any question of whether YCAPS would support it, but rather when we could make it happen.



With this project, I simply want to provide a resource for the peacemakers, diplomats, alliance managers, and other practitioners out there who may find themselves in the hot seat one day. My goal is to provide a quick-reference primer that improves everyone's negotiating ability, employing a combination of experiential knowledge and academic research. This product should offer a trusty guide for you whether it's your first negotiation, or your hundredth.

Why did I set out on this project? It's because I believe that the best negotiation comes from great collaboration, and great collaboration comes from negotiators who are fair, honest, and skilled. The world needs negotiators (especially in government) who understand and implement the fundamentals of negotiating to achieve cooperation and to avoid or overcome conflict.

To support this end, I have three aims for this primer. **The first is utility.** For this book to have any meaning, it must be useful to its owners. This means it has to cover every aspect of negotiation from start to finish, whether it's how to approach negotiations, how to set up the room, or how to close the deal. This primer purposely runs the gamut.

**The second goal is readability.** I wrote with a less formal style to avoid it reading like a textbook or manual. It is a deliberate choice to use contractions and to avoid footnotes and parenthetical references. If anyone wants to get more academic on the content, I am always available and game for a discussion on negotiations. You can reach me at Twitter handle @MikeBosack.

**The third and final goal is ease-of-reference.** Having been a staff officer, military unit commander, and a liaison officer, I know how precious a commodity time is. Too often, books on negotiations are great for a one-time read on a long flight, but they lose utility because of how difficult they are to reference in a pinch. This primer purposely prioritizes economy over exposition and includes quick reference lists in the back.

There are potential downsides to this book's approach. Certainly, many will pine for greater explanation of why the primer advocates for certain strategies or behaviors. I, too,

have an insatiable appetite for understanding every institutional, psychological, and practical underpinning of negotiations, but I had to make a difficult choice: Did I want to produce a primer for practitioners or a textbook for students? Since my objective was the former, I minimized my use of many of the traditional things one might find in an academic resource.

The content of this primer is the product of years of both practical experience and academic research. As a military officer and government official, I led negotiations, participated on negotiating teams, and served as an adviser for other negotiators. I wish I could say every lesson contained in this primer was something gained solely from success, but perhaps the more meaningful lessons came from the many failures both observed and endured. Indeed, the genesis of this book was my desire to document every lesson possible in a way that could elevate my own skill as a negotiator, and now the aim is to share those lessons with others.

Academic research helped clarify many of the raw ideas I had on negotiation from my years as practitioner. Scholarship offered names for concepts I had witnessed but not yet articulated myself, while filling in the gaps within my understanding of the bigger picture of negotiation.

I owe a great deal to the many people who contributed to this book. Some are probably unaware of their contributions because they were the negotiators I observed in action and studied first-hand. Among the top were Aaron Snipe and Donna Welton. They are shining examples of the quality negotiators present in the U.S. diplomatic corps. Others had a more direct hand in elevating my knowledge of negotiation. Colonel Mark Hague and Colonel Burke Hamilton taught me much about negotiating with allies and adversaries alike, and their advice is present throughout this handbook.

I am also indebted to Colonel Marvin Haynes, who entrusted me to negotiate as his Deputy Chief of Government Relations. There is no better way of learning than to perform, and he gave me the freedom not only to negotiate on his behalf, but to lead negotiating teams in pursuit of

alliance objectives. Paul Peyton and John Burzynski are two of the great minds in intergovernmental negotiation, and they were my mentors, my gurus, and my counsels. I am ever-grateful to have had the chance to learn from their combined century-long service to the international community.

I am also grateful for my foreign colleagues. In particular, Sasaki Tomonori showed me how effective a negotiation could be with a great counterpart on the other side of the table. Shinoda Tomohito was my Ph.D. supervisor and guided my academic research on intergovernmental negotiations. Tongfi Kim is a fount of knowledge and was always a valuable sounding board for me. Then there are all my former East-West Center and International University of Japan peers: the best things I learned about cross-cultural communication and negotiation came from my interactions with this group of friends and colleagues who hailed from over 70 countries.

Thanks must also go to John Bradford and the rest of the team at the Yokosuka Council on Asia-Pacific Studies. Their review and editing of this book helped make it far better than the draft they received. My appreciation goes to Natua Aderholt for his diligent copy-editing and to the two independent reviewers whose feedback was instrumental in making this a more meaningful primer. I am grateful to be a part of YCAPS, an exceptional organization with a service-oriented vision.

Finally, to my wife, Kim, who has always supported me—this book would not have been possible without her. In addition to her moral, financial, and family support, she helped me become a better writer by editing my work and reminding me how to communicate like a human being and not a pompous robot.

Anything valuable in this book is a credit to them—all mistakes are my own.

Michael MacArthur Bosack

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BATNA	Best Alternative to a Negotiated Agreement
WATNA	Worst Alternative to a Negotiated Agreement
ZOPA	Zone of Possible Agreement

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## **SECTION I**

# **KNOW THE GAME**





*Paris Peace Conference, 1919*

## **Chapter 1**

# **Introduction**

**N**egotiation is hard. There is no way around that fundamental truth. It is hard because the act of negotiating involves two or more parties seeking a way to achieve cooperation despite competing interests. It is hard because that cooperation often means the imposition of some costs on each of the parties. It gets harder when the parties involved are not just individuals, but organizations, and even more difficult when those organizations are whole governments.

Although there is no magic formula for making negotiation easier, there are rules, principles, protocols, and practices that can aid negotiators in their pursuit of agreement and cooperation. That's what this primer is all about: giving negotiators the tools and knowledge they need to succeed, whether it's their first negotiation or hundredth. It covers everything needed to lead and/or conduct an intergovernmental negotiation, from the point where you are deciding whether it is right to negotiate with another party up to the implementation of an agreement.

The structure of this book is based on a simple principle for anyone beginning a new endeavor, whether in life or in play: "Know the game. Know the rules. Know the players." In other words, you must understand what it is you will be doing in the context of the situation you're in; you have to know the boundaries for your actions; and you have to identify the people that you will encounter and their respective positions within this new 'game'.

As such, Section I (“Know the Game”) explains negotiations and lays the foundation for understanding this form of deliberation. Section II (“Know the Rules”) outlines the basic principles, rules, and protocols of negotiation. The following section, “Know the Players,” discusses the role players and types of negotiators that you will encounter during your negotiating experiences. The book then explains how you should prep for negotiations (Section IV, “Prepping for the Game”), how you should execute negotiations (Section V, “Playing the Game”), and what you must do to end negotiations successfully (Section VI, “Ending the Game”).

At the end of the book is an Appendix and Quick Reference List. The Appendix offers selected reading for any who wish to further their studies on the art of negotiation. Meanwhile the Quick Reference List section offers condensed checklists of items necessary to review before and while conducting a negotiation—things like the ten steps needed to build an effective negotiating strategy and a checklist for leading an effective negotiating session. No matter how seasoned a negotiator you may become, it is always good to review the fundamentals.

As difficult as negotiating can be, with this primer in hand you should feel comfortable in deliberating with another party until reaching an agreement to cooperate. There will of course be bumps along the way, but that is unavoidable for even the most experienced negotiators. The key to succeeding despite those bumps is to eliminate as many of the unknowns as possible and to have a solid foundation upon which your negotiating strategy is built and executed. All the information in the chapters that follow is designed to enable you, the negotiator, to accomplish those things.

## Chapter 2

# Key Negotiating Terms

**A**s you read this book and later when you engage in negotiations, you'll encounter plenty of negotiating jargon. It's important to understand these terms and phrases, not just so you can talk the talk, but because this jargon carries useful meaning. The list below is by no means exhaustive, but it will hold you in good stead as you proceed in your negotiations.

**Ackerman System:** A system of bargaining that is used for price haggling. Take the price that you would like to pay for an object, and, for your opening position, offer 65% of that. The next offer should be 85%. After more deliberation, offer 95%. Finally, offer around 100% of the original price point you wanted to pay. Using a simple example, imagine you are comfortable paying up to 100 dollars for something: your first offer should be \$65, then \$85, then \$95, etc. If you are on the other side of the negotiation, your asking price should be 135% the amount you hope to receive, then 115%, then 105%, then 100%. Two additional notes on this: (1) your final offer should be an odd number (e.g., \$101.93 instead of \$100), and (2) you should offer a non-monetary incentive in the deal (e.g., a press release commending the other side for its decision). Negotiators have demonstrated that this prescription taps into the psychological factors such as loss aversion to elicit more favorable views of the proposal on the table.

**Ad referendum (“ad ref”):** Ad referendum means “for referral,” and is the term-of-reference for negotiated agreements that are awaiting ratification.

**Agenda:** This is the list of items to be discussed in a negotiation. Some treat agendas as a strict order-of-negotiation, while others use it simply as a checklist for discussion points. It is important to distinguish between the two at the outset of the negotiation.

**Anchoring:** This is when one party sets a reference point (the “anchor”) for the rest of the negotiating process. This typically happens with the first offer in a negotiation and is most common in price negotiations. For example, a negotiator may say, “Look, I came in here with an offer of \$500 million, and you’re trying to low-ball me with your offers of \$100 and \$120 million.” In this case, the negotiator unilaterally set the anchor at \$500 million. In intergovernmental negotiations, unilaterally drafted text of an agreement is often used as an anchor, where a negotiator may say, “We will only deliberate the text of the draft we provided.”

**Aspiration Point:** An aspiration point is a party’s most desired outcome from a negotiation. It represents one boundary of a party’s “win-set.”

**BATNA:** This is your “Best Alternative to a Negotiated Agreement.” While the term is self-explanatory, its importance cannot be overstated—the strength of your BATNA directly correlates to the leverage you have at the negotiating table.

**Bargaining:** Also referred to as “haggling,” this is the brass tacks negotiation of prices and terms within the broader negotiating process.

**Black Swan:** Credit goes to former FBI negotiator Chris Voss for applying this term to negotiation, but a “black swan” is a piece of information that you discover over the

course of a negotiation that completely changes your prospects at the table. For example, you could discover that the other side's potential alternatives have fallen through, meaning you now have all the leverage. That piece of information would be the "black swan."

*Note:* The term harkens back to the 16th century when Europeans believed that all swans were white. The notion that there was a black swan was completely unbelievable and foreign to them. Then, black swans were discovered in Australia and for people stuck in the belief that all swans were white, the concept of what was within the realm of possible forever changed.

**Claiming value:** Simply put, this is *coercion*. It is framing an argument in such a way as to highlight the loss the other side stands to endure if a deal is not made; e.g. "If you don't make this deal, all of our existing cost-sharing arrangements go away, and you'll have to figure out how you're going to cover those budget areas."

**Circular 175 ("Circ 175" or "C-175"):** This is a U.S. State Department policy which directs the process that government officials must go through before they can refer an international agreement for ratification. It mandates the requirements for ensuring the new agreement aligns with existing laws, covers all the equities of interested parties within the government, and ensures the deal meets the intent of the ratifiers. While this term is unique to the U.S. government, almost any formal agreement will have a similar intra-organizational process, in both the public and private sectors.

**Concession:** This is something that you give or trade away to the other side. Anything given or any interest eliminated during the negotiation process is a concession, regardless of setting or intent.

**Creating value:** Simply put, this is *incentive*. It is the act of highlighting the potential gains from a proposal. At the Singapore Summit in 2018, the White House showed a video that advertised all the economic prosperity that North Korea stood to gain by making a deal with the United States, and it offers a good example of a message being delivered that is focused on creating value.

**Interest:** These are the objects you hope to gain or preserve from a negotiation.

**Logrolling:** This is a form of bargaining where each side offers reciprocal concessions (or trade-offs) to maximize value for each party in a negotiated deal.

**Negative sum:** A situation where the total of all gains and losses is still less than zero, meaning the only way for one side to maintain status quo is by taking from the other.

**Non-paper:** A document that does not contain a letterhead, seal, or any other attributional markings. It is used to convey ideas and positions without giving the appearance of formal commitment.

**Note verbale:** This is a less formal type of diplomatic communicate. It is drafted in the third person and is submitted to the other side without signature.

**Off-the-table:** A proposal that is no longer available for consideration.

**On-the-table:** A proposal that is open for consideration.

**Position:** Your formal stance on something in the negotiation. It could be related to an overall proposal, e.g. “We won’t go any higher than \$2.5 million on implementation costs.” It could also be on specific line items in the agreement: “Our position is that the paragraph should read as follows...”

**Positive sum:** A situation where both sides can enjoy gains from cooperation.

**Reservation point:** A party's least acceptable outcome from a negotiation. It represents one boundary of a party's "win-set."

**Right of first refusal:** This is a contractual obligation for the parties to an agreement to reenter negotiations before a signatory can engage with a third party. This is most common in property rights, but there are similar applications in other negotiated agreements.

**Sidebar:** This is when one side of the negotiation takes a break to discuss issues, either unilaterally or informally with the other side. Under standard negotiating protocols, sidebars may be exercised at any point in a negotiation.

**Under-the-table:** Logrolling or side-payments that are not part of the official deal.

**Veto player:** A person, office, or organization that may not be an approval authority for a negotiated agreement, but nevertheless has the ability to obstruct some or all of the deal. The term comes from that entity's "veto" power, whether formal or informal.

**WATNA:** The "Worst Alternative to a Negotiated Agreement" is the worst possible outcome that would result from failing to reach a deal at the negotiating table. Your WATNA increases in importance depending on the likelihood that it will occur. For example, if you are a fisherman and you only have one potential buyer, your BATNA is to walk away and find another buyer, but your WATNA is where you are not able to find another buyer before your stock goes bad.

**Win-set:** This is the range between one side's most desired outcome and least acceptable outcome. It is also known as the "bargaining range."



**Zero sum:** A situation where one side's gain is another side's loss.

**ZOPA:** This is the "Zone of Possible Agreement," or the area where both sides' interests overlap and a deal may be struck. It is sometimes referred to as the "bargaining zone."

## Chapter 3

# Negotiating as a means of achieving cooperation

At its core, the goal of negotiation is cooperation. Two or more parties come to the negotiating table to figure out the best way to move forward together despite competing interests. If cooperation was unnecessary for one reason or another, there would be no impetus to negotiate.

That said, it is important to recognize that in international relations, there are several ways to come to an agreement on how to cooperate. While this primer focuses on negotiation, one must understand the different methods of achieving cooperation because sometimes negotiating is not the answer. Other times, it is the only means available to chart a course forward.

Although one may encounter various terms for these methods, there are essentially four basic ways of yielding cooperation between two or more governments: (1) *coordination*, (2) *negotiation*, (3) *mediation*, and (4) *arbitration*.

While every one of these activities has the same goal, their methods of getting there differ greatly. If you are engaged in international relations, it is critical to understand the features, pros, and cons of each method, so that you may assess which is the best for achieving your desired ends from an agreement to cooperate. Failure to do so will invariably leave you scratching your head wondering what went wrong at the end of deliberations with your foreign counterparts.

### ***Coordination***

The average international relations practitioner will engage in coordination with foreign partners at one stage or another; after all, coordination happens at all ranks and all levels of formality. The whole point of coordination is for separate entities to find a way to generate momentum towards achieving a common objective.

Parties in coordination will exchange views on constraints (things they must do), restraints (things they cannot do), their individual interests, and perhaps their desire to avoid certain costs. In many ways, this resembles negotiation.

So, how does coordination differ from negotiation? First, in coordination, cooperation is often a foregone conclusion. Another way to look at this: parties in coordination do not tend to hold an alternative to cooperation in reserve. In that way, it's never a question of "if," it's a question of "how."

Second, coordination tends to be viewed as 'positive sum', meaning that the result of the coordination process produces a net positive for all parties involved.

Third, coordinating parties are often less concerned with their individual costs than the mutual benefits of cooperation. Typically, a party would not view those costs as concessions to the other side, because reciprocity is assumed.

All that is not to say that coordination always results in agreement and cooperation. Sometimes obstacles are too great to surmount, or costs are simply too high. Still, coordination is the most common form of interaction between two or more parties in intergovernmental cooperation, and usually a positive one.

### ***Negotiation***

Negotiation is a different beast from coordination, but the resemblance between the two can be tricky. Not every negotiation involves a formal process where two or more parties meet at a table and deliberate an agreement that needs to be signed and ratified. In those formal settings, things tend to be straightforward because everybody knows that they are

in a negotiation and should be prepared to follow the standard principles and protocols. In cases where it is not so formal, negotiations can be deceiving.

So, when do you start to enter the realm of negotiation instead of coordination? First, the focus of negotiations is on the *agreement* to cooperate, not the *execution* of cooperation itself. Under these circumstances, many parties will treat the process as 'zero sum', as in one side's gain is the other side's loss. They will seek to maximize their benefits from cooperation while minimizing the costs.

Second, in negotiations, there is a clear alternative to cooperation for one or more of the parties involved. In other words, there is a limit to how far each party will go before they exercise their best alternative to a negotiated agreement, or BATNA.

One of the most common mistakes in international relations is confusing coordination for negotiation. This is dangerous, because in coordination, it is common to offer concessions under the assumption of reciprocity, whereas in a negotiation the reality is that the other party will gladly take something for nothing unless you negotiate a trade-off. Mistaking the two also leads to frustration, where the party that believes it is in coordination will become upset with the behavior of the party that is actively negotiating, wondering why their partners take so much and give so little to support cooperation. This can plague relationships, especially in alliance management. Finally, failure to recognize the difference between coordination and negotiation could lead to major breaches in protocol that could derail any form of cooperation.

That said, it is helpful to approach negotiations with the optimism and flexibility that one would bring to coordination. Focusing on mutual benefits, emphasizing win-win solutions, clearly communicating interests, constraints, and restraints, and encouraging the other side to follow the principles of reciprocity are all worthwhile practices in a negotiation because they tend to produce better results, especially when the parties intend to maintain long-term relationships with each other.

**Mediation**

Mediation is a negotiation that involves a third party whose goal is to foster an agreement. A key characteristic of mediation is that it is non-binding and non-coercive; in other words, the parties to the negotiation maintain total control of the outcome.

So why bother with mediation if mediators have no authority to compel? In short, it is helpful when a negotiated outcome is unlikely; for example, the introduction of a mediator is common when the parties to the negotiation are in militarized conflict (such as warring parties negotiating a ceasefire or peace treaty).

It may also occur when there are outside parties who maintain an interest in a negotiated agreement. That does not mean that third-party mediators have a personal stake in the specific terms of the outcome, just that they have a stake in producing an agreement from the negotiation.

Who should select the mediator? In the field of international relations, there is no consensus on the ideal method for doing so, but the best option is if the parties in negotiation can come to a mutual agreement on who should mediate. This offers a small agreement from which to build upon when the mediator arrives, and it increases the legitimacy of the mediator in the negotiating process. If that's not possible, the next best practice is having an international organization like the United Nations or one of its subordinate bodies assign the mediator.

Mediators handle negotiations differently, tailoring their efforts to the demands of the situation. Some are relatively hands-off; the best example being President Theodore Roosevelt who mediated the Treaty of Portsmouth between Russia and Japan. Those two countries shared a professional approach to negotiation, but they needed neutral ground and support in boundary- and agenda-setting in the negotiation itself. As such, Roosevelt hosted the two negotiating parties in New England and jumped into the negotiations whenever Russian and Japanese delegates seemed to be approaching an impasse. He also spent time handling his own state affairs and, of all things, playing tennis.

An example of a hands-on mediator was Ralph Bunche, who successfully fostered an agreement to end the conflict between Israel and Egypt in 1949. Unequivocally, Bunche led the negotiations, drafting proposals, engaging each side unilaterally during periods of impasse, managing negotiating agendas, and setting the tone and tempo of deliberations.

In both cases, mediation proved successful despite the disparate methods. Nevertheless, the functions were the same: helping the parties to negotiation find their zones-of-possible agreement while navigating around barriers to cooperation.

### ***Arbitration***

Like mediation, arbitration involves a third party, but there is one distinct difference: the arbiter has the authority to compel the parties in negotiation. What this means is that the arbiter is the ultimate decision-maker for the outcomes of negotiation.

Arbitration is more common at the interpersonal level and in the business world than in international relations. The reason for this is practical: an individual government maintains authority over people and businesses within its sovereign borders, but there is no commensurate organization that has such authority over countries. The United Nations, for example, exists as a collective body, not a governing one. There are, however, cases where countries may elect to join an organization where arbitration is a potential option for dispute settlement—the prime example being the European Union.

Is arbitration effective? In the interpersonal and business realms, yes, arbitration can be an expedient method for resolving conflict and mandating cooperation between negotiating parties. In managing intergovernmental negotiations, it is only as effective as the negotiating parties allow it to be. The governments must relinquish their autonomy to the arbiter, which some may be willing to do in theory, but most would be loath to do if it meant an imposition of

excessive costs. As such, arbitration can end up being more of a symbolic exercise than a practical one.

\* \* \* \* \*

In the end, each method of achieving cooperation is unique and presents varying sets of considerations, costs, benefits, and limitations. As international relations practitioners, it is critical to recognize which method you're actively engaged in and to assess which will be the best in helping you achieve your goals.

If you choose negotiation, the chapters that follow will guide you through the process from start to finish, with plenty of tips and guidance to ensure you maximize your positive outcomes along the way. These intergovernmental negotiations have unique features from the ones you'll experience in a personal capacity. This primer provides explanations of how they are different, while also offering the foundational knowledge necessary to carry them out.

## Chapter 4

# The Six Phases of Negotiation

Traditional studies on intergovernmental negotiation look at two phases of negotiation that occur at two levels. The phases are (1) *negotiation*, or the actual step of hammering out a deal between two or more parties; and (2) *ratification*, which is the step of getting the deal approved in each side's respective governments. The two levels at which these deals are negotiated and ratified are the *international* level where the intergovernmental dealings principally occur (Level I), and the *domestic* level where decision makers must manage unilateral interests within their own governments (Level II).

While this model has been a useful tool for many examinations, it cannot explain several phenomena related to intergovernmental negotiations. For example: how do countries decide to enter negotiations in the first place? Working level officials rarely have the authority to make decisions to start negotiations in a vacuum; there must be some impetus and direction that initiates and bounds the negotiating process. But when and how does that occur?

Also, why is it that the deal that is originally negotiated often looks so different from the one that is eventually implemented? More often than not, there will seem to be inconsistencies between the specific language of an intergovernmental agreement and the activities done to meet its terms.

To understand intergovernmental negotiations in a way that can answer those questions and facilitate your



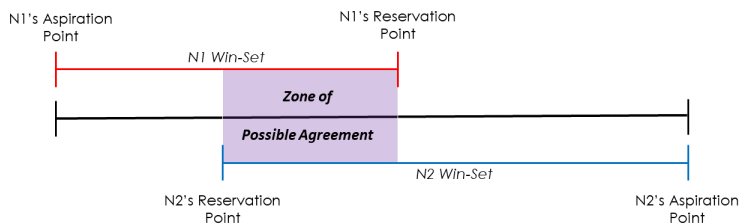
negotiating activities, it is necessary to expand the scope of examination beyond two phases. As you approach your negotiations, recognize that there are actually six. The two levels—international and domestic—are still relevant throughout, but their importance varies in each of the phases. Those phases are as follows.

### **Phase 1: Pre-negotiation**

Unless there is some external impetus for entering a negotiation (e.g., the expiration of an existing agreement), governments will take time to “feel each other out.” Each government will assess what it stands to gain or lose and what the other side’s interests, constraints, and restraints may be. All these decisions typically happen at Level I, with working-level officials from each side engaging informally to gather information and to make assessments that they can provide to Level II decision-makers.

Ultimately, the goal for officials in this phase (even if they do not immediately recognize it) is assessing the “zone-of-possible-agreement” (ZOPA), or the overlapping space in both sides’ win-sets. More precisely, the ZOPA is the space between each side’s least acceptable outcomes for the negotiation (also known as their reservation points). The figure below illustrates this concept:

**Figure 4.1. Understanding the “ZOPA”**



Phase one can be time-consuming; the time necessary to assess whether a ZOPA actually exists can range from near-immediate to years-long. Unless one side can convince the other that a negotiation is capable of yielding an agreement

that falls within its win-set, there will be no impetus to move forward.

One important note here: a party to the negotiation may set preconditions during the pre-negotiation phase. While it may not be immediately evident to some, preconditions are directly tied to the ZOPA: either they include elements of a side's "least acceptable" outcome, or they serve as signals that a ZOPA indeed exists. A simple example here is when warring parties decide upon a ceasefire as a precondition to formal peace talks; for them, the cessation of hostilities is part of the baseline acceptable outcome, and any subsequent negotiation will be for other objects.

Once the governments complete their assessments and decide that it is in their mutual interest to negotiate, they engage one another to work out key parameters for the negotiation. This marks the advancement to the next phase.

### ***Phase 2: Agreement to negotiate***

Once two or more parties decide that a negotiation can produce a favorable enough outcome, they set the parameters for the negotiation. This often includes fundamental guidelines such as purpose, timeline, and perhaps some key objectives that all sides hope to achieve in the negotiation. They may also set boundaries to define what issues are off-limits for the negotiation or to clarify the objects in play. Finally, an agreement to negotiate may include specific details, such as where negotiations will take place, how frequently they will occur, or who will be representing each side.

While Level I negotiators will work out the details, the actual agreement to negotiate is typically decided at Level II by domestic political leaders. An example of this was the 1996 Joint Declaration between President Bill Clinton and Prime Minister Hashimoto Ryutaro. That declaration noted that the two countries would renegotiate the 1978 Guidelines for U.S.-Japan Defense Cooperation, but before the two heads-of-government met, they each had to concur with the decision. Level I officials worked out all the details for what the two sides aimed to achieve through negotiations

and sent them to their respective political leaders to approve. Those administrations then had to determine whether the objectives aligned with their respective political agendas. When they felt comfortable with the way ahead, the two parties met and issued the joint declaration. In addition to stating the agreement to negotiate, the declaration specified some key areas where they would try to evolve the U.S.-Japan alliance. This sets the stage for the next phase in the process.

### ***Phase 3: Negotiation***

Once the agreement to negotiate is in place, the Level I negotiators set themselves to work in the negotiation phase. Their goal is simple: produce an *ad referendum* agreement that meets the guidelines set during phase two.

Intergovernmental negotiations can vary in length depending on the objectives for the agreement, the relative costs and benefits to be lost or gained, and the strategies of the parties to the negotiation. Whatever the method of reaching an agreement at the negotiating table, it still only represents the halfway point for the full intergovernmental negotiation cycle.

### ***Phase 4: Ratification***

There are essentially two forms of ratification: (1) an *executive* authority signs an agreement that is then immediately enforceable; and (2) a *legislative* authority deliberates an agreement before deciding whether to ratify it. In both cases, domestic policymakers may disagree with the terms of the agreement that intergovernmental negotiators drafted. It is important to recognize that ratifiers fundamentally only have three options: (1) reject the agreement outright; (2) send the *ad referendum* agreement back to the negotiating table; or (3) ratify it. While this bounds Level II actions during the ratification phase, domestic policymakers may set the conditions for reinterpreting the terms of the agreement *after* ratification during the next phase.

### ***Phase 5: Interpretation***

Once ratification is complete, the language of an agreement may be fixed, but it does not mean the definition is set in stone. Rather, each party then has to figure out how it intends to carry out the terms of the agreement. Before executing an intergovernmental agreement, each side will review the terms and conditions, prioritize items for implementation, and interpret the constraints and restraints necessary for compliance.

Sometimes interpretation happens formally through introduction of new legislation. That legislation bounds the limits of implementation; after all, a government will not tend to exceed its own laws, even if an international agreement demands it. There is also informal interpretation that occurs when policymakers review the agreement. This often happens whenever there is a turnover in personnel. For example, if the implementers of the agreement are different from the negotiators, it is unlikely they will understand all the intent behind the specific language which, in intergovernmental negotiations, is typically agonized over until all sides agree on every single word. This will also happen whenever there is a changeover in leadership, where a new individual in charge may simply say, “I don't think that's what it's supposed to mean,” or, “I don't like that we're putting so much emphasis on this aspect of the agreement when we should be focused on this other section.”

An important point about the interpretation phase is that it is done entirely at Level II without the necessity of deliberations with the other side. This means that when the parties to the agreement come together for implementation, they may once again require negotiations at the working levels.

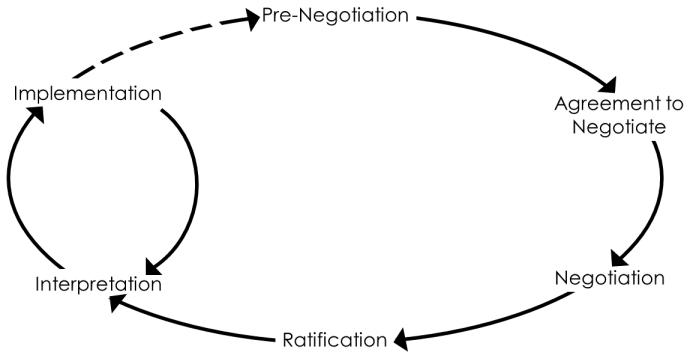
### ***Phase 6: Implementation***

The final phase of a negotiation process is implementation. While that may seem simple in theory, intergovernmental negotiations often produce agreements requiring action across several organizations in multiple countries. Implementers also have the challenge of taking both the

agreement that the parties ratified, as well as their unilateral interpretations, and finding some way to put them into action in a meaningful way. This often requires follow-on negotiations, maybe even the addition of subsequent agreements, memoranda of understanding, or other formal instruments. Making this process easier is the fact that the decision authorities for implementation are typically at lower levels of government, but all this activity means that further changes to the original negotiated agreement are probable.

The implementation phase is the last of the six, but the process itself is cyclical. No agreement is permanent, meaning that eventually the parties will have to decide whether to terminate the agreement or to negotiate it once again. The figure below depicts all the phases in sequence.

**Figure 4.2. The Six Phases of Negotiation**



One will notice in the figure that there is an additional line between implementation and interpretation; that is because an agreement, while still valid, constantly undergoes a cycle of reinterpretation and implementation. The line between implementation and pre-negotiation is dashed, because if an agreement remains mutually acceptable, there is no need to reenter the pre-negotiation phase.

With this, the answers to our original questions are clear. How do governments decide to enter negotiations? They informally negotiate until they can assess the existence of a ZOPA during the pre-negotiation phase, and then, during the agreement to negotiate phase, they come to some decision on the scope, objectives, and mechanics of the ensuing negotiation.

Why does the agreement that is eventually implemented look so different from the one that was originally negotiated? This is because there were three phases of negotiation that took place after the original document left the negotiating table: ratification, interpretation, and implementation. Further, the interpretation and implementation phases are ever-occurring in a sub-cycle of negotiation until the parties to the agreement decide either to terminate it or to renegotiate the original terms.

For practitioners, it is important to remember how the negotiation process works across the six phases in order to ensure they build the best strategy for achieving their goals through a negotiation. Understanding how agreements can evolve across the phases and anticipating how the other side may alter it in the ratification, interpretation, and implementation phases is critical to preserving one's interests over time.

## Chapter 5

# Five Common Problems in Intergovernmental Negotiation

Negotiation is almost never easy, and no matter what level you do it at or who you might be representing, you will face challenges. A large part of your job as a negotiator is to recognize those challenges and find creative solutions to them that satisfy your side's interests.

In the case of intergovernmental negotiations, there are five common problems: (1) bargaining indivisibilities; (2) commitment problems; (3) information problems; (4) two-level problems; and (5) path dependency. This chapter describes each of these in detail while providing some ideas on how to overcome them in a negotiation.

### **1) Bargaining indivisibilities**

As the term implies, bargaining “indivisibilities” refers to objects of a negotiation which are unable to be divided. In other words, there is no way to offer partial concessions because the object both sides want cannot be split, so everything becomes an “all-or-nothing” proposition.

While this is not a problem in price negotiations (e.g., buying a car), it is all too common in intergovernmental negotiations. For example, if a party wants to resolve sovereignty issues, this introduces an indivisible object to the negotiation since a country either has sovereignty over territory and airspace or it does not. This is also a problem when it comes to talks on denuclearization: the issue is binary

where one side is a nuclear power (whether actual or aspirational) and the other side's goal is to undo that.

There are workarounds to these issues, but it takes clear consideration of the interests, constraints, and restraints at play. I'll use the territorial issue as an example: how might you negotiate a dispute when one country claims sovereignty over an island that another clearly controls? If you look at the interests underpinning that claim, it may reveal that the claimant is less concerned about the island itself than the maritime resources around it. Sovereignty over the island is not divisible, but administrative rights to maritime areas are. Therefore, a negotiated agreement is possible. The agreement between Taiwan and Japan on Taiwanese fishing rights around the Senkaku Islands offers a good example of a successful mitigation of sovereignty disputes between two governments.

The key then is to explore what each side truly wants and focus on those core interests. In the event that it is simply impossible to reach a deal because both sides want exactly the same indivisible object, the key then is to look at other concessions that the other side may want more. Perhaps there is something else you can give that will make the other side okay with giving up the entire indivisible object. As a negotiator, it's your job to explore these options at the negotiating table.

## **2) Commitment Problems**

Commitment problems come in two forms: the first is related to the absence of trust that a party will uphold its end of a bargain. This is especially common when warring parties are attempting to settle a peace agreement. It may also be the case when your negotiating partner has a reputation for renegeing on deals.

The second is when circumstances have changed so much since the original point of agreement that it is either difficult to uphold the terms of an agreement or it becomes counter to a party's interests. This is the case for agreements that last much longer than originally envisioned or where one of the signatories experiences massive development or



decline following the conclusion of a deal. Both forms of commitment problems render important considerations in any intergovernmental agreement, and the same solutions apply to each.

The best way to approach any negotiation, be it with friend or foe, is to do so with the baseline assumption that there *will be* commitment problems. There need not be malice when insisting that measures be put in place to ensure a negotiated agreement is adequately implementable, and you will be above reproach if you remain consistent in mandating tools for implementation. The old “trust but verify” adage is a useful companion in any negotiation.

You can facilitate implementation through several means. The first is by adding specificity to an agreement. The clearer the terms of an agreement are on paper, the more success you can guarantee when it comes time for implementers to carry out those terms.

The second is by incorporating rules and mechanisms for evolving the terms of agreement. If commitment problems arise from the immutability of an agreement despite ever-changing circumstances, it is obvious that the best solution is building in a way to ensure the agreement evolves along with those circumstances.

Finally, you can mitigate commitment problems by minimizing bad faith negotiating tactics. If you engage in bad faith behaviors, you can hardly expect the other side to trust that you will be a good faith implementer. Conversely, if you allow the other side’s bad faith behaviors to go unchecked during a negotiation, it is partially on you when they proceed to employ bad faith tactics down the road. Stick to internationally accepted protocols and employ the rules of negotiation to mitigate commitment problems.

### **3) Information Problems**

These are problems associated with a dearth of information or mis/disinformation that causes misinterpretation and miscalculation. In circumstances with information problems, parties may be making decisions that seem perfectly

*rational* based on the information available but, if presented with all the facts, would be seen as *irrational*.

The key to overcoming these problems is simply to take conscious steps towards maximizing the amount of information you have in a negotiation. Some of this is possible through good old-fashioned research: study the other side's negotiators; elevate your understanding of how their government operates and what their interests, constraints, and restraints may be; and accumulate knowledge on the core issues at play.

The rest has to be done at the negotiating table, which means that your job as a negotiator is not simply to deliberate positions but also to try to pull as much information as possible from the other side. You can do this by asking questions and via a tactic called "labeling." Labeling is where you try to ascribe a circumstance or emotion to your negotiating partner. You may not hit the mark, but it prompts the other side to clarify your label. Here is an example:

*Negotiator 1:* I am trying to understand why you are adamant about this deadline. We still need time to deliberate the matter, and we fear that the deadline is going to cause bad decision-making or no deal at all. What is the reason you need the agreement to be concluded by that exact date?

*Negotiator 2:* The deadline is necessary to be able to meet my government's objectives for the negotiation.

*N1:* It seems that you're trying to honor a decision about timing that someone in your government has already made.

*N2:* Yes, there was a meeting with the minister last month and my director-general informed her that the deal would be concluded by this date. The minister affirmed this.

When you gather additional details, you can then adjust if necessary or find other ways around the problem set. Sometimes that is by providing critical information to your negotiating counterparts to help inform their decision-making. Let's continue the example further.

*N1*: I understand that your minister believes the deal will be concluded by this date. Is she aware that our side does not agree? I recommend advising your senior leaders of the disparity in understanding. I would be happy to have my leader's office address this directly with the Minister.

*N2*: That would be very unhelpful.

*N1*: Well, the alternative is to resolve the items that our side has already identified. If you can meet us on those conditions, then we can take your deadline back for consideration.

In this example, you have teased out that the negotiator on the other side does not want to have to go back to the minister (the specific reason doesn't really matter). This means that your negotiating counterpart may value meeting the deadline enough to offer concessions that would otherwise be off the table. By being clear with your conditions, you have provided information that offers a clear path to "yes."

#### **4) Two-level Problems**

In intergovernmental negotiations, there are two levels at which negotiations take place: the international level (Level I) where intergovernmental negotiators hammer out deals; and the domestic level (Level II) where a deal gets ratified and resources are dedicated to implementation. This often creates situations in intergovernmental negotiations where both sides have domestic political issues they must manage to achieve an agreement.

This condition can significantly frustrate the negotiating process. Sometimes, negotiators will agree to something at the table that they cannot deliver during the ratification or

implementation phases. Other times, government officials outside the negotiation will paint their negotiators into a corner with unachievable expectations. Then there are circumstances where a Level II player becomes a constant presence throughout the negotiating process, altering specific decisions made at the negotiating table and tweaking details that you and your counterpart have spent hours agonizing over.

There are several ways to overcome two-level problems in a negotiation. The first is to be clear with negotiating interests early on: as much as possible, get a second-level affirmation of those interests. Second, determine beforehand what tools for creating value or claiming value you have immediately at your disposal. Third, minimize concessions on anything that requires second level approval (i.e., Congressional appropriations, etc.)—the fewer veto players involved in a negotiation, the more likely you can achieve an implementable deal.

Fourth, be up front with your negotiating counterpart on the two-level problems you may face on your side. There is nothing wrong with being honest with your negotiating counterpart about the reality of implementation challenges. If you've ever heard someone say, "My hands are tied on this" during a negotiation, then you know that it is fairly commonplace practice at the negotiating table. Here's another example.

*N1:* We must have cost-sharing funds delivered annually by January.

*N2:* I understand that this aligns with your budgetary cycle, but we cannot guarantee appropriations will be available by January each year. We do not want to put ourselves in a position to be delinquent on payments.

The other side may get frustrated with the realities of the situation, but being up-front and honest early will spare you problems down the road.

Fifth, ensure that your government only broadcasts *interests* to the public, not *positions*. The biggest mistake governments make heading into negotiations is to publicize their *aspiration points*—the most desirable outcome from a negotiation. For example, a government may seek to justify its decision to enter negotiations by stating, “We expect total disarmament and verification protocols to ensure that we can never have another incident with this country again.” Well, that has just created a situation where the aspiration point becomes the benchmark for success—anything less will seem like a bad deal to the public. Instead, the right answer is to justify the negotiation by saying something like, “We are entering these negotiations to reduce tensions and eliminate the risk of future incidents. Our team’s job is to figure out exactly how to do that with their negotiating counterparts.”

Sixth, build agreements that are specific and include mechanisms for evolving the terms of agreement over time. Understanding that political pendulums tend to swing back and forth, it is better to build in components that enable intergovernmental agreements the flexibility to adjust to these shifting political climates. When there are mechanisms within the agreement to negotiate changes to the terms of implementation, a government has an option other than outright abrogation to try to affect some change. As a negotiator, it is wise to weave those options into an agreement, whether by creating an implementation commission, committee, working group, or ad hoc mechanisms.

### **5) Path Dependence**

Path dependence is the adherence to an established policy or process simply because it is “the way it has always been done.” When trying to negotiate a new deal or renegotiate the terms of an existing one, negotiators or veto players on either side may seek to obstruct progress to ensure that status quo conditions remain in place. The prevalence of path dependency can also create the impression that the other side is path dependent, leading to misinterpretation of deeds or intent in a negotiation.

There are three ways to overcome path dependency. The first is to be clear with negotiating interests at the outset of the negotiation and to ensure that you have higher level buy-in with your objectives. Don't wait until a point in time when veto players can scuttle your deal—try to remove them from the equation as soon as possible by engaging them early and following up when there are major developments in the negotiation.

Second, treat every negotiation as a new, individual engagement. It is wise to factor the other side's past behavior into negotiating strategies, but it is counter-productive to assume that anything is identical to a previous negotiation.

Third, at the outset of the negotiation, introduce a new negotiating anchor that represents a break from precedent. This could be a draft agreement that includes new and different provisions from what is expected, a new proposal that has not been tried before, or a concession that has not been tabled before. The objective is deliberately avoiding old habits.

\* \* \* \* \*

One common theme across all five of these problems is that many intergovernmental negotiators are unaware of their existence or implications. This is especially true when the negotiator is unwittingly fueling that problem. For example, a path dependent negotiator never says, "I'm picking this option because I'm path dependent." No, that negotiator will say something like, "Why fix something if it isn't broken" or, "How can we guarantee that change will actually produce something better than what we already have? We can't take that risk."

To succeed in negotiations, keep these five problems and the ways of overcoming them in mind. If you anticipate these problems, build in contingencies into your negotiating strategy, and recognize them early when they start to manifest, you will increase your likelihood of overcoming them en route to an effective deal.



*Dr. Ralph Bunche and Arab-Israeli Armistice Negotiators,  
1949*

**SECTION II**

**KNOW THE RULES**



## Chapter 6

# Principles of Intergovernmental Negotiation

Every negotiation is different, but there are certain fundamental truths that apply at any negotiating table. These are truths that have been revealed over the course of countless negotiating sessions, some through success and others through failure. Some have been learned from expert negotiators of the past, while others are the result of in-depth studies on negotiation. These are well-known principles to experienced negotiators, even though they have gone unwritten in the past. They are principles that should underpin every negotiating strategy while informing actions all the way from preparation for the first negotiating session until the transition from agreement to implementation. They are as follows.

**1) Away from the negotiating table, it's all about institutional constraints and interests.** There's only so far a government can and is able to go, which means there's only so far that negotiators can and are able to go. When you approach a negotiating table, it is important to have a clear assessment of those constraints and interests.

**2) At the negotiating table, it's all about personality.** All negotiators operate differently within their constraints. You must adapt your negotiating strategy to the person sitting across the table from you in order to maximize your potential gains. This also means that you should do

a self-assessment of how your personality, preferences, and biases may be influencing the outcome of the negotiation too (more on that in Chapter 10).

**3) Never expect to achieve your opening position.**

An intergovernmental negotiation is about two or more sides coming to the table, offering opening positions, and then finding some middle ground between them. A “take it or leave it” opening position is not negotiating, it’s delivering an ultimatum. Be reasonable with your expectations and enter a negotiation with flexibility built into your strategy.

**4) There are no withdrawals from the ‘Bank of Goodwill’.**

There are no chips to cash in later; no favors that will eventually be repaid. This is not a cynical indictment of humanity, it’s the reality when negotiators represent a government rather than themselves. In an intergovernmental negotiation, every concession should be reciprocated.

**5) Intergovernmental negotiation is a two-way street where reciprocity is protocol.**

Only bullies and amateurs think a negotiation between governments should consist of nothing but unilateral concessions. Reciprocity is a basic principle underpinning the international system, and its application extends to the negotiating table.

**6) In intergovernmental negotiations, there are fundamentally only four ways to influence the other side: *process, personality, incentive, and coercion.***

*Process* is the use of negotiating protocols, verification procedures, and implementation milestones to influence the outcomes of negotiations. *Personality* is the employment of relationships and individual persuasion to influence decision-making on the other side. *Incentive* is the presentation of benefits in exchange for concessions from the other side (referred to as “creating value” in negotiator’s parlance). *Coercion* (aka “claiming value”) is the imposition of costs meant to compel concessions.

**7) A negotiated agreement means nothing if there's no ability to implement it.** Always keep the implementation phase in mind. Part of this translates to the establishment of trust between negotiating parties. If you can't trust the other side in the negotiation phase, you can't hope to trust them during implementation. The other part is ensuring the agreement has adequate checks and balances built into the language and/or sufficient institutional oversight for implementation.

**8) Negotiations are fluid, ever-evolving objects; thus, circumstances change constantly.** Constraints may loosen. Alternatives may reveal themselves. Representatives at the table may swap out. A skilled negotiator recognizes all changes and adapts. Fortune favors the negotiator who is more agile in adjusting to changes in circumstances.

**9) No two negotiations are the same.** Even if the core objectives from one negotiation to the next are identical, other factors will always be different: different negotiators, different decision-makers, different constraints and restraints, etc. Thus, it is foolish to reuse any strategies from one negotiation to the next or to assume too much based on past experiences. Treat every negotiation as an entirely unique object.

**10) Alternatives to negotiation are critical.** You must always consider your BATNA. Failure to generate alternatives leads to desperation, and desperation leads to bad deals.

**11) It's always easier to change a "no" to a "yes" than a "yes" to a "no."** Unless one hundred percent sure of a decision, lead with "no" until you are certain. The other side will never be upset about you shifting your position from "no" to "yes," but the opposite will almost always generate consternation and tension.

**12) Some negotiations will not produce an agreement.** This is just a fact of life. It might be the product of too many constraints at the domestic level. It may be the result of bad negotiating strategies on either side. Sometimes the solution is taking a break from a negotiation and agreeing to reconvene at a later date. In others, the best course of action is pursuing your BATNA. Whatever the case, the answer should never be to abandon your interests simply to secure a deal. “No deal” is better than a bad deal.

## Chapter 7

# Protocols of Negotiation

There are protocols associated with all manner of international engagements, but few have the immediate impact of those associated with intergovernmental negotiations. Though this subject can be quite tedious and some considerations may seem minor at first glance, failure to recognize these protocols may at best introduce unnecessary friction points in the negotiation that must be worked through, and at worst, derail the process before it can ever truly get started.

Fortunately, intergovernmental negotiations have been features of international relations since the dawn of civilization, so there is no shortage of precedent from which to derive its protocols. Although the list here is by no means exhaustive, it offers a useful template from which to begin.

\* \* \* \* \*

### ***Meeting place***

There are two appropriate options for negotiating settings: (1) alternate between non-neutral locations; or (2) conduct negotiations at neutral locations that are mutually acceptable to all sides. Manipulating the meeting location is a common power play for negotiators—recognize this in how the other side broaches the subject of meeting locations with you, and manage your expectations on where you will have to conduct your negotiations.

### ***Interpretation***

Unless a common language of negotiation is agreed upon, each side should bring its own interpreter to translate from the native language to the foreign language. Interpretation should be done consecutively unless you have enough simultaneous interpretation listening devices for *every* person in the negotiating room.

If a common language of negotiation is agreed upon, it is incumbent upon each side to make provisions for any of their own attendees who cannot converse in the lingua franca. This may mean bringing an interpreter solely for those individuals.

A point of recommendation: although it can drag out negotiations, there is utility in employing consecutive interpretation over simultaneous. Consecutive interpretation introduces breaks in dialogue that allow interactions to be more measured, thoughtful, and deliberate. It gives you and your staff who speak the foreign language the chance to hear comments twice and to assess the quality of the interpretation services, which may not be that good. It also allows you to read the room as your interpreter translates your words for the audience. This is important because reading body language is critical in negotiations.

### ***Room arrangements***

Once you have settled on meeting locations, you will need to determine the arrangements for the room. The central theme attached to any room arrangement is the principle of equality; in other words, each side of the negotiation should have an equal number of chairs, equal space available, equal positioning, etc. These considerations change depending on whether you are playing host. In principle, the guest should always have the more privileged position in the negotiating room if equality is not attainable. Some specific considerations related to room arrangements follow:

#### ***Door position***

If possible, no one should have their backs to doorways. If that is unavoidable, both sides should have doors at their

backs, or only the side playing host should have the door at its back. This may seem silly for the average negotiation, but in the most extreme examples, it is for security: imagine if you were in hostile territory attempting to negotiate a cease-fire—you would not want to have to keep looking over your shoulder during the talks. In non-hostile situations, having the door at your back is at the very least a discourteous distraction.

### *Temperature*

If it can be helped, rooms should not be kept too warm or too cold. Be wary of any party to a negotiation that seems to be sweating or icing you out. Those tactics can be used to distract you or to rush your decision-making. Be aware of the temperature and do your best to keep it neutral.

### *Table position*

Believe it or not, the position of the table matters in some cases. For example, historical precedent in some countries suggests that the victors sit on the north side of the table and the defeated sit on the south side. Emphasis on this requirement has waned over the years as individual customs have ceded to international norms, but it still should be a consideration if negotiating with foreigners who are not diplomats.

### *Back bench*

Always confirm the numbers of participants before settling on a room arrangement. It is not necessary to seat all attendees at a table, but you should have adequate seating in the back benches to accommodate all members of the negotiating teams.

### *Equipment*

Coordinate with the other side to determine what equipment will be required, including computers, projectors, microphones, or other technology necessary for conducting the negotiations. Each side should have equal access to that equipment.

### ***Unilateral meeting rooms***

If a negotiating session is scheduled to last more than a few hours, each party to the negotiation should be afforded a meeting room for unilateral purposes. They may decline to use it, but the option should be offered to them.

### ***Time for the meeting***

This is an important consideration in cross-cultural negotiations. Some countries start the work day early, while others start later. Some work long hours, some do not. The United States and Japan offer an example: the standard U.S. government employee duty day runs from 0800 to 1700; the standard Japanese duty day is 0930 to 1830, though most bureaucrats stay in the office until well after midnight. In circumstances like these, the two sides should work out appropriate start and end times before negotiations begin to manage expectations and offer parity in their approach to talks.

### ***Communications***

Wherever the sides decide to meet, each party to the negotiation should have access to common communication networks. These days, each side should at least have access to landlines or cellular towers. If that cannot be accommodated, those limitations should be conveyed to the other side prior to meeting.

If arranging to meet in a neutral location, all sides should have equal communications capabilities afforded to them.

### ***Physical Security***

Neither party should be subject to fear tactics or intimidation during the negotiation. Such behavior is grounds for immediate cessation of talks. The parties should also be protected from external threats while engaged in negotiations, meaning the hosting side (or all sides in neutral locations) must provide adequate security to ensure that negotiators can conduct their business free from fear.



### ***Information Security***

This protocol comes down to three considerations:

#### *Confidentiality*

The standard protocol for intergovernmental negotiations is that any matters related to the negotiation are confidential, meaning no details should be released to the press unless previously agreed upon by all parties to the negotiation. Leaks are a violation of protocol and should be addressed immediately, although any negotiator should anticipate that leaks are likely to occur at some point in the process.

#### *Press involvement*

No press should be permitted to be involved in the negotiation unless all sides agree to it. If they do agree to it, each side should have an equal number of invites, and the press should be privy only to agreed-upon portions of the negotiation.

#### *Eavesdropping*

It should go without saying, but neither side should be subject to bugs, wiretaps, or any other secret recording devices whether in the negotiating room or elsewhere.

### ***Office supplies***

Each side should bring its own office supplies to the negotiating table, including presentation documents, folders, pens, paper, etc. Even if playing host for a negotiating session, there should be no expectation for you to provide such materials to the other side.

### ***Food/Refreshments***

Baseline negotiating protocol does not mandate that a host offer the other side food or drinks during a negotiation. However, expectations should be managed, and parties to the negotiation should at least have access to basic meals and drinks to purchase for themselves. In the case that the host location does not have that available, the host is obliged to provide food and drinks, or at the very least to notify the

other side in advance of the situation so they may bring their own supplies.

### ***Amenities***

Equal amenities should be afforded to all parties of the negotiation, including things like toilets, smoking areas, etc.

### ***Distance***

All parties to the negotiation should be obligated to travel the same amount for the execution of the talks. Here is where it gets tricky: a government may say that it will conduct one negotiating session at its Ministry of Foreign Affairs, and then it will conduct the next at the other party's Embassy in the same city. Is that still fair? Of course not. True alternation of locations means equal (or at least negotiated and agreed upon) travel distances for the negotiating parties.

### ***Sequencing***

The standard protocol is that the hosting party is the first to open in a negotiating session. If negotiations are done at neutral locations, the first to open should alternate.

Why is this important? This is not just for form's sake, but the order in which you offer proposals makes a difference in negotiations. The jury is still out on whether proposing first or waiting to offer a counterproposal is better, but all students of negotiation agree that there are crucial differences between the two.

### ***Breaks***

Negotiating sessions should have adequate breaks. These should be built into the schedule, and lead negotiators should have the prerogative to call a break whenever desired.

### ***Ground rules for the session***

Either before the negotiation begins or at the outset of the first meeting, you should agree upon ground rules, considering the following items:

### *Recording*

Will you allow recording devices in the negotiation, or will all records be derived from hand-written notes? The standard is *not* to record negotiations, but if all sides decide it is appropriate, then they should also mutually decide when to start and stop recordings.

### *Minutes/Records*

Who will record the minutes for the meeting and how will you confirm the content of those minutes if you decide to coordinate them as formal records of the negotiation? This is important for ensuring that all parties are on the same page throughout the process.

### *Formality*

Protocol dictates that one err on the side of formality when addressing other negotiators, which means using title and family name, not given name. If you wish to use given names, the lead negotiators should agree on the decreased level of formality first.

### *Decorum*

All sides should engage each other respectfully. That means maintaining control, avoiding inflammatory language, and avoiding unseemly behavior.

### *Speakers*

Negotiators should agree on who is allowed to speak within the negotiating room. In some cases, it is only the lead negotiators who do all the speaking. In others, the lead negotiators may direct someone from their respective teams to speak. In the most relaxed setting, anyone present in the room may speak unprompted (even from the back bench). The lead negotiators should indicate their preferred mode of discussion at the outset.

### *Personal Electronic Devices*

What electronic devices will be allowed in the negotiating room (computers, tablets, smart phones)? If hosting the

session, plan to have an appropriate storage location for electronic devices outside of the negotiating room.

### ***Socializing***

There is no requirement in intergovernmental negotiations to allocate time or resources to socializing, though there is a tacit understanding that the principle of reciprocity applies; that is, if one side offers a hosted lunch or dinner, the other side should probably do it, too. There is no obligation to accept an invitation to a social event during a negotiation, though many negotiators consider it essential to breaking through some barriers in the process.

### ***Cost-sharing***

Unless negotiated otherwise, the baseline expectation is that all costs incurred from the negotiation will be shared. This does not mean that the parties to the negotiation compare invoices at the end of the talks; it just means that they all contribute in some way that at least signals fair contribution to the process. The trickiest part of this is when selecting a neutral location and determining who will pay for items such as venue reservation and services. As much as possible, each side should pay its own way, and any line items should be figured out away from the negotiating table between staff-level officials. However, if the issue becomes large enough, lead negotiators can raise it during a negotiating session.

\* \* \* \* \*

Keep in mind that at least a few of these protocols will be violated during the course of negotiations, whether intentionally or unintentionally. It is your duty to ensure your own team is adhering to them, as well as keeping the other side honest. Opposing negotiators may attempt to violate the protocols as a means to influence outcomes, but clear understanding of internationally-accepted rules and norms will provide you with the anvil against which to hammer bad faith behavior in an intergovernmental negotiation. If it

happens to you, point it out quickly and firmly, reminding the other side of what the proper protocols are.

## Chapter 8

# Elementary Rules of Negotiation

The innumerable negotiations throughout the ages and countless studies on the art and science of negotiating have yielded important lessons for negotiators. Some were learned the hard way through failure, others through success, and still others through theorizing and controlled experimentation. But while there are a great many lessons out there that differ in nature and content, there are some fundamental ones that recur with such frequency and consistency that we may consider them to be “rules” for negotiators.

This chapter curates those core lessons learned into the “elementary rules of negotiation.” These rules inform the conduct of negotiators, whether leading or supporting the negotiating process. While any advice related to negotiation generally tends to avoid absolutes, these rules are so tried and true that this primer comfortably uses the words “always” and “never” in describing them. The rules are primarily applicable to intergovernmental dealings, but most are relevant in any type of negotiation. They are as follows.

**1) Never enter a negotiation without a strategy.** It doesn't matter if you are negotiating an armistice agreement or determining budget cuts from a single project, the process of building a strategy will ensure that you and your team are adequately prepared. Failure to do so automatically disadvantages you.

**2) Don't get distracted by outsiders who tell you what makes a good deal or a bad deal.** If you've followed rule number one, you have a firmer grasp of your interests, constraints, and restraints than any outside observer. Keep in mind that your negotiated agreement is a good deal if you meet your indispensable interests and stay within your constraints and restraints. Don't let outsiders convince you to overreach or undersell.

**3) Always focus on interests, not positions.** In other words, don't ever be wedded to a specific proposal. The point of the negotiation is to meet your overall interests, not to "win" with a certain position. Try to maintain as much flexibility as possible to yield the best outcomes.

**4) Don't feel bad for being tough in negotiations.** As long as you maintain integrity and treat the other side with respect, there is no problem in being tough or holding a hard line. There should be no hard feelings in negotiations as long as everyone operates in good faith.

**5) Never negotiate with yourself.** You may think that the other side is unlikely to deliver a certain line item in the negotiation, but always make the other side tell you that. Don't eliminate your own interests or shortchange yourself of potential throwaway positions before getting to the negotiating table. [Note: The exception to this rule is if there is something blatantly obvious that the other side cannot provide. Keep your proposals grounded in reality.]

**6) Never over-commit at the table.** Promising to deliver something only to come back to the table with your tail between your legs undermines your authority and erodes trust. If you want to entertain a proposal but are not sure if it will be acceptable to your superiors, communicate that to the other side; e.g., "I think this deal may work, but I'll have to take it back to discuss with my organization."

**7) Always take your time at the negotiating table.**

Don't rush yourself, and don't let the other side rush you. If you need to confer with your team, request a moment to huddle. Don't be afraid of long stretches of silence if you need time to review the language of a proposal or gather your thoughts.

**8) Remain in control of yourself at all times.**

If things get heated at the table, make sure every response is delivered intentionally and for a particular effect. For example, you may choose to show emotion as a means to signify your discontent to the other side, but acting like a maniac in negotiations only hurts your ability to secure a deal. This rule also applies if your negotiations carry over into the evening when alcohol is flowing: always stay clear headed and in control.

**9) If you're lead negotiator, always keep your team orchestrated.**

Before you start a negotiating session, convene your team to review the strategy, assign roles, and hear out questions, comments, and suggestions. Once in the session, if a team member starts going off strategy, intervene as soon as possible. Take time to huddle with your team to re-focus efforts, if necessary.

**10) Don't let the other side get away with bad faith behavior.**

Call them out on it *every* time. If things don't improve, walk away. If you can't mitigate aberrant behavior in the negotiation phase, you're unlikely to mitigate it in the implementation phase.

**11) Never show all your cards.**

You need to be clear in explaining your interests to the other side, but they don't need to know exactly what your strengths and weaknesses are in the negotiation. As a corollary, don't expect the other side to show you all their cards either.



**12) Always maintain awareness of changing circumstances.** Things change rapidly in a negotiation, whether it's the interests at play, the tools you have available to you, or the developments occurring at the negotiating table. You must stay abreast of those changes while adapting accordingly.

**13) Do your best to form a relationship with the other side's negotiators, even those representing adversaries.** At the end of the day, negotiators meet each other to find a deal that serves both sides' interests. You don't have to like the person on the other side of the table, but you must find a way to cooperate with one another. Trust among negotiators can be possible even if trust is limited between governments.

**14) Never back the other side into the corner or humiliate them.** Challenging the other side may be necessary to force a negotiator to break through institutional barriers, but you must be cautious in your approach. When you put people on the defensive, they are more likely to respond in ways that set back the negotiating process, and you may erode trust.

**15) Always keep communication channels with the other side open, even when there may be a pause in formal negotiations.** Relationship building, preserving flexibility, and managing changing circumstances all depend on keeping good contact with the other side. Open communication channels also enable you and/or the role players on your team to engage informally in ways that are productive for the negotiation.

**16) Always maintain good communication with your client (whether it's an individual, an organization, or a government).** Just as circumstances change on the other side, they may change on your side, too. Good communication ensures that you avoid veto players down the road and helps you find flexibility if you need it.

**17) Never squander a productive negotiating session.** If you are having breakthrough after breakthrough during a particular session, ride the momentum as long as possible. Delay transportation. Call back to say you'll be late. Do what it takes to keep the progress going. Those windows do not present themselves often, so you must capitalize on them when they do.

**18) When you've met all of your negotiating objectives, end the session as quickly as possible.** Dragging things out only opens the doors to alteration or demands for further concessions.

**19) Keep strategic messaging on point.** Sending mixed messages through public statements, correspondence, or other communication channels confuses the other side and complicates the negotiating process.

**20) Never expect a negotiation to go smoothly.** Even when interactions at the table are cordial, negotiations are all about finding middle ground that always results in some costs to all sides. Since costs (whether real or opportunity costs) are always a part of the process, there will naturally be some tension. If you follow the preceding rules, you should be able to minimize those tensions, but always plan for the worst and hope for the best.

## Chapter 9

# Considerations in Cross-Cultural Negotiations

**E**very negotiating team you encounter will bring a different set of values, behaviors, constraints, biases, and perceptions. This is true regardless of whether you're negotiating within your own organization or with other groups from your own country, let alone with foreign governments. Differences between the two sides can introduce challenges in the negotiating process, and cultural factors may amplify those gaps exponentially. Thus, this chapter offers insight into cultural considerations that could influence dealings at the table and away from it.

Two caveats here: First, these are considerations, not rules. Never approach a negotiation with stereotypes or prejudice. Understand that every negotiating team is different, regardless of culture. Second, this chapter uses the term "cultural considerations" with a focus on foreign cultures, because the issues discussed tend to be amplified at the international level. However, these considerations could apply in any negotiation at any level since every negotiator, organization, and client differ.

Those caveats aside, the ten considerations that are important in cross-cultural negotiations are as follows.

### ***Inside vs. Outside***

Each culture tends to have a different conception of what it takes to become a trusted party. There are often different rules on how certain cultures treat someone on the inside versus the outside. This may include whether the other side views the negotiations as positive sum (win-win) or zero sum (win-lose), or its willingness to negotiate interests rather than positions.

Trust, both in people and in process, is a key aspect of negotiations. If you can't achieve personal trust by breaking through the barrier of being seen as an outsider, you must rely on process trust—that is, adherence to negotiating norms, good faith behavior at the table, and faithful implementation of agreements—to maximize outcomes.

### ***At the Table vs. After Hours***

Some cultures tend to demand that negotiators play hardball at the table, only opening up and demonstrating flexibility in informal settings. This means that you will need to engage away from the negotiating table, whether at the golf course, restaurant, bar, or other off-duty venue.

A word of caution: while after-hours engagement can help break logjams in a negotiation, there are two reasons to do this as sparingly as possible. First, process is critical in intergovernmental negotiations, and every time you accommodate informal dealings, you give the other side a free pass. You can't hope to achieve a sustainable intergovernmental relationship if it's founded upon what *individual* negotiators accomplished in *informal* settings.

Second, this sort of negotiation puts you in a vulnerable position. In those situations, you are unlikely to have your team to support you, you may be imbibing alcohol, and you may find yourself in non-neutral territory, among other things. For those reasons, if you must do after-hours

negotiation, I recommend sending your “fixer”; that is, someone who can float ideas and offer informal proposals but is disavowable if necessary (more on this and other role players in Chapter 12).

### ***Title/Rank/Seniority vs. Function***

In some cultures, things like title, rank, and seniority carry great weight, even more-so than function or competency. This could have several effects on the negotiation. It could determine who does the talking at the table and to whom positions and arguments are directed. A person of lower rank or stature on your team may not be taken as seriously by the other side. There may be an expectation of deference. The other side may demand that your negotiating team match their level of representation.

You should take this into account with your negotiating team, considering who speaks at the table and who ‘leads’ your negotiations (you may need to have a “figurehead” present). As personal and process trust are formed, you’ll typically see the other side’s focus on rank and title start to wane.

### ***High-Context vs. Low-Context Communication***

This refers to the manner in which people communicate—specifically, the level of implied meaning. For cultures that communicate implicitly and with a high degree of context, things they say can be confusing or unclear for low context communicators. For high-context communicators, low-context styles can come off as blunt or disrespectful. Allow me to offer an example:

*Negotiator 1 (Low Context):* Is this item acceptable to your side?

*Negotiator 2 (High Context):* Hmm...this might be difficult at the moment.

*N1:* I'll ask again: can you accept this deal or not?

*N2:* I do not think this will sit well with my superiors, but I cannot say for sure.

*N1:* So, is that a yes or a no? I need an answer to bring back to my bosses.

In this case, the low context negotiator wants an explicit answer. The high context negotiator twice offers an answer of “no,” though the low context negotiator did not register it. This is a simple example, but the disparity in communication methods can lead to much more significant instances of miscommunication in negotiations.

For reference, high context cultures include Japanese, Russian, Chinese, French, Korean, and Indian, among others. Low context cultures include American, Australian, German, and Israeli. When dealing with a country that differs in level of context, it is important to recognize disparate communication styles ahead of time and adjust negotiation approaches accordingly. It also helps to have individuals on your negotiating team that are accustomed to liaising or communicating with the other side (e.g., interpreters, diplomats, and/or foreign area specialists).

### ***Perceptions of Strength & Weakness***

No matter the circumstances, it is never a good thing to be viewed as desperate in negotiations. At the same time, you don't want to appear bullying or exploitative. This can be challenging in intergovernmental negotiations, because each negotiating partner will have different perceptions of strength and weakness. A good faith gesture in one culture

could be seen as weakness in another. Playing hardball could be fair for one side but seen as coercive to the other.

Do your best to assess the other side's likely perceptions of strength and weakness and adjust as necessary based on the flow of discussions and reactions in negotiations. When in doubt, fall back on internationally accepted protocols and stay consistent. Oftentimes, power plays only count if you let them, so a measured, consistent approach can neutralize the other side's intended effect.

### ***Physical Arrangements***

What is considered neutral ground? On which side of the room should a negotiating team be seated? Will the other side try to assert dominance via physical arrangements?

In some cultures, the answers to those questions matter greatly. Give due consideration to setting, but the safest bet is to follow internationally accepted protocols as described in detail in chapter 6.

### ***Emotional vs. Unemotional Approaches***

Whether or not the use of emotions is valued in negotiating styles can vary from culture-to-culture. Some view it as a function of trust and closeness in a relationship, while others see it as losing control or demonstrating irrational behavior.

Like dealing with other cultural considerations, it helps to have members on your negotiating team who are experienced in liaising or working directly with the other side. These teammates can inform your approaches prior to going to the negotiating table; provide feedback to you during the negotiation; and directly engage the other side in a manner most appropriate to the situation.

### ***Negotiating Authority & Consensus Building***

Cultures that rely on consensus building are less likely to empower negotiators at the table. This slows the negotiating process and forces consideration of how to influence decision-making away from the negotiating table.

The first step in dealing with this issue is figuring out where decision-making authority resides on the other side. If there is a clear requirement for consensus building, you will need to temper your expectations of what individual negotiating sessions can yield. Be prepared to work issues vigorously in-between formal sessions, and use the time at the negotiating table for fact finding and providing clear data and proposals which can then be circulated to relevant parties.

If the other side empowers its negotiators at the table, then you should adjust your negotiating strategy accordingly. Since these negotiating sessions can be dynamic, have an effective plan for each session worked out (especially regarding the specific interests and positions you intend to discuss), and use flexibility to your advantage to come up with creative, mutually beneficial solutions.

### ***Prejudices***

An unfortunate truth is that many cultures in the world still maintain discriminatory beliefs. For example, some do not view women as equals to men or other cultures as equal to their own. Although discrimination is infuriating, a common reaction is to set aside the prejudice in the context of the negotiations. Either the issue is ignored outright, or it's addressed directly as a sidebar concern, independent of the negotiations themselves.

Experience yields a different option for when a negotiator encounters prejudice: turn it around to one's own advantage. Use the other side's underestimation or disdain



against them strategically in a negotiation. If they believe you to be intellectually inferior, let them over-explain things and give you much more information than they might otherwise. If they turn contemptuous, surprise them with your tough and agile negotiating style. At all times, keep them questioning their own biases through demonstrating poise, professionalism, and action; after all, if you can challenge their prejudices, then you can challenge any preconceived notions about the merits or demerits of a potential deal with your side.

### ***Outcome-focused vs. Relationship-focused***

Some cultures will value a relationship more than the final score sheet at the end of a negotiation. Understanding this dynamic is especially important in intergovernmental negotiations, since they rarely constitute one-off engagements.

If the other side values relationships more than outcomes, you must weigh your side's interests between the short-term gains that a harder-line negotiation could bring and the longer-term relationship that you could support by softening some of your demands. This can be a difficult decision, but one thing that will help manage this issue is keeping a focus on interests in negotiations rather than positions.

### ***Performance vs. Authentic Communication***

When engaging officials from some foreign governments, there may be an element of performative behavior in the negotiations. This includes the things they say, the tones they take, and even their physicality during the session. Take, for example, North Korean negotiators: in lower-level negotiations, there will always be a lead negotiator and a political minder. The minders are not there simply to monitor the other side—they also watch their own. They will take notes

on whether the North Korean negotiator has made strong enough remarks and “checked all the boxes” that were mandated for the session.

This can become difficult if you cannot discern between performative actions and authentic communication. Sometimes the condescending tone and unseemly remarks can elicit strong emotions, but hopefully you’ll have studied up on the other side’s negotiating style enough to pick up on these things and respond to them calmly and rationally. If not, you will need to monitor the other side and try to figure out what is real and what is for show.

That, of course, is simply to inform your broader negotiating effort. In the near-term, you can address the behavior the same way every time by calmly pointing out the unhelpful nature of the other side’s behavior and reminding them of acceptable protocols for the negotiation.



*Nelson Mandela and then-President P.W. Botha meet for secret negotiations in 1989*

**SECTION III**

**KNOW THE PLAYERS**

## Chapter 10

# Evaluating Yourself as a Negotiator

One of the secrets of becoming a great negotiator is coming to terms with two fundamental truths. The first is that there's no single template for a successful negotiator. If you look at the exceptional governmental negotiators that have come before—e.g., Folke Bernadotte, Ralph Bunche, Nelson Mandela—you will find that they were all unique in their backgrounds and approaches. Bernadotte was a member of the Swedish royal family, ever-calm and dispassionate, known for his ability to foster rational decision-making even when engaging the most horrible people (architect of the Holocaust Heinrich Himmler, for example). Bunche was Bernadotte's polar opposite: raised in poverty by his former-slave grandmother, he was insistent, assertive, and animated in his engagements, and he had an infectious tenacity and passion that catalyzed progress even when it seemed inconceivable. Meanwhile, Mandela was a grassroots leader facing down the systemic oppression of Apartheid. He was an emotionally intelligent, strategic-thinking leader, and he serves as the ultimate example of how to foster the belief that change is inherently better than the status quo, even when negotiating from a position of weakness.

The second truth—and this is critical—is that no matter how good you think you are at negotiating, you can always be better. As exceptional as Bernadotte, Bunche, and Mandela were, they did not start off at the pinnacle of negotiation skills. They were students to the end, constantly studying their craft and seeking ways to improve. If these great diplomats and statesmen could find it in themselves to continue learning along the way, you can too. And you must if you hope to become an effective negotiator in a range of situations with variable stakes at play.

Because there is no single model for a great negotiator, and because you can always find room to improve, a critical step in advancing your negotiating skills is by evaluating yourself. But where should you start?

The best way to conduct an evaluation is to look at the individual skills necessary for negotiation and how you may rate within each. Breaking down these skills is important because their respective value varies from situation-to-situation. A negotiator may be phenomenal in one-on-one negotiations, but could have trouble when teammates are involved. Another negotiator may do well in low stakes negotiations, but finds it difficult when there's a lot riding at the table. And so on.

The key then is identifying the skills needed for negotiation, honing the ones you are already good at and improving in areas where you are not. Stripping away everything else, there are ultimately nine skills necessary for negotiation: (1) communication; (2) attentiveness; (3) assertiveness; (4) composure; (5) preparedness; (6) strategic thinking; (7) emotional intelligence; (8) team leadership; and (9) charisma. They are described in more detail below.

## 1) Communication

- *How do you prefer to deliver your proposals: are you direct, or do you prefer to soften your positions in hopes that they land easier on the other side?*
- *Do you speak in short sentences or do you prefer to “think aloud” and explain things to the fullest extent possible?*
- *How is your volume and intonation at the negotiating table?*
- *Are you able to keep the other side’s attention?*
- *Do other people often ask you for clarification of your points?*

This skill is the ability to deliver and receive information effectively. How you deliver your positions can matter in some cases, especially if there are cultural considerations in play. Whatever the situation may be, the three key things to make sure of:

- (1) That you are communicating the position **clearly**
- (2) That you are communicating it **fully**
- (3) That you are delivering it **in a way the other side can understand**

Whatever style or method you prefer, you must ensure that you are capable of accomplishing those three things.

If you have difficulty with communication, there are a few things you can do to improve your skills. The simplest solution is practice. Take every opportunity to engage in public speaking. Have conversations with people. Take a subject that you know well and try explaining it to someone who does not.

The next part is more time consuming but necessary: write a short paper (one to two pages) about a subject that interests you, read aloud what you've written, and repeat the process. This does a few things for you: first, it trains your brain on communicating about a specific topic, giving yourself enough time to think about the subject and to form sentences and paragraphs around it. Second, it allows you to practice speaking the points that you want to make. Finally, it helps you commit those things to memory so that when you have a conversation on that subject in the future, you already know what you want to say and how you want to say it. When you finally get into a negotiation, the only thing you'll have to do differently is write about your positions and interests, practice reading them aloud, and then deliver them at the negotiating table.

Until you improve your own communication skills, there are things you can do to help yourself in negotiations. One, you can bring a *presenter* with you. This teammate is someone who delivers key proposals and communicates positions. Two, you can focus on exchanging formal positions *in writing* and using negotiating sessions to discuss the written proposals. Finally, you can employ a *fixer* that precedes and follows-up on every negotiating session to clarify positions and work through major issues away from the negotiating table. While that may seem like passing off negotiating responsibility, understand that you are still in charge of the negotiation—you are merely employing the presenter or fixer to make up for skills that you lack at the table.

## **2) Attentiveness**

- *How is your stamina during negotiations; do you lose energy or interest quickly?*



- *Do you prefer frequent breaks or do you like marathon negotiating sessions?*
- *How good of a listener are you?*
- *Do you take notes?*
- *After a negotiating session, how well can you recall the contents of the meeting?*

Attentiveness is the ability to focus on the task at hand, and in negotiations, it includes things like active listening, observing the other side's behavior, and keeping track of proceedings. The ability to focus and pay attention is indeed a skill, and it can be challenging for many. Some can hone this skill simply through normal one-on-one conversation, but for others, there may be extenuating factors that make attentiveness difficult. It is important to know your own limits at the negotiating table.

There are two ways to overcome attention deficits. The first is to communicate your expectations from the outset. This is a negotiation, which means it is already a two-way street: take advantage of that and be open about your preferences. If you find it difficult to work without breaks, ensure that you communicate the expectation that you will recess every hour. The second is to employ your teammates. Have a notetaker present and employ sidebars to ensure you're tracking the most important developments.

### **3) Assertiveness**

- *Do you have difficulty saying no?*
- *Do you tend to go along with what others insist for the sake of good relations, even if it's inconvenient?*
- *Do you dislike conflict or confrontation?*
- *Do you worry about how someone might react to your positions?*

Assertiveness is the ability to present one's own position in a calm but deliberate manner, devoid of both aggression and passivity. Oftentimes, assertiveness is mistaken as bluntness or rudeness, but it is possible to be both diplomatic *and* assertive.

Being assertive can cause concern because of the negative responses it may elicit from the other side. There is no shame in disliking confrontation. Certainly, for some, telling a person “no” comes as easy as breathing, but for others, it can be anxiety inducing, especially when they're worried about how it might affect their relationships.

For you to be successful in a negotiation, you have to get used to saying “no,” but you can help yourself by finding different ways to express the same meaning. Here are a few examples of how to say “no” in different ways: “That will be very difficult for me to do”; “I don't see how I could make that happen”; and “I think that might be asking too much.” Another method is to shift the blame away from yourself to the decision-maker in the negotiation; e.g., “My boss has already made a decision on this matter, so I have no authority to change it.”

A tried-and-true option is to ask this simple question: “How can I do that?” It prompts the other side to think about why you have to say no in that situation; in other words, it is forcing them to consider, even for a moment, an empathetic approach to the problem set. If they don't have a good answer to that question themselves, they may decide to come off their own position.

#### **4) Composure**

- *Do you wear your emotions on your sleeve?*
- *Do you find it difficult to hide excitement?*
- *Do you have a good ‘poker face’?*
- *Do you have any triggers?*

There is no rule stating that great negotiators must maintain a good poker face, but great negotiators are aware when their natural responses may be signaling something to the other side. They then know how to use it; for example, “You may see that my face is turning quite the intense shade of red right now. That is because your proposal is so unacceptable, I cannot even fathom how I will take it back to my bosses for consideration.” In this case, the negotiator takes what may seem like a weakness and uses it as a tool for making the other side understand that the concerns are genuine.

Another thing to consider is whether there is something that the other side could do that may cause you to react strongly enough to throw you off your game. Before you tell yourself, “No way, I’m always level-headed,” imagine you catch the other side in a lie and they insist that it is *you* who is in fact lying. Or, what if the other side starts interrupting and making accusations? The list goes on, but the point is that every human being has a trigger, and those may be more sensitive if already under stress. Negotiations are naturally stressful, so it is critical to assess the things that would make you feel uncomfortable, angry, distressed, or otherwise upset. Once you have recognized those triggers, you can better plan for how you might respond if you encounter them during a negotiation. (For more information on this, see chapter 19, “Dealing with Tilt.”)

## **5) Preparedness**

- *How much time do you spend preparing for a negotiation?*
- *Do you draft your own talking points or does someone else do it for you?*
- *Do you go into a negotiation with a fully formed strategy?*

- *Do you head into a negotiating session with a specific game plan?*
- *If leading a team, do you go over the strategy and game plan with the team?*
- *Do you do a dry run of your negotiations?*

Simply put, preparedness is having made oneself ready to do something. In the case of negotiations, this is the single most important factor that can influence negotiating outcomes. After all, it doesn't matter how slick you are at the table if you have no clue what you're really trying to achieve or how good a deal you may make if it's still worse than your BATNA. Being prepared is the one thing you can do for yourself that will help you overcome every other shortcoming you may have as a negotiator.

In negotiation, preparation means building a negotiating strategy, crafting game plans for each session, wargaming them, and writing and rehearsing talking points. This may seem like a lot, especially for small negotiations, but if you want to be successful, preparation must become muscle memory. Prepare, prepare, prepare.

## **6) Strategic thinking**

- *When you make a decision, how many steps ahead do you think?*
- *Do you tend to be task-oriented or goal-oriented?*
- *How often do you strategize?*

Strategic thinking is the ability to keep the big picture in mind even while making individual tactical decisions. This can be difficult to manage, especially in complex, dynamic negotiations. Often, it will feel more comfortable to default to focusing only on the next move and the immediate

objective, though as a negotiator, it is your job to keep all of the elements of your negotiating strategy in mind at all times.

The best way to improve your strategic thinking is practice. Build negotiating strategies every possible chance you get: when you buy a car, when you negotiate a lease, when you are trying to get your boss to agree on an idea. When you get used to implementing strategies even in mundane situations, it becomes easier to think strategically in the high-pressure ones.

The other thing you can do while you are still honing your skills is to keep memory joggers in your notes. Obviously, you don't want to risk letting the other side get a hold of your strategy document, but short notes should be able to remind you of your overall interests, your constraints and restraints, and your prepared positions.

## 7) Team Leadership

- *Do you use your negotiating team or do you prefer to go it alone?*
- *How comfortable are you giving directions?*
- *How much do you know about your negotiating teammates?*
- *What skills do your teammates possess that you may lack?*
- *Have you assigned roles to each member of your negotiating team?*

Team leadership is the ability to coalesce a group of individuals into a single functioning unit while maximizing the utility of each member. That may seem simple enough, but in negotiations, this often means managing representatives

from different organizations, each with their own interests, ideas, and egos.

The most common solution for lead negotiators who feel uncomfortable with team leadership is simply to ignore and/or marginalize the other members of the team. This “my way or the highway” approach is risky at best and self-defeating at worst, especially if the members of the team have ways to undermine you as the lead negotiator.

If you feel uncomfortable leading teams, the best way to manage that discomfort is to employ process over personality. That process is fairly simple:

*Step 1: Meet with all the members of your negotiating team individually.*

Ask them about their impressions of the negotiation, their personal experiences with the subject matter and players at hand, the outcomes they hope to achieve, and the roles that they think they would like to play.

*Step 2: Compare their answers to the list of role players you should have on your negotiating team (see Chapter 11).*

For example, if there is a salty individual who expects very little to gain from the negotiation, you already have your *skeptic*. If you have a junior ranking individual who has the passion and energy for the negotiation, you may have your *action officer* and/or *fixer*. Continue down the list until you begin to see a role for everyone on your team (doubling up role assignments is always okay, too).

*Step 3: Gather the team to build the negotiating strategy together.*

As the lead negotiator, you are still the final decision-maker for each of the elements of the negotiating

strategy, but if you begin with collaboration in your team, you'll have a lot better shot of continuing collaboration throughout the whole process because you'll have at least a modicum of buy-in from all involved. Further, when you have time, it is always better to be inclusive of ideas and perspectives, because there will invariably be something you miss or a new angle from which to view problems and potential solutions.

*Step 4: Assign roles.*

Be explicit with your team on what you expect from them and why their roles are important. If people understand what's expected of them before going to the negotiating table, you will be able to maximize their utility in the session while minimizing bad behaviors.

## **8) Emotional intelligence**

- *How often do you think about feelings?*
- *Do you really listen when you ask people how they are doing?*
- *Does it make you uncomfortable to engage with others on an emotional level?*
- *Do you find it difficult to empathize with others?*

Emotional intelligence is the ability to monitor a person's emotions, to distinguish which emotions are present, and to employ those observations in your own decision-making and behavior. It is a critical skill for negotiations, because you must be able to make quick assessments of how hard you can and should push the other side on a point, as well as what actions may be required to foster the level of trust and mutual respect necessary to reach a collaborative deal.

Emotional intelligence is a challenging thing to master, and it takes both constant introspection and conscious effort to improve your management of emotions in interpersonal engagements. You must be able to take a look inside yourself and understand how you respond to things. If you get uncomfortable and defensive when the other side feigns anger, you may fall for a deliberate bad faith negotiating tactic. Conversely, if you have trouble recognizing exasperation and frustration on the other side, you may push them away from a concession they otherwise might have been willing to offer. Take some time to figure out how strong your emotional intelligence is. You should be honest with yourself, or at least find a trusted confidant who will be frank with you.

The next thing to do is to practice emotional intelligence. There is a straightforward method of doing so: simply ask the same people every day, “How are you?” Observe their responses. On one day, they may smile and give you direct eye contact when they respond. On the next, they may have their eyes down and sound sullen. They may say the same exact words every time—e.g., “I’m fine, thanks”—but the body language and tone could be completely different. Once you can read a person’s response to “How are you,” you will have the basic emotional intelligence to read the other side at the negotiating table.

## **9) Charisma**

- *Are you a ‘people person’?*
- *Have people ever described you as the ‘life of the party’?*
- *Do you tend to get along with people?*
- *Do you seem to connect with others quickly?*



Charisma is an affability, attractiveness, or charm that is compelling to others. Charisma and the likeability that generally comes with it won't automatically make you a better negotiator, but it can buy you some goodwill from the other side. It can make you appear more trustworthy, make people more attentive to your remarks, and compel them to give you the benefit of the doubt when there is miscommunication or confusion.

Some will debate whether charisma is a skill or a trait. When people think of a charismatic person, they tend to think of someone who is attractive and outgoing. However, that perception is based on the fact that many people don't expect someone who is more attractive or captivating than themselves to display interest towards them. When someone betrays expectations in a positive way, it's disarming and generates that feeling of pleasant surprise that is easily describable as charisma.

Given this, charisma can be a skill that you hone. In fact, charisma is often the product of three other skills on this list: communication, attentiveness, and emotional intelligence. Work on increasing your ability in those three areas, and you will find that people will tend to feel more comfortable and gravitate towards you more.

As for the "attractive and outgoing" side of charisma, the best thing is to keep it simple: be clean and be yourself. You just want to make sure that you are presentable, and in a way that makes you feel more comfortable. Be aware of cultural considerations, of course, but if you like a certain color tie or blouse, go for it. The more comfortable you feel, the more confident you'll appear, and that confidence will be noticeable. Also, always understand the basic principle of human interaction: most people find it awkward when they're engaging someone new—the people who are comfortable with it straight away are the exception rather than

the rule. Embrace the awkwardness and engage anyway, especially when you are trying to cultivate a rapport with the other side in a negotiation.

## Chapter 11

# The Archetypes of Intergovernmental Negotiators

A basic principle of intergovernmental negotiation is that away from the negotiating table, it's all about institutional constraints and interests. There's only so far that another government is able to go, which means there's only so far negotiators are able to go. Meanwhile, at the table, it's all about personality. All negotiators operate within their constraints differently.

While every negotiator is different, experience has shown that there are consistent archetypes that you will encounter in your negotiations. Each of these archetypes exist both on your own side of the table and the other, and if you conduct enough negotiations, you will invariably have the (dis)pleasure of encountering all the ones described in this chapter. They are important to recognize, because it will help inform your negotiating strategy and your approach at the table. They are detailed below.

### ***The Robot***

The robot is only there to deliver messages, record feedback, and relay things back to actual decision-makers once a negotiating session is over. Trying to negotiate directly with robots is a waste of time because they are not actually negotiating anything. The best you can hope for is *fact finding*,

in that the robot may be willing to provide critical information needed to inform your broader negotiating strategy.

You have three options when dealing with robots at the negotiating table: (1) endure it if you can see a favorable deal materializing at the end of the mundane back-and-forth; (2) cancel meetings until the other side is actually prepared to bring negotiable positions to the table; or (3) engage higher level authorities on the other side.

### ***The Bureaucrat***

Functionally, bureaucrats are similar to robots in that they have little power at the negotiating table to do more than deliver messages, record feedback, and relay things back to decision makers. However, bureaucrats are prone to those human characteristics of emotions, weakness, and, on rare occasion, charisma.

Bureaucrats can cause negotiations to drag with little benefit to either side, but there is a way to challenge them. Bureaucrats tend to be like blades of grass: they bend whichever way the wind blows strongest. Hold the line. Push back. Do it politely, but firmly (remember, they may be robot-like, but they still have human emotions). Use the bureaucrat as your mouthpiece to the other side's higher ups to influence negotiating positions.

### ***The Tyrant (aka the Toddler)***

Tyrants try to dictate everything at the table, make unreasonable demands, and are prone to outbursts when they don't get what they want. The more they get their way, the more they'll demand.

Tyrants only respond to firmness and calm pressure. They may put up a fight, but at the end of the day, they are still at the table because they need something. As such, they

will eventually capitulate to get it (or they will be replaced by higher ups with someone who can).

### ***The Used Car Salesman***

These negotiators pretend they're doing you favors even though they're offering terrible deals. The challenge with Used Car Salesmen is that they don't have to convince *you*—as long as they convince your higher ups or enough people on your team that it's a good deal, they can pull a fast one on you.

The best way of managing Used Car Salesmen is to use expertise and research to shine a light on all the faulty aspects of their proposals. Keep them honest and you have a better shot at bringing the negotiation to a desirable agreement.

### ***The People Pleaser***

People Pleasers avoid confrontation, hate delivering bad messages, and love to agree on things at the table that have no chance of getting higher-level approval on their side. This can cause the other side to do a lot of flip-flopping on agreements while limiting the ability of negotiating teams to work through difficult issues.

If you cannot get a People Pleaser to deal with difficult items, you can create an agenda for negotiating objectives, knocking out the easy parts first and leaving the more difficult sections to the end of a negotiation. Another option is to create working groups to deal with the challenging issues, only bringing near-final proposals to the plenary level.

### ***The Desperate***

Desperate negotiators will do just about anything to secure a deal. They will often negotiate with themselves before

coming to the table, and they are prone to offering “good-will” concessions as signs of good faith.

If you’re across the table from desperate negotiators, you could choose to be exploitative—they certainly make it easy enough for you. Just keep in mind that an exploitative deal may not sit well with ratifiers or implementers in subsequent phases of negotiation. While that may not seem like a big deal in a one-time transaction, it matters for the long-term success of the agreement.

### ***The Snake***

The Snake is self-serving, crafty, prone to dishonesty and deception, and exploitative at every turn. Snakes are slippery ones to negotiate with, and they will do their best to bring out the worst in you and your team.

Snakes need to think they’ve got you. That’s okay—let them believe they’re leading you along. The trick is to ensure that you and your team are steering the deal to something that was favorable for your side anyway. To do so, you must keep your interests guarded (the snake will only try to exploit them), and steer the talks using throwaway positions. Ask many questions and gather as much information about the other side’s positions and interests as possible. When Snakes get overconfident and start making mistakes by revealing too much information, don’t interrupt them.

### ***The Figurehead***

Figureheads “lead” negotiations, talk a big game, and tout their own influence, but they are neither the decision-maker nor coordinator of their side’s positions or interests. Of course, a figurehead will never reveal their own lack of influence, so negotiations can go astray unless you or your team identify the real power brokers on the other side.

In any intergovernmental negotiation, pay attention to the titles and offices of the other side's team and look for cues that there is a clearing house other than the person "leading" the negotiation. If another power broker is evident, ensure that your strategies are directed at that person, whether directly or indirectly.

### ***The Maestro***

Maestros are the most dangerous type of negotiator to face. They are smart, crafty, and able to orchestrate all players on their teams in execution of strong negotiating strategies. Facing a Maestro means that an agreement is more likely than with some of the negative archetypes listed above, but it also means that you will have a tough fight on your hands.

Your best shot against a Maestro is to match skill with preparation. Ensure that you are well-prepared for the overall negotiation and each individual negotiating session. Create working groups on specific negotiation items, since this will limit the Maestro's influence across all areas. Prep your team thoroughly and ensure that every move is made in accordance with broader negotiating strategies.

### ***The Golden Goose***

Negotiating with a Golden Goose is a dream. These negotiators are team players that understand both sides' interests and constraints and know how to work effectively to find a mutually acceptable deal.

The only catch with Golden Geese is that if you overuse or attempt to exploit them, they can easily transform into one of the other nine archetypes. Avoid the temptation to overwork, exploit, or take advantage of a Golden Goose in any way. Also, be sure to uphold all your side's commitments, lest you put the Golden Goose in a precarious position with his/her superiors.

## **Chapter 12**

# **Essential Role Players for your Negotiating Team**

Every intergovernmental negotiation is different. You may lead negotiations with a four-person team or be a part of an effort that included upwards of thirty-five people at its peak. Because conditions vary so much, there is no “one-size-fits-all” prescription for the composition of negotiating teams, but this chapter identifies essential role players to have on your side, whether specifically recruited or assigned after your team has been assembled. These role players represent the basic functions you need to ensure you can execute a thoughtful, balanced negotiation strategy.

### ***The Action Officer***

Every negotiation requires preparation, coordination, communication in between formal negotiating sessions, and myriad other tasks (sometimes while negotiations at the table are ongoing). The members of your team at the table should be singularly focused on their own tasks, so all the side-jobs must be delegated to an action officer to handle. One cannot overstate how important a good action officer is in making sure that negotiations go smoothly. Poorly coordinated logistics, failure to deliver prepared documents to the other side in a timely fashion, and mismanaged meetings can derail the negotiating effort. Always ensure you have a quality action officer to keep the negotiation process running smoothly.



### ***The “Fixer”***

Every negotiation needs a fixer—someone who can get the negotiation back on track when there is an impasse, or who can bridge gaps in negotiating positions and interests. The fixer cannot be the lead negotiator because there are limits to what the lead negotiator can and should do behind the scenes. That is not to say that the fixer does anything illegal (never do anything illegal!), but fixers must be disavowable because they are meant to do things like feel out certain positions with the other side, make unofficial proposals, and engage outside of the public eye when formal negotiations are stalled. They should be experts on the other side, should be comfortable straddling the line between the two sides of the table, and should maintain at least a modicum of trust and respect from the other party.

### ***The Skeptic***

Every negotiating team should have somebody on board who is skeptical of the other side and the positions they present. You should always have somebody questioning everything from a negative angle (i.e., “What's the catch?” or “What are we losing here?”). It helps you avoid naïve decision-making and prevents your team from becoming desperate. It is also helpful that the other side knows you have a skeptic on your team—knowing you have someone scrutinizing their behaviors and positions at all times can give them pause and help keep them honest. [A point of caution here: don't let your skeptic breed cynicism; healthy skepticism is useful, but cynicism can derail a negotiation.]

### ***The Optimist***

As important as it is to have a skeptic on your team, it is equally so to have an optimist. This is somebody who looks at the other side as if they always have the best of intentions and their positions are always merited. The presence of an optimist not only allows you to have a peacemaker on your side of the table for reassuring the other side, but ensures that your team does not become overly cynical, especially during heated negotiations.

### ***The Subject Matter Expert***

The leader of a negotiation does not need to be a subject matter expert, but s/he absolutely must have subject matter experts both on the team and at the table. Subject matter experts provide the research and feedback necessary for crafting negotiating positions. The subject matter expert also ensures that any proposed agreements at the table are aligned with your overall interests. Additionally, they can raise red flags when the other side makes dubious claims or oversells its proposals.

### ***The Legal Expert***

Legal experts help define the constraints of your negotiation and assess the legality of positions the other side offers at the table. You don't ever want to walk away thinking you have an agreement only to find out that ratification of such a deal would be in violation of a domestic law. One caveat here: policy and law overlap, but they are not interchangeable terms. That someone is a legal expert does not necessarily mean that he or she is a subject matter expert in the issues being negotiated, an expert in the policies driving a negotiation, or an expert in negotiations themselves. The law constrains a negotiation and is used to protect each side, but it should not become the central focus.

### ***The Presenter***

Some lead negotiators prefer to be the ones to offer positions in a negotiation, but delegating that responsibility to another member of the team is often helpful. Flexibility in a negotiation is essential, and having a presenter means that a separate individual is delivering key positions to the other side. It enables the lead negotiator to distance him or herself from initial proposals, meaning the lead negotiator does not feel locked into a certain deal, and the other side isn't given the impression that their lead counterpart is stubbornly attached to it. An ancillary role for the presenter is to filibuster. Sometimes you need somebody who can recite proposals and the research underpinning the accompanying positions to give the lead negotiator and other key members

of your team time to monitor the other side's reactions and to contemplate the next move in the middle of a meeting. Finally, it is critical to have someone who can communicate proposals clearly and persuasively.

### ***The Interpreter***

Functionally, you may need someone who interprets one language to another if the negotiations are done bi- or multilingually; however, even if all the negotiations with foreign parties are done in English, you still should have an interpreter present. An interpreter does two additional things for you. First, the interpreter listens to what the other side says in their native tongue in sidebars at the table or during breaks. It is helpful to know what they may be saying to each other aside from the formal back-and-forth at the table. Second, the interpreter is there to watch for cultural cues. There are things that people will say and do that have different meanings depending on their culture, so it's important to have somebody on your negotiating team who is able to understand the subtext of what the other side is communicating.

One important note here: your interpreter should be well-versed in the issues being negotiated. Provide talking points and other negotiating materials in advance of the meeting, and be sure to include your interpreters in your negotiating prep sessions. Never underestimate the importance of a good interpreter; after all, it doesn't matter how cleverly you think you are carrying out the negotiation if it all gets lost in translation.

### ***The Interagency Coordinator***

Anytime you seek to enter an agreement that obligates your organization or government to a foreign entity, you must have someone ready to coordinate interests, positions, and constraints with other organizations on your side. This process is as important as the actual negotiations that will occur with your counterpart at the table, because the other players on your own side can make or break any deal. Ensure that you have a role-player identified to do the leg work early and

often in corralling the myriad sources of influence within your government or organization.

### ***The Lead Negotiator***

Negotiations cannot be done by committee; there needs to be somebody leading the negotiating team. This means assigning roles, delegating tasks, making the calls on what positions will be offered at the table, and selecting which negotiated proposals should be forwarded to a decision-maker. It is important for the lead negotiator to remember that his or her title does not mean “the person who talks the most at the negotiating table.” Like a conductor for a symphony orchestra, the leader doesn’t play every instrument; rather, s/he makes sure everyone is well-practiced, on the same sheet, and playing at the right tempo.

### ***The Decision-Maker***

Opinions are split on whether the lead negotiator should be the decision-maker for negotiated agreements: some believe that having the decision-maker at the table offers greater flexibility, while others suggest that distance between the table and the decision-maker enables an extra layer of protection for interests. In most cases, having some distance between the negotiating table and the decision-maker is useful, if only to give the lead negotiator an extra tool to employ in negotiations. Distance means that the negotiator can argue that his or her hands are tied on certain things, that decision-making processes don’t have to be rushed, and that emotions are removed from the decision-making equation (especially important given that things at the table can get tense from time to time). That said, separating the lead negotiator and decision-maker can be problematic unless the decision-maker avoids micromanaging the negotiating team, understanding that his or her role is simply to affirm that all interests are preserved and that the agreement at the table is ratifiable. The decision-maker must be dispassionate, unbiased, and trusting of the negotiating team.

**Some ground rules for managing your role players:**

- People need to play their assigned roles as much as possible; for example, it would be unhelpful if your skeptic flip-flopped to optimist or your legal expert started trying to lead the negotiations. Don't undermine them if they have other helpful contributions—just make sure those contributions do not detract from their primary roles.
- It is possible for you to double up roles on your team. Some examples here: action officers often make great fixers since they have frequent contact with the other side anyway; and your subject matter experts may be the best option for presenters because of their familiarity with the content of your proposals.
- It is important not to assign too many roles to individuals, lest you overburden them and reduce effectiveness.
- Treat every role-player on your team equally, regardless of rank or renown. Every function is critical, and you cannot hope to execute a successful negotiation without all members working in unison.

## Chapter 13

# Demystifying the “Tough” Negotiator

All throughout your career, you will hear colleagues come out of their respective negotiations bemoaning the “tough negotiator” they were facing on the other side of the table. They will wonder why they couldn’t make headway and feel like they kept giving concession after concession with no progress from the other side.

When you’ve been in enough negotiations, you will see many types of negotiators—but “tough” is not one of them. Sure, there will be obstinate negotiators, shady negotiators, and out-of-control negotiators; but “tough” negotiators, no.

You see, what many people consider a “tough” negotiator is actually just the product of one’s approach to negotiation, not any particular personality traits or skills. This chapter demystifies the notion of a tough negotiator, because being “tough” in negotiation is actually very easy. Simply put, these negotiators do it in five steps:

- 1) They come in with a clear negotiating strategy.
- 2) They have at least a rudimentary assessment of the other side’s interests, constraints, restraints, and best alternative to a negotiated agreement (BATNA).
- 3) They start with “no” or “I’ll have to take that back for consideration” rather than “yes” or “maybe.”
- 4) They don’t bend on their indispensable interests.

## 5) They don't give something for nothing.

All those practices align with the elementary rules and basic principles of negotiation. In essence, these “tough negotiators” are simply following the rulebook that is out there for all negotiators. If you follow those rules (such as those included in Chapter 7) and the five steps outlined above, people will be describing *you* as a tough negotiator.

But let's dispel one more myth: the so-called “tough” negotiators are not *great* negotiators. Sure, they may be good at holding a line and meting out the most basic, transactional, position-focused agreements. While this may get the job done in some cases, they could also be leaving a lot on the table.

The best negotiators are not “tough,” they're “agile.” Harvard University's Michael Wheeler developed the concept of “negotiation agility,” and it's something that all good negotiators understand: it's the ability to adapt rapidly to the conditions of the negotiation while still maximizing outcomes. Agile negotiators understand and employ all their available instruments of power in an orchestrated manner. They can read potential changes in the zone-of-possible agreement, especially if the negotiations drag out for longer than expected. Agile negotiators find ways to keep negotiations focused on interests, not positions, even when the other side tries to drag deliberations back to the basic proposal/counter-proposal format.

Getting to the point of being agile in negotiations takes time, study, and practice. Even when you do get the skills down, the demands of a negotiation may mean a whole team's effort is necessary to give you the tools to be agile in a particular situation.

The best thing you can do is to start with the fundamentals. Learn and review the principles, rules, and protocols of negotiation. If called to the negotiating table, follow the five basic steps needed to be “tough,” and then build upon that. Ask yourself whether you are negotiating positions (the *what*) or interests (the *why*). Think about what leverage you may have other than the proposals you're offering at the

table. Constantly assess the other side and try to determine where they may have more flexibility.

It is certainly a challenge to get to the point where you can describe yourself as “agile,” but follow the recommendations here and you’ll at least have no problem achieving the status of “tough” at the negotiating table.



## Chapter 14

# Negotiating with Allies versus Adversaries

There is a perception out there that one should approach negotiating with allies differently from one would with adversaries. *After all*, they may argue, *you should treat your friends better than your enemies*. People who believe that immediately impose their own handicaps in negotiation. Yes, there are differences when negotiating with allies and adversaries, but those differences are isolated to the *mechanics* of the negotiation, not the principles, rules, and protocols. You need to factor those mechanical differences into your negotiating strategy, but your overall approach should be the same.

Remember that intergovernmental negotiating relationships, be it with allies or adversaries, are built through demonstrations of respect, integrity, and reciprocity. Those things are not exclusive to friends; there is no rule that says you must like who or what the other side's negotiators represent for them to be able to earn your respect and collaboration in a negotiation. Conversely, the notion of friendly relations often comes at the price of favors (also known as "unilateral concessions"), and those can scuttle long-term negotiating relationships rather than strengthen them. In principle, the best thing to do is to bring the same mindset to every negotiation.

Naturally, there are considerations in negotiating with allies versus adversaries that you must bear in mind, and

they can be divided into two categories: practical and psychological.

### ***Practical considerations***

These are considerations related to the systemic and organizational relationships that would exist among friendly governments and adversarial ones. The specific practical issues are included below:

#### *Number of channels for communication and negotiation*

In other words, this is the number of touchpoints between governments, and there will typically be many more between allies than between adversaries. Certainly, having many channels for communication offers a greater variety of options for dealing with issues requiring negotiation. This is especially important when trying to employ fixer- and action officer-level interactions to facilitate progress in a formal negotiation. All this affords flexibility and efficiency in trying to achieve collaboration. Conversely, the absence of channels has the opposite effect, impeding flexibility and minimizing the chance to use lower-level officials to find creative solutions in negotiations.

The challenge with having a greater number of channels is that it makes it easier for the other side to employ bad faith negotiating tactics such as *forum shopping* and *end-rounding* (more on that in Chapter 24). Thus, channels for communication are a good thing, but it is on you to make sure they are used in good faith.

#### *Frequency of contact*

The frequency of contact between negotiators tends to influence their behavior at the negotiating table. It is much easier for someone to be a bad faith negotiator when they don't expect to see their negotiating partner again. This is one reason why bad faith negotiating tactics can be prevalent in negotiations between adversaries, but this same principle applies in negotiations among allies if your counterpart does not expect to have to deal with you again.

The best thing you can do is bring the same approach to all negotiations: demonstrate good faith, call out bad behavior, and maintain the disciplined implementation of your negotiating strategy.

### *Veto players*

A veto player is someone within your organization or government who is able to block some aspect of the negotiation, whether it is a specific inclusion or the agreement writ large. Veto players can derail progress in a negotiation quickly, and they are something you need to consider when developing your negotiating strategies.

The difference between negotiating with allies versus adversaries is that there tends to be more veto players when it comes to dealing with adversaries. Whether due to historical enmity, distrust, or political interests, there will tend to be parties seeking to insert themselves in the process and introduce special requirements for garnering their support.

There are only two workarounds for dealing with veto players: (1) by eliminating them before the negotiation begins, and (2) by incorporating their interests into your negotiating strategy. The ways of removing veto players from the process altogether can be difficult. The simplest way is to get a higher authority on your side to deny certain organizations or entities from being involved in the negotiating process. Another way is to bound the negotiation to things where potential veto players do not have any authority.

The better way to deal with veto players is to co-opt them early on. If someone wants to derail your negotiation, they will always have the chance to do so during the implementation phase, so getting their buy-in early or eliminating any reason they could have to veto the agreement are the best options. Reach out to those players early, capture their interests, and incorporate everything you can into your negotiating strategy.

### *Information issues*

This one is paradoxical: in some cases, you will have more complete information when negotiating with friends, and in others, you'll have more when dealing with rivals. If you have more information with friends, it is in part because of the number of channels and frequency of contact, but it may also be a result of trust between your governments. Your governments may have special information sharing agreements that allow for the privileged exchange of information, meaning that secrets are passed to both sides to which others are not privy. Meanwhile, with adversaries, you may have architecture in place for observation or even espionage that can yield critical information that you would not otherwise have with your allies.

The important point is that the nature and volume of the information will be different depending on whether you are negotiating with allies or adversaries. As a negotiator, you must be cognizant of that and adjust your respective negotiating strategies to account for different types of information problems. If negotiating with allies, understand that you will have some blind spots, because while they will likely show you more of their cards at the table, it will be more difficult to see what is going on away from it. Conversely, with adversaries, you may have a better idea of what is happening away from the table but lack a complete understanding of the hand they are playing in the negotiation.

### *Protocol*

The biggest mistake people make when negotiating with allies vice adversaries is applying different protocols for each. Generally, the protocols should be the same. Once you start going down the path of treating adversaries different in a negotiation, it opens the door to reciprocated discourtesies and distrust, both of which can fuel the use of bad faith negotiating tactics. Apply the standard protocols consistently, and demand reciprocal courtesy from your negotiating partner, be it an ally or an adversary.

There are three exceptions to negotiating protocols depending upon the party sitting on the other side of the table:

security, gift-giving, and hosting. When negotiating with allies, security is often an after-thought, because fear and mistrust are not prevalent in the existing relationship between your governments. When dealing with adversaries, however, fear and mistrust tend to be key features of the relationship, so you should take extra precautions in offering security reassurances to the other side. The best way to do that is to be forthright in communicating what security protocols will be in place. There really is no being too blunt in explaining the measures you are taking, since every insight and data point you offer erodes information problems in a negotiation.

Gift-giving and hosting go hand-in-hand as issues when dealing with adversaries. As discussed in Chapter 5, two-level problems where domestic politics can affect intergovernmental negotiations are common, even more so in dealing with adversaries. You must be aware that appropriating personal or public funds for an adversary can incense domestic audiences, who will then challenge the credibility of the negotiation. For example, if you are negotiating with Russia and are seen being wined-and-dined by the Russian government, it would undermine your standing and call into question your motives. You must think about this if you are considering giving a gift to the other side or hosting them for a meal. The best approach is to avoid gifts and 'go Dutch' for all engagements where payments are required. In situations where the other side initiates it, keep the principle of reciprocity in mind, as well as all rules that your government already has in place for diplomats who often find themselves in these sorts of sticky protocol situations.

### ***Psychological differences***

These are the differences that stem from no other source than one's own mindset towards negotiating with allies and adversaries. These aren't founded in rational thought; rather, they come from preconceived notions, expectations, and cognitive biases. If gone unchecked, they can negatively impact your negotiating strategy and approaches at the

table, so it is important to recognize them early. They include the following things:

*Mistaking coordination for negotiation*

When dealing with allies, government officials often forget that they are in a negotiation. In their minds, cooperation is a foregone conclusion, so they believe that they are engaged in *coordination* rather than *negotiation*. They don't tend to make that same assumption when dealing with adversaries, since the perception is that cooperation is the exception, rather than the rule. This is dangerous, however, because it leaves people open to exploitation by allies, where they give and give, always expecting cooperation to be the outcome while the other side gladly takes something for nothing.

The only way to prevent this is to understand the dynamics of the situation before engaging the other party. Generally, if there are monetary payments involved, it will always come with a negotiation. If the other side has a viable alternative to cooperation, then you'll be engaged in a negotiation. When unsure whether you're engaged in coordination or negotiation, use the same approach of building a negotiating strategy—it never hurts, and it will protect you from making bad assumptions based simply on the pre-existing relationship your government has with the other side.

*Bank of Goodwill*

Many negotiators assume that allies will tend to return favors in kind—that there is indeed a bank of goodwill in which a unilateral concession offered now is a deposit for one that will be reciprocated down the road. Those same negotiators tend not to apply that belief when dealing with adversaries. Either way, there is no rational reason to operate under an assumption that favors can be banked. The other side has competing interests in a negotiation whether you are dealing with a friendly party or an adversarial one, and they are all looking to maximize their benefits while minimizing their costs. Under those circumstances, there can be no “bank of goodwill.”

*Taking things personally*

When negotiating with allies, people tend to expect good faith in the deliberations, but that is never guaranteed. What often happens is that people who expect good faith from the other side get burned, and then they take it personally, which throws them off their game and oftentimes invites bad faith behavior in return.

A simple way to work around this is the principle of “no expectations, no disappointments.” Don’t ever expect the other side in a negotiation to start out employing good faith tactics; rather, understand that part of your role as a negotiator is to encourage good faith at the table by demonstrating good behavior, calling out bad behavior, and employing skill and preparation over chumminess and favors.

*The Stakes*

The stakes tend to feel higher with rivals than with allies. This is in part because negotiations with adversaries do not occur as frequently as those with allies, so the exceptional nature of the engagement elicits a feeling of elevated importance. When the stakes *feel* higher, it can rattle the nerves and make you think you have to treat this negotiation as something new and different. That simply isn’t true.

The workaround here is to employ the same approach to every negotiation. When you make something routine, it helps you feel more comfortable no matter what the stakes may be. It’s the same principle that applies to elite athletes, in which practice, repetition, and preparation make it so they can maintain the same level of composure whether it’s the first game of the season or the championship.

*The need to appear “tough”*

Many believe that they must be tough on adversaries and agreeable with allies, but in the case of negotiations, they are wrong. There is no need to adjust approaches. As discussed in the previous chapter, “toughness” in negotiation is not about who can dominate the talks or impose the most threats; rather, “toughness” is about who can best maximize their side’s outcomes while minimizing concessions. To

accomplish that, there is no requirement to be rude, brash, or coercive. Meanwhile, being “agreeable” often translates to giving up more concessions than necessary. Being fair and being generous with your concessions are two different things—strive for fairness.

But there’s something even better than being “tough” or “agreeable”: achieving a good, implementable deal. You do that by being agile. Agility requires strength in being able to protect your interests and buttress your positions with sound arguments, but it also demands flexibility and ingenuity in finding solutions to seemingly intractable problems. Whether you are dealing with allies or adversaries, consistently strive to be agile.

#### *The need to document*

In situations where negotiators are not as concerned with commitment problems or outright deception, they will feel less compelled to write things down. *After all*, they reason, *our partners will hold up their end of the bargain*. Meanwhile, when dealing with adversaries, there will often be extra note takers in the room, full minutes or transcripts of the meetings drafted, and comprehensive analysis after each negotiating session.

Frankly, the latter approach should be the method for *any* negotiation. The reason being is that documentation is your best asset in a negotiation. It eliminates disputes when there is a misunderstanding with what has already been decided, gives you a clearer picture of what the other side communicated in previous sessions, and ensures that you don’t have to rely solely on your memory to contemplate the next steps for the negotiation. More than that, this documentation gives the implementers of the agreement insight into what was being deliberated and why, which helps them become more successful in implementing the terms of agreement as you and your negotiating counterparts originally envisioned. If you fail to do this just because the other side happens to be a partner nation in some capacity, you are only setting yourself up for headaches down the road. Document everything.



\* \* \* \* \*

**Key takeaways:**

- Do not get too complacent in negotiating with allies or too cynical in engaging adversaries. It is easier for allies to engage in bad faith negotiating tactics (and for you to fall for them), and you may scuttle deals with adversaries because of irrational mistrust.
- Take advantage of the additional info that you will have when negotiating with allies and understand the challenges you will face in the absence of information from adversaries.
- Never abandon the basic principles and rules of negotiation; your fundamental approach should be the same no matter who is sitting on the other side of the table.
- When negotiating with adversaries, recognize institutional and practical obstacles and take steps to overcome them.

## Chapter 15

# Two key questions about your negotiating counterpart

It is natural to assume parity at the negotiating table. That is, people tend to believe that if they are meeting with counterparts to negotiate, those counterparts will bring a commensurate level of interest and authority to the negotiation. Unfortunately, when dealing with other governments or entities, that is rarely if ever the case, simply because every organization operates differently.

Failure to recognize disparity between your side and the other can lead to unhelpful expectations and misguided negotiating strategies. As such, it is necessary to answer two key questions about your counterpart to inform your approach to the negotiation:

- *How interested is your counterpart in collaboration?*

In other words, is the other negotiator willing to offer concessions and/or commit to meeting your interests to achieve cooperation? Your goal in asking this question is to determine whether the negotiator is *pro-collaboration* or *anti-collaboration*.

- *What is your counterpart actually able to do for you?*

Stated another way, what constraints does that negotiator face? Constraints are any barriers that limit the negotiator's ability to form and implement deals. This may

include lack of authority, existence of veto players, or the need to incorporate other interests into the negotiation. Your goal here is to assess whether the negotiator is *more constrained* or *less constrained*.

It can be difficult to answer these questions before reaching the negotiating table unless your team already has a decent understanding of the other side's government system and negotiators. You may have to glean that information from interactions, but it is always better to do the homework beforehand whenever possible. Here are some specific questions that can get you started in your assessment:

- Have you or others achieved satisfactory deals with this negotiator in the past?
- What position within the government does the negotiator hold?
- What is his or her rank?
- What authority does someone of that rank and position have over the things you hope to achieve from the negotiation?
- Is the negotiator representing the whole government or just a single ministry or agency? If just a single ministry or agency, where in the pecking order does it fall within the government hierarchy?

If you or your government have history dealing with the negotiator, some of these questions may be easy to answer well before you reach the negotiating table. In cases where the negotiator is new to your side, you will have to adapt and learn quickly, starting your observation and assessment from the outset of the first meeting and continuing to glean more information as the negotiation progresses.

Once you have a solid understanding of the other side's negotiator, you can employ rational negotiating strategies

focused on *creating value*, *claiming value*, *process trust*, and *personal trust*.

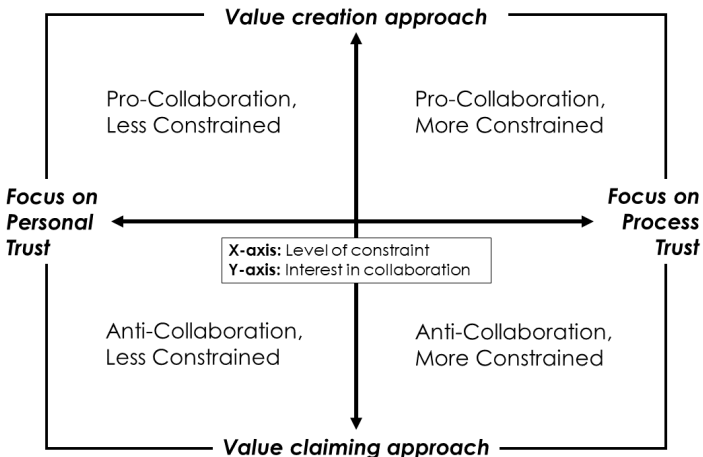
*Creating value* is an important means for building trust and reinforcing positive steps. Often generalized as “incentives,” creating value may include immediate or future concessions, or the presentation of benefits that stand to be gained from a potential deal.

*Claiming value* is a necessary tool to force concessions from the other side that they do not want to make. Generally referred to as “coercion,” claiming value could include the immediate or future imposition of costs, or the presentation of things that could be lost if a potential deal is not reached.

If the negotiator is more constrained, *process trust* is critical to guide the other side's higher-level decision makers and potential veto players towards collaboration. Process includes the use of milestones for verification, accountability, and trust building.

If the negotiator is less constrained, *personal trust* is the most critical aspect of negotiations, since s/he presumably has the power to affect change at will; thus, negotiating approaches should be directed at shaping your counterpart's personal decision-making. The figure below represents this:

**Figure 15.1: Adjusting approaches based on your Negotiating Counterpart**



Now let's imagine you are negotiating with someone who has the authority to act and is pro-collaboration. Here, you can create value and focus on personal trust to foster good outcomes at the negotiating table. This is because the negotiator not only wants to move forward in the negotiation, but s/he is able to carry out the terms of the deal and grant you concessions in return. In these cases, incentivizing that person's decisions can yield fast and meaningful results.

Conversely, in situations where the other negotiator is anti-collaboration, you must switch tactics. Instead of incentivizing the other negotiator, you must claim value, meaning you must impose costs whether immediate or promised for the future. Again, constraints are important here, because if the negotiator has no authority, employing coercion directly against him or her is not useful. Instead, the value claiming must be directed at the entities the negotiator represents in procedural ways; e.g., "If your side fails to meet this requirement within three weeks, we'll have no choice but to impose sanctions." If the negotiator *does* have the authority, then the value claiming should be focused on the person. Modifying the statement from above, it would be, "If you fail to meet this requirement within three weeks, we'll have no choice but to put out a press release explaining that your side's lead negotiator—meaning *you*—blocked any chance we had for a deal."

As you can tell, rational negotiating strategies differ significantly depending upon your counterpart's interest in collaboration and level of authority. Always take the time to assess those specific elements when negotiating, otherwise you may incorrectly employ your tools and offer concessions that yield nothing in return.

**SECTION IV**

**PREPPING FOR THE  
GAME**



*United Nations Command negotiators prepare for  
Armistice negotiations in Panmunjom, 1951*

## Chapter 16

# How to Build an Effective Negotiating Strategy

**I**magine for a moment Tom Brady going into the Super Bowl without having studied the opposing team or game-planned with his coaches. Imagine Bobby Fischer getting ready to play chess against Boris Spassky without observing Spassky's style of play or visualizing his own moves for the opening, middlegame, and endgame. Imagine still the Allied forces landing on Omaha Beach with no clear vision for what comes next.

It is incomprehensible to think that such grievous errors would be possible, so you might be surprised by just how many people simply 'wing it' in negotiations—even those that have the possibility of affecting international relationships for years to come.

Sometimes the decision to forgo strategy-making is the product of overconfidence in one's own abilities—a negotiator believes that s/he can simply outwit the other side on the fly. Similarly, the lead negotiator may have the dangerous "if I've seen it once, I've seen it all" attitude. In other instances, it's based on time and geographical constraints; your negotiating team may be scattered throughout different locations and/or saddled with countless other tasks. Sometimes it's a failure to understand the stakes, believing that the objects being negotiated are not important enough to warrant that much time or thought. In still others, it's the failure to recognize that you're actually about to engage in a negotiation at all.



Whatever the reason, things will always end poorly for the side that fails to prepare. Approaching a negotiating table without a well-formed strategy is a precarious endeavor, and one in which nobody should knowingly engage.

Every negotiation big and small demands a negotiating strategy. The strategy does three things for you. First, it provides a clear roadmap for how to achieve your core interests in negotiations with the other side. This roadmap is not just for you as the negotiator, but your whole team and all the interested parties on your side so that everyone may work in concert.

Second, the strategy lends confidence to your actions and decision-making during a negotiation. Negotiations are stressful even at the best of times, so calm and composure are critical.

Third, a strategy offers a baseline for adaptation when necessary. The negotiating strategy is not a single set of instructions; rather, it provides the foundation for a game plan which can evolve if circumstances change. It is difficult to change course when you don't have a clear idea of where you're headed in the first place.

Thus, before engaging in any negotiation, you must build a strategy—and here are the ten steps for how you do it:

### **Step 1: Assess your team**

Take stock of who you have dedicated to conduct the negotiation with you. Review the lineup, and ask yourself five questions:

- 1) *Are the members of my team part-time or full time?* Understanding your team's time constraints tells you the kind of issue attention you can expect and how many demands you can reasonably levy upon them.
- 2) *Do they report to me or to someone else?* Team building is important, and determining whether you

have legitimate power or if you have to rely solely on referent power in your leadership of the team is essential.

- 3) *What are their individual strengths and weaknesses?* You must determine how you can employ each of the members of your negotiating team. Maybe someone is a great presenter. Perhaps someone is a ready-made fixer, perfect for smoothing things out with the other side. Take stock of the skill sets and capabilities your team offers to the negotiation.
- 4) *Which agencies are over represented?* If your team leans too heavy to a particular organization, you run the risk of group-think or over-emphasis on a single organization's equities. Be mindful of this.
- 5) *Which are underrepresented?* If an organization has too little or no representation, you will need to devote extra time and attention to gathering information and equities from that organization. It is important to ensure that you cover all interests to avoid missing something in the negotiation or unnecessarily limiting your options at the negotiating table.

## **Step 2: Gather Interests (that is, your “Ends”)**

If you've been assigned to a negotiation, it's because there is some general interest already in play. However, a vaguely defined interest does you no good at the negotiating table. You must have a clear idea of what your side is seeking to achieve so that you can give yourself the best foundation for developing a strategy. It may seem counterintuitive, but the better you define your interests, the more flexibility you'll give yourself in achieving them.

Reach out to all interested parties on your side with two questions: (1) what do you *need* from these negotiations;

and (2) what do you *want* from these negotiations? *Needs* are things you absolutely must achieve for a negotiated agreement to yield a net positive, while *wants* are things that would be good to get but are not critical.

This can prove challenging at times. Organizations are often slow to respond. Other times they are demanding and overly directive on specific positions they want you to pursue. Specificity is important, but you also need to get an idea of the broader needs at hand. For example, if an organization says they absolutely need a foreign government to construct four buildings for them, it may be that the number of buildings is not as important as the available square footage and amenities included inside. As a negotiator, it's your job to get clarity on those things before going to the negotiating table, not only to protect your side's overall interests, but to empower you with alternatives.

This step is also important for securing a mandate from each of the different organizations. Failure to do so may introduce veto players on your own side later on in the process.

When you have identified all your interests, you must divide them into three categories:

- 1) **Indispensable:** These are your *needs*, and they are non-negotiable.
- 2) **Desirable:** These are your *high value wants*. You should hold onto these as firmly as possible at the negotiating table, but you can deal them away if it means securing your indispensable interests.
- 3) **Disposable:** These are your *low value wants*. Every negotiation needs throwaway positions, and your disposable interests grant you critical flexibility in dealing with the other side.

### **Step 3: Determine your side's constraints (what you must do) & restraints (what you cannot do)**

Every negotiating strategy has boundaries. The obvious ones include interests (you have to achieve your interests otherwise there's no point in negotiating) and legality (barring extreme circumstances, you can't do anything illegal to reach an agreement). Other boundaries that are typical in negotiations include time constraints (most negotiations have an aspirational or explicit deadline) and budget constraints.

Those aside, there are always myriad other constraints and restraints in intergovernmental negotiations. For example, there may be other agreements in place that a new deal must honor, or there may be requests from allies to avoid certain concessions in deliberations with a third party.

Take time to document your known constraints and restraints. Then be sure to coordinate with other organizations (whether inside your own government or outside), supplementing as necessary with assessments from subject matter experts. The more explicit your boundaries are, the more flexibility you'll have in the negotiation to go right up to the line without crossing it.

### **Step 4: Assess the other side's interests, constraints, and restraints**

Before diving into how you intend to achieve your goals in the negotiation, you need to gauge what is within the realm of possible for the other side, where you can push, and where you will likely need to flex. This doesn't mean you should negotiate your own interests away before getting to the table, but it means that you may have to be more creative in the way you pursue those interests.

One of the critical parts of this step is assessing your potential ZOPA (zone of possible agreement). Your ultimate goal in a negotiating strategy is to build the foundation for a game plan that will draw a proposed agreement within the ZOPA so you can walk away with a mutually acceptable deal.

### **Step 5: Determine how you may achieve your interests (the “Ways”)**

Now that you’ve determined your interests, identified the boundaries you have in pursuing them, and assessed the other side, you need to consider how to achieve your goals in the negotiation.

At the intergovernmental level, ways of influencing outcomes fall into four general categories:

- **Creating value:** These are immediate incentives or promised benefits that you can offer to the other side.
- **Claiming value:** This is the imposition or implication of costs associated with failing to achieve a negotiated agreement.
- **Process:** This is where you allow adherence to the process of negotiations to bring the two sides closer to a mutually acceptable deal. Use of “process” includes agenda setting in a negotiation, using a mix of plenary and working group negotiating sessions, and employing milestones for progress.
- **Personality:** The focus here is on influencing individual negotiators and/or decision-makers to affect the outcomes of a negotiation. This way is especially useful when you have government leaders and/or lead negotiators who are less constrained in their respective authorities.

### **Step 6: Evaluate Tools & Instruments you have at your disposal**

Once you’ve decided on the ways that you want to go about achieving your goals, you must evaluate the tools and instruments (or “means”) you have to execute the negotiation. There are two categories of means here:

- *At the table:* These are the tools you and your negotiating team have at your immediate disposal. It includes, but is not limited to, presentation of proposals, imposition of deadlines, use of throwaway positions, and employing a fixer in-between formal negotiating sessions, etc.
- *Away from the table:* These are the tools that your home organization or whole-of-government has to influence negotiations. A simple example of this is North Korean missile launches in the early 2000s. The Kim Jong Il regime had missile launches (the means) that it used to coerce its negotiating partners (the way) in attempt to drive them towards concessions that favored North Korea (the ends).

### **Step 7: Craft your game plan**

Now that all the necessary prep work is done, you can finally put everything together into a game plan for engagement. At a minimum, there are five things you need to include in your game plan:

- 1) **Your goals for each negotiating session.** For example, your only goal in the first negotiating session may be simply communicating your opening position and your core interests. You may walk into a later negotiating session fully planning on storming out at some point to express discontent at the lack of overall progress. The bottom line is to know what you're trying to achieve in a single session that supports your overall strategy.
- 2) **Which positions you'll employ at the negotiating table.** This includes crafting throwaway positions, which you should always have in your arsenal unless your only remaining option is brinkmanship.

- 3) **What the members of your team will do.** Understand what you want your role players to do during the negotiation. Everyone should have a function, even if it's just as a notetaker. If they don't, there's no point having them in the room.
- 4) **What your government will do.** You may need outside organizations to take certain actions to set you up for success in a negotiation. For example, you may desire an official statement published ahead of talks to signal incentives, or you may need your government to take punitive measures against the other side to help break a logjam.
- 5) **Your audibles.** You must have ready-options for changing course if circumstances in the negotiation demand it. This will help you take advantage of windows of opportunity without having to make up things as you go along (that's called spit-balling, and it's almost always a risky move).

### **Step 8: War-game the negotiation**

Never, ever approach a negotiating table without war-gaming it, whether formally or informally. As clichéd as it may be, practice does make perfect. Walk through the possible proposals and counter proposals. Consider what you will do if you encounter bad behavior from the other side (e.g., being insultingly late, trying to posture via physical arrangements, leaking info to the press, engaging in escalatory or provocative behavior, etc.). Run through the entire game plan as you have envisioned it and imagine how the other side will respond. Try to develop creative solutions that you may not have considered in earlier steps.

### **Step 9: Make adjustments to your game plan**

This is a straightforward step. Once you've done the war-game, take whatever you learned and make the necessary adjustments to your game plan.

### **Step 10: Build your game day lineup**

Finally, you need to get ready for game day. This step is also straightforward and deliberate. It should become routine for your team before every negotiating session. The steps are simple:

- Assign specific roles to your team members
- Decide on seating arrangements
- Prep your briefers
- Review the game plan for the negotiating session with your team one last time

\* \* \* \* \*

You'll need to re-accomplish steps nine and ten before every negotiating session, and you always have the option of revisiting earlier steps if circumstances drastically change and adjustment of your overall strategy becomes necessary. With those final notes in mind, if you follow this basic guideline, you can build an effective negotiating strategy and set yourself up for the best possible outcome at the table.



## Chapter 17

# How to Determine Interests

Chances are you've heard of this causality dilemma: "Which came first: the chicken or the egg?" The issue at play is that it's unclear which is the cause and which is the effect. Negotiations have their own variant of this, and it relates to the interests at play (i.e., your wants and needs): "Which comes first: determining what's within the realm of possible, or determining one's own interests?"

Here's why it is difficult to isolate cause and effect with this. Interests alone do not drive people to the negotiating table—there may be other ways to satisfy those interests that don't involve bargaining with a particular party. No, they enter a negotiation because they believe that enough of their interests can be satisfied through bargaining with this specific party, meaning they already have some idea of what might be achievable at the negotiating table. Then again, they wouldn't be able to assess whether a negotiation was worthwhile unless they already had their interests in mind to inform what they are trying to achieve in the first place. That's the causality dilemma.

This dilemma has real impacts in how one approaches negotiations, especially when developing a negotiating strategy. In practice, this variant of the "chicken-and-egg" argument can be boiled down to which question you ask yourself first: (1) "What's within the realm of possible," or (2) "What do I hope to gain?"

Negotiators are split on this. There are some who say that you can't really understand your interests without clear

boundaries. For example, if someone wants to buy a car, the unbounded person could easily say, “I want a Ferrari,” even if there is no chance of affording it. In that scenario, if you show up at a Ferrari dealer and don’t have a way to fork out more than \$200,000, there is no chance for a deal.

For these negotiators, bringing unrealistic interests into play is a waste of time and confuses the development of a coherent negotiating strategy. From their perspective, the right approach is to say, “Here is what’s within the realm of possible in the negotiation. Based on that, what would we like to achieve?”

Then there are those who start with a blank slate and brainstorm their wish list for a negotiation. This primer calls it “the perfect world” scenario, as in, “In a perfect world, what would you get at the end of the negotiating process?” Negotiators in this camp believe that if you have already bounded yourself before defining your interests, you may be leaving something off the table that you really want or need. You also may be missing the opportunity to clarify your interests at play and to amass enough throwaway options.

So, which is better: doing the assessment of what is achievable, or dreaming up of what you want from a negotiation first?

Unlike the chicken-and-egg question, this is not a theoretical question for negotiators, who get to put their answers in practice. Thus, this primer recommends dreaming big.

In the early stages, you shouldn’t limit your interests based on what the other side may or may not provide. Taking a narrow approach does two things that negatively impact you: first, it makes you focus on positions rather than interests since you are more concerned with what you can get rather than why you want it. Second, you would be negotiating with yourself instead of the other party, and that violates one of the elementary rules of negotiation.

To use the preferred method, start by asking yourself (and your clients) the “perfect world” question: “In a perfect world, what would you get at the end of the negotiating process?” Document every response they offer.

Once you have you the unbounded list of interests, start challenging each line item with the other side's perspective in mind. How can we justify that? Is it too exorbitant? What are our priorities relative to all those interests? What concessions would we be willing to offer to achieve each of those interests? How is the other side going to fulfill our requests?

What'll end up happening as you go through that process is that elements of your negotiating strategy will begin to form organically. You will start to understand your own priorities better. You can also anticipate how the other side may approach you during the negotiation. You'll see which interests become your *indispensable*, your *desirable*, and your *disposable* ones. In some cases, you may even be able to identify alternative solutions for those interests that don't require negotiation, which will help you strengthen your BATNA (best alternative to a negotiated agreement).

Using the "perfect world" approach to developing interests in negotiations will not fail you. The offices you represent will understand that you have taken full stock of their priorities. You will have enough throwaway positions to employ that make the other side feel like you've conceded enough to achieve your indispensable and desirable interests. Moreover, for many of your throwaway positions, you'll be able to find alternate solutions, so the cost can remain relatively low. Through this approach, you will find that while determining interests in a negotiation may present a theoretical dilemma, it doesn't have to be a practical one.

## **SECTION V**

# **PLAYING THE GAME**



*Negotiation of the Peace of Karlowitz that ended the Great Turkish War, 1699*

## Chapter 18

# Preconditions to Negotiations: Tools or Barriers?

**B**efore you reach the negotiating table, you or the other side may demand certain concessions. Any explicit demand that must be met prior to meeting for negotiation is called a “precondition,” and the jury is still out on whether its usage is beneficial to the party demanding it. In other words, folks still aren’t entirely sure whether preconditions are tools or barriers to achieving one’s goals.

Absent a definitive answer to that question, this chapter instead offers four things for your consideration as you approach your own negotiations: (1) the motives (good and bad) behind preconditions; (2) the problems with preconditions; (3) what you should do when encountering them, and (4) when you might consider using them.

### **Motives behind Preconditions**

As with most things, there are good and bad aspects to preconditions. More specifically, there are positive and negative motives that drive a negotiator to impose preconditions. Here are the *positive* motives:

***To yield a signal that a zone-of-possible-agreement (ZOPA) exists:*** Trying to determine whether a negotiation is worth your effort can be difficult. It can take time, coordination, and pre-negotiation. Sometimes you’ll have no idea if the other side is even earnest about

negotiating with you. A precondition essentially serves as a shortcut, especially for signaling core interests; e.g., when a warring party demands a cease-fire prior to commencing negotiations on a peace settlement, or when a country demands certain sanctions or trade barriers be lifted prior to meeting at the table. In cases such as these, one's willingness to accept preconditions is the indicator that a ZOPA exists.

**To build trust:** A negotiator may demand preconditions as a sign of trust. There are three types of trust at play here. First is the trust in a party's commitment to negotiating. The operative notion here is that if you put your ante on the table, you intend to play your hand. The second is trust that a deal is possible, which is where the signal that a ZOPA exists is important. Third, preconditions offer trust that implementation of a negotiated agreement is viable. If you accept a precondition and stay true to it, it's a sign that you'll be willing to honor whatever deal is made in the negotiation.

**To satisfy domestic policy audiences:** We often see politicians trumpet something like, "No meetings without preconditions!" This statement has nothing to do with achieving ends in negotiations; rather, it is about appearing strong to a domestic audience. The notion that a leader will demand concessions prior to meeting implies a position of strength or dominance in a negotiation. This sort of politicking is rarely helpful at the negotiating table, but sometimes this illusion of dominance is important in overcoming political barriers to negotiation; that is, perhaps potential veto players need to believe that you'll be in a position of strength going into the negotiation before offering their support. Taken from a positive view, a negotiator may be imposing preconditions to breakdown internal barriers to negotiation so s/he can get the job done at the table.

Then we have the *negative* motives:

**To establish dominance in the negotiation:** Some negotiators use preconditions to garner concessions prior to

reaching the table. The belief here is that if the other side is willing to deliver concessions before getting to the table, they will be able to offer more as soon as they get there. A negotiator may also believe that acceptance of preconditions puts them in control of the negotiation, where they'll dictate the location of meeting places, the frequency of interaction, the agenda, and eventually, the outcomes of the negotiation.

***To secure core objectives before actually entering a negotiation:*** Oftentimes, a negotiator will demand preconditions that satisfy all their indispensable interests for the negotiation. For example, a precondition that sanctions or trade barriers be lifted may actually represent the primary objective for the party demanding it. The problem here is that once those negotiators get these core objects, they will have gained enough to walk away from the table satisfied even if they get nothing else. This affords them a position of power in the rest of the negotiations, especially if there is nothing else they really want or need.

***To lock someone into the negotiation:*** Imposing a cost to begin negotiations makes walking away more difficult. Put another way, it is harder to justify folding a hand when you have chips in the pot. By forcing you to concede something before getting to the table, the other side is effectively raising the cost of walking away from a deal, even if that deal may be less than desirable.

### **Problems with Preconditions**

Regardless of whether the motives for preconditions are positive or negative, there are problems with their usage:

***Preconditions can erode trust.*** While a precondition may be used to garner trust for the side demanding it, preconditions can erode trust from the side that is on the receiving end of those demands. In other words, while one side's trust may go up, the other side's will likely go down. In the end, preconditions can yield a net negative in the trust column.



***They can derail the negotiation process before it starts.*** Imposing preconditions sets a tone for the negotiating process. It leads off with a *position*-based rather than *interest*-based approach and lays the foundation for transactional bargaining rather than flexible negotiating. It also opens the door to bad faith negotiating tactics. Taken in aggregate, this can completely derail your negotiating process before you even get to the table to begin formal talks.

***Preconditions can create domestic political barriers for decision-makers.*** While imposing preconditions may be necessary for one side to placate its domestic policy audiences, it can create barriers for the other side. In other words, the preconditions that are meant to make one side appear strong to gain support for the negotiation can make the other side appear weak, which may be unacceptable. When things become unacceptable, the negotiation process withers.

### **What to do when encountering preconditions**

If the other side is demanding preconditions, there are five actions one should take:

- 1) Recognize them as preconditions because the other side may not explicitly claim them to be. Sometimes calling out the other party can get them to reconsider their approach.
- 2) Be clear with your response to those preconditions. Explain exactly why their demands are acceptable or not, and if accepting preconditions, be explicit in which preconditions you are meeting so the other side does not re-define its requirements later.
- 3) Insist upon reciprocity. If someone sets a precondition, you should set one in return. Better yet, you can roll that proposal directly into the next action below.

- 4) Propose an agenda and put the preconditions on the table as negotiable items. With this option, you aren't rejecting the preconditions outright; instead, you're simply incorporating them into the broader negotiating effort.
- 5) If you decide to accept preconditions, be sure to stay true to them and hold the other side stay accountable for any preconditions that you have set. Since preconditions are often signals of trust in a negotiation, breaking a precondition can derail the negotiating process. If you intend to break a precondition, have a good reason for it, and be explicit to the other side as to why you are breaking it.

### **When you should consider using preconditions**

As a rule, it is best to avoid unilaterally imposed preconditions. In their basest form, they are ultimatums just to get to the negotiating table. Based on the problems associated with preconditions, they are more often barriers to the negotiating process than tools for achieving desired outcomes. If there is a concession needed from the other side immediately, it is better to get to the table and negotiate for it. If the other side agrees to it, it won't be a concession to a precondition (which can generate resentment for negotiating counterparts), it would be a successful sub-agreement within the broader negotiating process, which helps generate momentum for the rest of the agenda.

There is only one circumstance where preconditions are advisable: when you need to eliminate internal barriers that are preventing you from getting to the negotiating table. In other words, your goal in using preconditions is less about the other side and more about getting the space necessary within your organization or government to maneuver in negotiations. In those cases, you must explicitly communicate to the other side why there are barriers and how preconditions can eliminate them. As with so many other things in negotiation, clear and authentic communication is key.

## Chapter 19

# How to Lead an Effective Negotiating Session

Regardless of the situation, objectives, or players involved, it is important never to waste an opportunity during a negotiation. Every interaction counts, and that means when you find yourself at the negotiating table you have to maximize the session. But how do you do that?

There is much to be written about specific techniques, sequencing, and delivery of proposals, but stripped down to the foundation, there are ten core steps to making the most out of any negotiating session.

*The first two come before the session convenes.*

### **1) Determine the objectives of the session in advance.**

Before inviting the other side to a negotiating session or accepting an invitation to one, make sure you have a clear set of objectives in mind. Even if you have a broad negotiating strategy, you must determine what your goals are for the specific session and how you intend to achieve them. “Winging it” is hardly ever a good idea in any situation, but there are two specific problems with doing it in a negotiating session: (1) you waste precious time fact-finding and trying to come up with objectives on the fly, when you could have done that in advance; and (2) when you try to determine your potential outcomes during a meeting, you end up

shaping your own objectives based principally on what the other side is telling you at the table. Simply put, you're negotiating on their terms, not your own, and that's never a good thing.

Additionally, it is not only necessary to have a good idea of what you hope to achieve, but you should assess what the other side is aiming for as well. That may be difficult, especially in the early stages, but always try to put yourself in the other side's shoes and think about what they might be trying to get from you in a particular negotiating session. Having at least a modicum of understanding of what the other side is trying to achieve will enable you to respond more calmly and flexibly at the table when they issue demands.

## **2) Ensure you've included all the right people.**

You cannot guarantee how many negotiating sessions you'll get, so you must make every one of them count. Make sure you have the people you need from your side to meet your established objectives. Call, follow-up, and never just assume those individuals are committed and prepared. An unprepared participant in a negotiation can be worse than if s/he weren't there at all.

If you cannot muster the necessary people from your team, reschedule the session or be clear with the other side on what issues or topics may be off-the-table given the absences. The latter option should be done sparingly, because the other side may see it as a tactic to avoid negotiating certain items. That will erode trust and invite reciprocal behavior.

As for the other side, it is not your responsibility to guarantee that they bring the right people, but be explicit with your expectations beforehand. This is especially relevant when it comes to rank level, both from a protocol and practical perspective. Different ranks bring different authorities as well as different views on problem sets. Also, even if *you* don't care about rank disparity, the other side might, and that can derail a session right from the start.

*The next seven steps are done at the negotiating session itself.*

### **3) Ask everyone to introduce themselves.**

Always go around the room and ensure folks introduce themselves and the office or organization they represent. This is essential for four reasons. First, it gives you a sense of the audience in the room. Second, it is essential for record keeping. Third, it recognizes each individual's role in the negotiating process. This is not just important from a leadership perspective, but it is critical when parties to the negotiation want to avoid acknowledgment of a certain individual or the office or country s/he represents. Fourth, it supports relationship building—even if you know everyone in the room, others may not.

### **4) Recap where you are in the negotiating process.**

Give your counterparts a clear understanding of where you think you are at in the negotiations. If it is the opening session, use this step to explain the factors that brought you to the table in the first place; e.g., the overall purpose of the negotiation and any preconditions that either side has satisfied. If you are further along in the negotiation, use this step to recap previous sessions and/or documents that the other side may have passed in the interim. For example, “We reviewed your proposal from last week. As we understand it, your position is [X]. Our interest remains [Y], which is why we want to explore other options that could be mutually acceptable.”

### **5) Explain your intent for the session.**

Once you have acknowledged the foundation for the session, you should set your expectations for outcomes. This helps focus the session and allows the negotiators on the other side to consider how they can approach those expectations. It also enables you to establish a tone, but be cautious with that: if you open too combatively, you may put the other side on the defensive or anger them. Emotional negotiating rarely yields positive outcomes.

## **6) Keep discussions on point.**

If you are leading a negotiating session, it is your responsibility to ensure that it remains on track and in line with the objectives you laid out. If discussions begin to stray from the agenda, interject and get conversations back on track. If the tangential points were valuable, come back to them at the end of the meeting or set up a sidebar for later.

## **7) Take your own notes.**

It is impossible to run an effective negotiating session if you are not keeping track of positions, issues, or key information. These notes don't have to be as in-depth as meeting minutes, but they need to be enough to serve as memory joggers as you consider counterproposals and challenges to the other side's positions. They will also be important for recapping the outcomes of the session for yourself and other participants.

## **8) Use sidebars and breaks.**

While you never want to disrupt a good rhythm in a negotiating session, you should not hesitate to call for sidebars with your team or recesses to re-calibrate. Don't put yourself in a position to make mistakes for the sake of trying to power through a session without a break, and if you bring a team to the negotiating session, use them.

## **9) Review key positions and agreements that came out of the session.**

Always review the list of completed agreements and unresolved positions at the end of the meeting so that everyone is clear on what needs to be done thereafter. This also allows for additional clarification, as necessary. The last thing you want is for the other side to walk out of a negotiating session assuming that you had agreed to something you didn't, or for your side to believe the other had conceded something they hadn't. It can feel cumbersome at times, especially at the end of a long negotiating session, but it is always worth it.

**10) Set the stage for follow-on action.**

In closing the negotiating session, be sure to note if you intend to host a follow-on meeting, offering a proposed date and time (or at least an approximation). Further, in the same manner as your opening to the session, you can use your closing to set a tone. What kind of report do you want the other side to deliver to their higher-ups? Was the meeting contentious? Was it productive? Be careful with the way you close a session, because the tone you take at the end of the meeting is the one that will stick with the other side. It is possible for an amicable, productive negotiating session to be ruined by a tantrum-riddled finale, just as a hard-nosed, heated session can be pacified with a calm and authentic closing.

\* \* \* \* \*

The trick with these ten things is to put them into practice at every negotiating session and make them routine. It can feel a bit unnatural at first, especially if the other side does not immediately take to it. However, negotiation is a two-way street, so don't ever feel obligated to abandon your best practices, especially if it's only to placate a bad faith negotiator. Instead, follow these steps and maximize the utility of every negotiating session you lead.

## **Chapter 20**

# **Bad Behaviors to avoid from your Negotiating Team**

**N**obody starts off as a great intergovernmental negotiator. Even experienced salespeople, hagglers, and gamblers would have trouble in intergovernmental negotiations, because the rules are different, the stakes are often higher, and there's usually a team that must find a way to work together. Those things all demand more from a negotiator, and the only way to improve is by regularly critiquing yourself and evaluating the other members of your negotiating team. To help speed you on your course towards becoming a better negotiator, there are lessons learned from some of the bad behaviors that are commonplace over the course of a negotiation.

Certainly, there are some bad behaviors that are obvious. First and foremost is lying. 'Lying' does not mean withholding some of your cards; rather, it means making false claims or presenting data that you know to be untrue. Another is making an agreement that cannot be honored. While such a trick may work to buy time or mislead the other party for some ulterior motive, it should never be employed in intergovernmental negotiations. Reputation is a national interest because it can affect dealings elsewhere. The last example an obvious bad behavior is personally attacking members of your own team or the other side. It goes without saying that such behavior is not only unprofessional, it is destructive for the negotiating process and erodes long-term relationships.



While those bad behaviors are obvious, there are others that are less so. In many cases, these are correctable—a capable lead negotiator will identify them early and address them quickly. If the behavior persists, the lead negotiator has a tough choice to make in whether to remove someone from the team. It is an important choice though, because all the bad behaviors listed below can have lasting, negative impacts on intergovernmental negotiations if not sufficiently addressed.

So, without further ado, the ten bad behaviors to avoid from your negotiating team:

### ***Sympathizing***

This is ‘feeling bad’ for playing hardball and/or believing the other side deserves more than what your side is willing to offer.

You should never feel guilty about negotiating as long as it’s done honestly, forthrightly, and without exploitative tactics. The other side comes to the table expecting to negotiate, and if you engage fairly, they have every chance to advocate for themselves or to walk away if your proposals are unacceptable to them.

### ***Kibitzing***

Kibitzing happens when someone is absent for most of the negotiation prep, comes in at the last minute, and blows up negotiating strategies by imposing additional constraints or issuing new critiques.

Sometimes that feedback is valid, but if the member of the team was doing his or her job, it should have been addressed early. Other times, the kibitzing may be uncalled for and unnecessary, but either the member has enough pull from a home agency or sows enough doubt among the negotiating team that you change negotiating strategies anyway. In any of those cases, the late feedback forces last minute changes and puts you on your back foot going into the negotiation.

### ***Poisoning the Well***

Worse than skepticism, poisoning the well is taking preemptive steps to discredit the other side with irrelevant or false information. For example, a member of your team may tell stories about the other side's lead negotiator that could make him or her seem untrustworthy and/or incompetent.

This breeds cynicism, erodes trust in negotiations, and forces a narrow, transactional approach based on positions rather than interests.

### ***Undermining***

This is when someone on your team introduces information or makes arguments at the table that undermine your own side's negotiating positions.

It often happens when someone is unfamiliar with the negotiating strategy, fails to keep the big picture in mind, or has ulterior motives.

### ***Ball-hogging***

Like ball-hogs in sports, this is when members of the negotiating team try to do all the talking in prep and during negotiations. People who are ball-hogging often overstep at the negotiating table.

Chapter 12 of this primer discusses the essential role players to have on an intergovernmental negotiation team, so there is no reason why people should try to take on everything themselves. Ball-hogging can disrupt a negotiation strategy, reduce your team's credibility, and create unforced errors in negotiations.

### ***Tattling***

Tattling is threatening or actively trying to change the course of negotiations by unilaterally going outside the team to a home agency or decision-maker.

Trying to manipulate your negotiating team by using outside influence erodes trust, damages team unity, and disrupts negotiating strategies.

### ***Leaking***

Simply put, this is delivering information about the negotiation to the press without permission. Some people like to use leaks strategically, but it typically does more harm than good in any context. It erodes trust in negotiations and undermines the formal negotiating process. Engagement with the press is important, but it should be deliberate rather than via leaks.

### ***Spitballing***

Spitballing is making up negotiating positions on the fly, as in, “I’m just spitballing here, but...” Improvisation can be good in a negotiation, but only if the strategy allows that kind of flexibility at the table—in intergovernmental negotiations, that is rare.

### ***Losing control***

A member of your team loses control when failing to keep a cool head and making outbursts at the table, especially during heated negotiations. In short, it is responding emotionally rather than rationally. Negotiating with displays of emotion can be intentional—even helpful at times—but when using it, every reaction should still be measured and deliberate.

### ***Self-promoting***

This is when a person privileges his or her own career goals vis-à-vis the negotiating process. When you or members of your team insert personal interests into a negotiation, it shifts priorities, introduces a way for the other side to exploit your team, and distracts from your side’s overall goals.

\* \* \* \* \*

### **Some ground rules on dealing with these behaviors:**

- You may be prone to any of these bad behaviors yourself. Always do self-evaluations before, during,

and after a negotiation to see how you can improve. If you engaged in any of these bad behaviors, try to understand why and what you could have done better.

- Except for tattling, leaking, and self-promoting, many people do not recognize that they have done something wrong until someone tells them. Do not hesitate to address bad behavior when you see it. For the same reason, be receptive to feedback you receive from others.
- If bad behaviors happen at the negotiating table, they need to be addressed as soon as possible (usually at the next break, though if it is bad enough, you can call for a quick sidebar with your team immediately). If members of your team continue to engage in bad behavior, the next step is to move their seats, shifting them further down the line or from the table to the back bench. If they keep doing it, it's time for formal counseling and perhaps to look for a replacement.
- Understand that most people who find themselves in intergovernmental negotiations are amateurs at negotiating, and that's true on both sides of the table. If possible, take time to talk to your team about these bad behaviors at the start when you lay out your expectations for the negotiations. If people understand from the get go, it makes the process a lot smoother and helps your team operate more cohesively.

As important as it is to mitigate these bad behaviors within your own team, don't be afraid to call attention to it if you're seeing them happening on the other side. Negotiations are a two-way street, and sometimes you need to shine the light on bad behaviors to preserve trust and improve the negotiating process.

## Chapter 21

# Negotiating from a Position of Weakness

No one seeks to negotiate from a position of weakness, but sometimes there isn't a better option. Whether you're someone trying to buy a car after moving to a new town, an Amazon employee trying to get better benefits from corporate, or the Faroe Islands being muscled into accepting Huawei 5G, you're negotiating from a weakened position. But what exactly makes a "position of weakness," and how do you overcome it?

There are six major factors that contribute to a weak position in a negotiation:

### **1) The other side commands more power than you, whether in resources or legitimacy**

Perhaps this is the most obvious factor, but it is commonplace across the broad spectrum of negotiations. We see it in interactions between great powers and smaller nations, in negotiations between companies and their employees, and almost anytime an individual is trying to pitch a new idea to a big corporation. It is especially prevalent in labor disputes. A single minimum wage employee has little hope of negotiating successfully against a company with a seemingly endless supply of money and lawyers. In each of these cases, there is disproportionate power among negotiators.

**2) Your WATNA is more likely than your BATNA**

When walking away from a negotiation is more likely to yield a worst alternative to an agreement than a best alternative, it creates a conundrum. In these cases, the short-term impacts of taking a bad deal may actually still be better than the short-term consequences of not taking that deal at all. In what I call the “one problem at a time” effect, a weaker negotiating party accepts a deal to solve a short-term problem while ignoring the longer-term costs. This is why Chinese “debt diplomacy” is so effective, because countries will seek the near-term solutions despite the longer-term traps.

**3) The other side prefers status quo**

If the other side perceives its BATNA to be just as strong or stronger than any potential negotiated deal, they have leverage at the table. This is because they can demand all they want without worrying that you’ll walk away, since it is already in their interest to avoid a negotiated settlement.

**4) The other side does not trust you**

If the other side distrusts you, you will have to work that much harder to implement confidence building measures and to reinforce trust through the negotiating process before they accept a deal with you. They may also demand preconditions, which means that you’ll have to make concessions just to get to the table.

**5) The prospects of the negotiation are clearly zero sum**

In a zero-sum negotiation where your gain is the other side’s loss, it hampers your ability to generate “win-win” scenarios. This is common in any price bargaining, where you’re simply ‘dividing the pot’. It becomes even more difficult if the objects you are seeking at the table cannot be negotiated by increments; that is, they are indivisible. An example of an “indivisibility” is sovereignty (land rights, decision-making, governance, etc.).

**6) You have a time constraint**

When you have to get a deal done by a certain time, you will be more willing to make compromises to meet the other side's demands. This is exponentially worse if the other side *does not* have a time constraint but knows that you do. Opposing negotiators that are competent will always use this to their advantage.

\* \* \* \* \*

You may find yourself in a position dealing with one or more of those factors. If you're dealing with all of them at the same time, you're in terrible shape.

However, do not despair: remember that there has always been someone in worse shape than you who has still succeeded. They overcame their weakness(es) at the negotiating table by exercising one or more of these six actions:

**1) Introduce new alternatives and/or improve the ones you've got**

If you have weak alternatives, the logical first step is to try to strengthen your options outside the negotiation. Are there opportunities you haven't explored? Have you tried dealing with other parties instead of the one you're currently engaging? Could you potentially seek mediation or arbitration? Sometimes you may not have the ability to improve your alternatives, but this should always be among your first moves in trying to strengthen your negotiating position.

**2) Increase the perceived value of what you're offering**

Sometimes the other side favors status quo or believes its BATNA is stronger than what you can offer because they do not understand the true value of your proposal. It is incumbent upon you to present your proposals in a way that maximizes their perceived value—that means using language and a presentation style that registers with the other side. You may also consider engaging outside entities who can help reinforce the value of your proposal.

### **3) Foster trust through relationship building**

If the other party distrusts your motives, proposals, or ability to implement a deal, you must consider how to allay their fears. The first step is building personal relationships at the negotiator level. There may always be distrust at the higher levels, but you cannot allow that to seep into your face-to-face dealings. Part of this involves taking the time to understand the other side's fears and addressing them early, especially through your proposals in the negotiation. Sometimes the mere recognition that your side is distrusted allows you to eject the elephant in the room and start the process on more even-footing.

### **4) Collaborate with others in the negotiating process**

The reason why labor unions are so important to workers is because they empower the individual through collective bargaining against a much stronger and better-resourced negotiating party. Union organizations are not universally applicable, but the principle behind them is; that is, if you are a weaker party in a negotiation, work with others who have similar interests to achieve common goals or to get their assistance in executing any of the other actions listed here.

### **5) Introduce external pressures**

This is a process whereby you engage entities outside the negotiation to put pressure on the other side's negotiators. These entities could be government officials, media, special interest groups, influential citizens, grassroots organizations, etc., and the goal is either to have them directly weigh in on the process or to raise public awareness to the point that the other side becomes more cautious with their steps moving forward in the negotiation.

### **6) Worsen the other side's alternatives**

If bad alternatives weaken a position in negotiation, logic follows that you can strengthen your relative position by worsening the other side's alternatives. There are three ways of doing that: first, you can threaten the other side. This is a



favorite tactic of North Korea; for example, “If you don’t change your approach to negotiations, we’ll be forced to continue developing strategic weapons.” If they do that, the North Koreans are really saying, “Make a deal, or we’ll build more nukes,” which makes the alternative to negotiation worse by the international community’s standards.

The second way is by imposing costs or penalties for not negotiating. In the business world, this could come in the form of litigation. At the intergovernmental level, the most common example is introduction of sanctions or trade barriers.

The third way is by eliminating the other side’s alternatives. This often comes in conjunction with other actions in this list, namely introducing external pressures and collaborating with others.

\* \* \* \* \*

Executing several of these actions at once in an orchestrated and seamless manner takes practice. Some, such as “worsening the other side’s alternatives” or “introducing external pressures” are risky and could backfire, so you must be cautious in how you approach them. As with anything, a risk assessment is helpful: determine whether the benefits of certain actions meant to strengthen your position outweigh the costs if you slip up in execution. And as always, continue to adjust your strategies as the negotiation develops.

## Chapter 22

# Dealing with Tilt

Sometimes in a negotiation, the other side will say or do something that triggers a visceral reaction from you. Be it anger, confusion, or frustration, the typical response is to become heated, interrupt, raise your voice, or attack the party on the other side. It can cause you to forget your whole plan for the negotiating session and even walk you into a well-laid trap from the other side.

Poker players have a term for that: *tilt*. They define it as a state of mental or emotional confusion or frustration in which a player adopts a less than optimal strategy, usually resulting in that player becoming overly aggressive. That same condition exists in negotiations, and just like causing a player to lose chips at the poker table, it can lead to negative outcomes at the negotiating table.

Tilt can happen to any negotiator, even a truly seasoned one. There is no shame in it happening, but great negotiators take steps towards managing tilt. There are things that one can do prior to a negotiation to try to prevent it, as well as techniques for recognizing it and recovering from it should it hit during a negotiation.

### **Preventing tilt through negotiation prep**

In principle, the best way to avoid tilt during a negotiation is through preparation. The more prepared you are, the easier it is to stay in control of yourself. Here are some specific tasks that can help:

*Have a well thought out negotiating strategy*

Having a clear understanding of your objectives and interests and how you intend to achieve them during a negotiation helps you keep the big picture in mind and stay focused.

*Have a solid plan for each negotiating session*

Building a game plan gives you a roadmap to come back to if you feel like you're starting to tilt. Ensure you've built a solid plan for the session, and review it beforehand.

*Anticipate potential bad faith negotiating behaviors*

It's always easier to deal with bad behavior from the other side when you're expecting it. Take time to consider what the other side may do and how you would want to respond to it in advance of the meeting.

*Recognize your own triggers*

Growing as a negotiator takes introspection. Take time to examine the things that can set you off at the table, document them, and try to understand them. You may not be able to resolve the source of that trigger, but knowing that it exists can allow you to adapt if you encounter a situation that could cause tilt.

**Recognizing tilt during a negotiation**

At any point in time during a negotiating session, you should be simultaneously keeping track of yourself and your counterpart. That can seem like a lot to contemplate in the heat of the moment, but there are certain tells that indicate tilt. Those include the following.

*Elevation in tone and volume*

When a negotiator begins speaking louder and with more emotion than usual, it is a telltale sign of the onset of tilt.

*Interrupting the other side*

Interruption reflects impulsivity and aggression at the table—both of which are key features of tilt.

*Deviation from the plan for the session and/or overall negotiating strategy*

When you begin abandoning your strategic objectives for the sake of fighting a single point in a negotiation, you are invariably experiencing tilt.

**Recovering from tilt**

This can be difficult; after all, controlling emotions is almost never easy. All negotiators should take time to think about the things they can do to improve their recovery from tilt, but here are a few tricks that tend to work universally.

*Take a few deep breaths*

If you need to buy a few seconds, look through your notes or search for something in your bag or briefcase.

*Ask an open-ended question to the other side*

Take the time during their response to contemplate your next move.

*Drink something*

If you're drinking, you aren't talking. If you aren't talking, you have time to think about your next move.

*Invite another member of your team to offer an opinion on the matter*

While they speak, take time to calm yourself and prepare your follow-up to your teammate's comments.

*If you still feel elevated, request a break or a sidebar with your team*

Sometimes the only solution to tilt is by taking a break. This option is fine as long as you do not abuse it. When taking the break, try to evaluate what it was that caused you to tilt, and if you need to address it (such as an inappropriate comment or blatant bad faith tactics from the other side), do so calmly as soon as you return from the break.

### **Managing tilt from the other party**

When an opponent experiences tilt at the poker table, it presents an exploitable opportunity; that is, you stand to profit from it. In zero sum, one-off negotiations, you may also be able to gain some ground. However, if you are engaged in *intergovernmental* negotiations that require outcomes centered on collaboration, exploiting the other side is rarely advisable. Remember that you need to come to an agreement on something that will require implementation and could need ratification, so your best bet is not to use tilt to extract concessions, but to use it to gain information from the other side that might otherwise not be accessible.

When negotiators are experiencing tilt, they will be more impulsive, which could lead to divulging information that they did not plan to make known. In these situations, rather than returning fire at the table, ask questions. When you think you've asked enough questions, ask a few more. You will notice two things start to happen: first, negotiators on the other side will tend to reveal key facts and beliefs underpinning their negotiating positions; and second, those negotiators will tend to calm down and even come to gain a modicum of respect for you because you talked through it rather than continuing to escalate. Sometimes feeling like someone is really listening is enough to bring a person back from the brink of completely losing control.

Once the other side's tilt has subsided, you can use the initiative as the individual who remained calm to continue with your newfound information in hand. Sometimes that can make all the difference.

## Chapter 23

# The Bad Faith Negotiator's Playbook

The goal of every negotiator can be boiled down to four simple words: maximize gains, minimize concessions. There are many honest and fair ways to do that. The problem is that there are many more disingenuous, dishonest, shady, manipulative, or downright hostile ways to influence the outcomes of negotiations. Those moves comprise what this primer calls the “Bad Faith Negotiator’s Playbook.”

Some of those plays are conscious, meaning the opposing negotiator is purposely doing these things, while at other times the negotiator is unaware that s/he is acting in bad faith. You must remember that most people sent to the negotiating table are untrained and inexperienced in the art of negotiation, so many will fall back on the tactics they’ve seen in movies or employed in personal negotiations elsewhere. Then again, some negotiators are simply underhanded. If you’re in enough negotiations, you’ll see your share of both.

Whether conscious of it or not, there are three fundamental reasons why negotiators fall back on the bad faith playbook.

### **1) To circumvent actual negotiations**

Circumventing negotiations means the negotiator is trying to avoid collaboration or bargaining at the table at all. Here are the moves you’ll encounter when the negotiator is seeking to circumvent the negotiating process:

### ***Forum shopping***

Before entering negotiations, the other side may shop around your government (or organization) looking for the person or office that will be the most willing to give concessions for a deal; in other words, they're looking to exploit your weakest link before having to offer anything at the table.

### ***Ultimatums***

Instead of negotiating with you, the other side will simply say, "Take our proposal, or else." With this, there is no negotiation—only demands. It's no different than a hostage taker saying, "Get me a ride out of here, or I'll start killing hostages." The problem with giving into these ultimatums is that if you concede to one, you'll only get more ultimatums in return.

### ***End rounding***

When some negotiators don't get what they want at the table, they may go straight to a decision-maker on your side to get that person to influence your negotiating parameters. In some extreme examples, they may go to your boss and attempt to get you removed from the negotiation.

### ***"Hands are tied"***

This is a tactic meant to convince your side that the negotiator doesn't have authority to make a decision or to offer a concession on something. The tricky part is that sometimes this statement may be true, and it could be a form of authentic communication of constraints. However, that's what makes it a believable ruse when a negotiator uses it as a way of excusing him or herself from having to make a tough decision.

### ***"That is impossible"***

Whenever someone says, "That's impossible," at the negotiating table, what they are really saying is that they haven't considered it as a possibility or that they're protecting a

particular interest. Here's a simple example: you knock on someone's door and say, "I want to buy your house tonight." The person answering the door may say, "That's impossible!" But what if you opened up a trunk with 10 million dollars in cash? In that case, the impossible may suddenly become possible. The point is that there are very few things that are untouchable in a negotiation, so things are only "impossible" until either the two sides can find a deal that makes it "possible," or the other side takes the time to explain specifically what makes a proposal unacceptable based on interests, constraints, or restraints.

### ***The "trading favors" act***

A negotiator may ask you to concede something as a personal favor with the promise that the favor will be returned down the line; e.g., "If you can do this for me, I'll have more leverage with my boss to get this other part of the deal done." Of course, the bad faith negotiator has no intention of actually returning the favor.

### ***Negotiating via the media***

Instead of dealing with you at the table, negotiators may go straight to the media to shape the narrative surrounding the negotiation. They will leak information, paint you as the bad guy, and take steps to force you into a position to make concessions based solely on the pressure you'll receive from external forces. While weaker parties may have to do this to level the playing field at the negotiating table, all too often, this is simply employed as a bad faith tactic in what should otherwise be fair and respectful deliberations.

## **2) Forcing bad decisions from the other side**

In trying to force bad decisions from the other side, the opposing negotiator will employ moves or behaviors that disrupt your negotiating strategy, cause distress, and obscure your judgment, among other things. These include the following:



***Exploiting home field advantage***

The side that hosts a negotiating session has certain advantages. It can control the physical environment (seating arrangement, temperature, access to bathrooms and food, etc.), its negotiators don't have to travel, and it has the opportunity to lavish the other side or subject them to privation as it sees fit. What you may see in your negotiations is the other side trying to do one of two things related to home field advantage.

First, the other side's negotiators may try to ensure that the majority (or all) negotiating sessions are done on their turf. That is a violation of basic negotiating protocol, but it happens routinely. The justifications range from excuses (e.g., "We would like to continue the negotiations but we cannot be further than an hour away due to government policies") to demands ("We will hold negotiations here or we won't hold negotiations at all.").

Second, they will try to exploit the situation. They may manipulate the physical arrangements of the room (seating, temperature, etc.), deny a unilateral space for your team, or leave you waiting for long periods without engagement. Worse, they could try physical intimidation tactics or use unauthorized recording devices in unilateral meeting rooms.

***Vying for alpha***

This is a move where an opposing negotiator attempts to establish a position of dominance over you. This can be done through tone, demeanor, or language, but also in physical arrangements such as putting you in an uncomfortable chair, a shorter chair, etc. The point of this is to knock you off your game and to establish the opposing side's command of the situation.

***Red herring***

A negotiator uses a red herring solely to gain leverage over you. The tactic is to put an arbitrary element of the proposal on the table to distract you from the core trade-offs of the deal, and then take it off to make it seem like a major

concession. Using a financial negotiation example here is illustrative: Let's say you're buying a car, and the dealer says, "I can give you the car for \$26,750. That includes the value of the car at 25,000, plus handling fees and dealership overhead." You may push back, at which point the dealer says, "Okay, I tell you what: if we can make a deal right now, I will waive the handling fees *and* dealer overhead, so you can get the car for \$25,000." In that case, the dealer did not negotiate the value of the car at all—he simply promised to waive fees that he had unilaterally imposed in the first place. Those extra fees are examples of red herrings.

### ***Jekyll and Hyde***

A negotiator may be easy to deal with one session and a monster the next. This inconsistency in behavior is meant to disrupt your negotiating strategy, principally by making you overreach during the "Jekyll" sessions because you are trying to maximize what you can on a good day. In that case, you're negotiating based on the other side's behaviors, not the merits of the deal.

### ***Good cop, bad cop***

If you've ever watched a cop show, you've seen this at play: one member of the other side is a hardliner while another takes a softer approach to coax concessions from you. Here is an example:

*Negotiator 1*: "What is this!? This is really the best you can do? You gotta be kidding me. You know what? This is a waste of my time!" [Shoves chair back and storms off]

*Negotiator 2*: "Please excuse my colleague...He's just under a lot of pressure right now. We all are. Look, I think we can make this deal work. If you can just bend in these areas, I think I can convince him to calm down and make a deal. You think we can do that?"

In this case, you're not actually negotiating the merit of an agreement, you're negotiating based on someone's behavior—one that is likely an act.

### ***False urgency***

Some negotiations have real deadlines, but many don't. When deadlines are arbitrary, some negotiators will generate a false sense of urgency to rush your decision making or to create fear that the deal will not happen. The whole point of this is to force you to make rash decisions and/or to offer concessions you normally wouldn't make.

### ***Manufactured crisis***

Opposing negotiators may manufacture a crisis to change your calculus at the negotiating table and/or to give the impression that they are offering concessions by deescalating. North Korea is notorious for this: the regime causes the appearance of crisis by executing provocations and blames the U.S. and/or South Korea for it. When they deescalate, many see it as a major concession, forgetting that the North Koreans were the ones to escalate in the first place.

### ***False authority***

Some negotiators will inflate how much authority they actually have in an attempt to shape your decision-making at the table. This can be used to intimidate you into offering concessions or to agree to a trade-off where you won't actually get anything in return.

### ***Personal attacks***

A personal attack is a statement made at the table or in public which denigrates you and/or attempts to undermine your legitimacy. When someone issues a personal attack against you, they are either unprofessional negotiators who cannot maintain their composure or underhanded negotiators seeking to elicit an emotional response that causes you to deviate from a rational negotiating strategy.

### ***Flattery***

Some negotiators will try to butter you up. They may attempt to inflate your ego to make you nicer at the table. They may do it to knock you off your game or to distract you. Whatever the case, if an opposing side's negotiator is flattering you, it's safer to assume that it's a tactic rather than an act of kindness.

### ***The "special relationship" act***

A common tactic, especially for foreigners dealing with Americans, is to feign the notion that the bond between negotiators is exceptional—that your relationship alone can yield results that others could not. While the relationship between negotiators is critical and can help overcome some sticking points, do not ever assume that it is special just because the other party tells you it is. What defines special negotiating relationships is how effective the two sides are in exploring mutually beneficial collaboration that leads to an agreement. If you find that your special "buddy" is asking for a lot without giving much in return, s/he is probably not your buddy.

### ***Blind-siding***

This is when a negotiator gives you a proposal or crucial information at a completely unexpected moment. The most common way this is done is to introduce something right at the end of a meeting; e.g., "One more thing before you go..." You may also experience it during a shared meal or a coffee break. Whatever the case, the purpose of this move is to hit you with something when you aren't ready for it.

### ***Gift giving***

There's a reason why governments typically limit the value of gifts officials are allowed to receive. Gift giving can constitute a form of bribery or attempt to establish undue influence. In negotiations, gift giving is also a way of softening negotiators and/or presenting the appearance of offering concessions while avoiding actual concessions at the negotiating table.

### ***False equivalence***

It is critical to know the value of what you have to offer and the value of what the other side is offering. Oftentimes, negotiators will try to claim equal value in trade-offs when there is actually significant disparity. They will talk up their own offers and denigrate yours in attempts to cloud your judgment.

### ***Tempo manipulation***

Manipulating the tempo of a negotiating session is one way of disrupting the other side's negotiating strategy or decision-making process. Tempo manipulation comes in many forms, but it includes speaking out of turn, interrupting the other side, taking long pauses, holding frequent huddles with their teams, and calling breaks at irregular times, among others.

### ***Roadblocks***

When a negotiator doesn't like the way things are going, s/he may introduce obstacles to progress. This could be imposing arbitrary preconditions or making intentionally ridiculous demands at the table to disrupt negotiations. The goal is to throw you off your game long enough until the other side can find a window of opportunity to regain the initiative.

### **3) Plays for boxing the other side into a deal they normally wouldn't accept**

The last tactic is to box the other side into a bad deal, meaning the negotiators are trying to get you to accept a deal that fails to meet all your expectations, whether knowingly or unknowingly. Here's how they do it:

### ***Wholesale dishonesty***

Unfortunately, lying is a common negotiating tactic. A negotiator may lie about any number of things, but here are a few examples:

- They could lie about whether a higher-level authority has reviewed a proposal; e.g., “My boss has analyzed what you proposed, and she cannot accept these items.” In this case, the negotiator is trying to make you believe that certain items are off the table even if they are still potentially in play. This is why coordination at all levels is important.
- A negotiator may lie about what s/he had agreed to in previous meetings. This is an easy way for a negotiator to attempt to undo past mistakes.
- A negotiator may lie about precedent to box you into a corner, such as, “Your predecessor and I already agreed to this. Perhaps you should check your records.” This is especially relevant if you are new to the position.

### ***The Fait Accompli***

A “fait accompli” is a thing that has already happened or been decided before those affected are aware of it, leaving them with few options but to accept it. A negotiating counterpart may pursue a *fait accompli* in an attempt to force your hand. Here’s an example of this in action.

*N1:* Today, we’d like to discuss your construction proposal. We reviewed your plan and see some major deficiencies that need to be addressed before we can accept it.

*N2:* It’s too late for that. We’ve already committed funds and signed contracts with construction companies. If we change the plans now, we’ll incur penalties and will be forced to explain to the public that it was your side that caused this to happen.

In that situation, the other side has taken unilateral action to paint you into a corner and force you to accept their construction proposal.

***Loaded agenda***

While rational negotiators approach an agenda as a list of topics to be deliberated, some negotiators will seek to load the agenda with conclusions favorable to their own objectives. For example, an agenda item for you may be, “Designation of the oversight committee,” whereas the other side would call that agenda item, “Agreement that our side is responsible for the oversight committee.” In these cases, Bad Faith negotiators are attempting to gain a *fait accompli* through agreement on agendas, meaning that once the agenda is set, terms that are favorable to them are already in place.

***Bait-and-switch***

This is a common tactic where the negotiator will entice you to the table with a seemingly good deal on an object you desire, only to change it up as soon as you arrive. In this case, the negotiator never had an intent to offer the thing you really wanted, they just needed to get you to the table to get the things that they wanted.

***The sneaky addition/omission***

Some negotiators will try to change the details of the proposal without broadcasting it to you. Their intent is to try to alter the terms without you realizing it. Even if you do notice, they will just brush it off as an oversight or as something they didn’t think mattered to you. Details always matter.

***Translation laundering***

When dealing with foreign negotiators speaking through interpreters, the other side will sometimes attempt to amend agreements by altering them during the translation process. Sometimes they will do this in written translations where the version in their native language reads different from yours. In other cases, they will repeat your statements back to you through their interpreters with intentional changes. If you are not paying attention, they will take their

laundered translations as the official minutes of the negotiation only to use them against you or your successors later.

### ***Premeditated crimes***

This is where negotiators agree to something knowing full well that their government has no intention of implementing it. What bad faith negotiators do is build in just enough vagueness into the letter of the agreement so that when they fail to act as you expect down the road, they can argue, “Show me where we agreed to that, because we never did.”

### ***Inches into miles***

This is a tactic where a negotiator takes something that you have agreed upon in principle and begins to add additional layers of negotiation on top of it to garner more concessions from your side. For example, you may have already agreed that the other side is going to construct a new facility for you. After concluding the portion of the agreement that already included cost-sharing, sustainment responsibilities, etc., your negotiating partner then says, “Okay, now we need to discuss compensation for local communities. If we do not get this done, we cannot provide the facility.” In doing so, they take a negotiating agenda item and stretch it out to maximize their own gains.

### ***Protracted negotiating***

Unfortunately, one of the most common bad faith negotiating tactics is to drag out the proceedings as a means to wear you down. The prevailing notion is that the longer it goes, the more willing you will be to grant concessions to reach a deal. This tactic is often paired with false urgency, where the other side suddenly imposes an arbitrary deadline in a protracted negotiation as a means to rush you into a bad deal.

\* \* \* \* \*



As you can see, there is an exhaustive playbook for bad faith negotiators. Of course, there are specific counters for each of these plays, but this primer boils it down to eight core behaviors that will serve you well in response to these moves:

- 1) Always remain patient and in control
- 2) Immediately call the other side out on bad faith behavior
- 3) Rely on support from your negotiating teammates
- 4) Document everything
- 5) Stick to your negotiating strategy
- 6) Don't allow the other side's unilateral problems to become your problems
- 7) When necessary, elevate issues to higher levels
- 8) If the bad behavior persists, walk away.

## Chapter 24

# Assessing your Negotiating Sessions

There is no such thing as a perfect negotiator, and there are certainly no perfect negotiations. Still, the great negotiators are the ones who put in the time and effort to the process, constantly self-critiquing and adjusting. A key function of this is assessing every single negotiating session.

After every negotiating session, you should take stock of where you succeeded, where you failed, how well you employed your negotiating skills, among other things. This will enable you to adjust your strategies and improve your techniques throughout the negotiating process. It also gives you an opportunity to reflect on the other party and document certain behaviors they demonstrated or information they revealed, both of which may come in handy later.

The questions below are important to answer and document after each session. Fifteen questions may seem like too many, but the routine of thinking through them quickly becomes second nature, to the point that you begin to consider them subconsciously. Make this a habit and it will become easier over time.

### *Negotiating strategy & outcomes*

#### **1) Are there any due-outs?**

In other words, are there any follow-on actions you must take, either because of an agreement you made with the other side or a promise to higher ups on your side. Be sure

to document these so you don't forget to take care of them before the next negotiating session.

**2) What were your objectives for the negotiating session?**

Be sure to consider only the specific objectives that you had hoped to achieve in this one engagement.

**3) Did you achieve your objectives?**

This is straightforward, in that you simply want to assess whether you got what you needed from the session. If you did, that's great—make sure to document it and communicate it to the interested parties on your side. If you didn't, be sure to adjust your negotiating strategy so you can make up for any objectives that you still need to achieve.

**4) Did you preserve your indispensable interests?**

This only requires a simple yes or no answer, but if your answer is no, you must consider the consequences of giving up that indispensable interest. Do you need to go back to the other side and renegotiate a concession? Do you need to convince your higher-level authorities to accept that you cannot secure that interest? Do you need to terminate the negotiation?

**5) What concessions did you offer?**

It is important to take stock of all the things you conceded to the other side. This is not to make yourself feel bad, but to keep a running tally of all you've done to try to accommodate a negotiated outcome. You can actually use this list in subsequent negotiating sessions if the other side is being obstinate; e.g. "We are not asking for anything more than what we've already yielded to your side. Here is the list of all the things we have conceded to you; now, it is time for your side to meet us halfway."

**6) What concessions did the other side offer?**

Just as taking stock of all the concessions you've offered is important, it is essential to do the same for the other side. It

is far too easy to feel like the other side has given you either too much or too little if you don't keep a record of it. When you have a tangible list of concessions to review, you may make more rational assessments of how the negotiation is going so far.

**7) Did you make any agreements?**

In other words, did you conclude negotiations on a specific provision or document? This is important in negotiations with multiple agenda items. If you come to an agreement, you should make note of it and try to keep the terms of that specific agreement off the table in the future. The other side may try to bring it up again to link it to other outstanding issues, but you should keep them honest and firmly remind them of what was agreed upon and when. Documentation of this is important.

\* \* \* \* \*

***Negotiating behaviors***

**8) Did the other side engage in any bad faith negotiating behaviors?**

If so, what? Did you address them? You should not let the other side get away with bad faith behavior, and documenting it not only helps you in future negotiations, but it will also inform your higher ups and successors of the challenges you faced in dealing with this particular negotiating partner.

**9) Did you tilt?**

What prompted it, and did you recover? Sometimes it can be difficult to admit one's own mistakes, but the only way to improve is to recognize where there were problems. Try to recognize your triggers and your follow-on actions that either alleviated or exacerbated the tilt.

**10) Did the other side’s negotiator tilt?**

If so, what prompted it? It is important to note your negotiating counterpart’s triggers so that you may avoid or exploit them in the future, depending on the situation. It is also useful so you can inform others on your side who may have to deal with that same negotiator.

\* \* \* \* \*

***Information that could influence the negotiation***

**11) What information did the other side reveal about their interests, constraints, or restraints that you did not already know beforehand?**

In a negotiation, you should always be on the hunt for the “black swan”—that piece of information that reveals a key interest, constraint, or restraint in a negotiation. Perhaps your negotiating strategy was predicated on getting a deal before a certain date, but the other side let slip that they have no chance of getting it ratified until after a higher-level veto player is shuffled to another posting. In that case, you may adjust your negotiating strategy to slow the pace of negotiations to ensure that the deal will be ratifiable and implementable.

**12) Was there information you wish you had during the negotiation but didn’t?**

You may still be perplexed about something that the other side is doing in the negotiation. They may be unusually stubborn on a specific provision or may be demonstrating erratic behavior that you simply cannot understand or explain. Try to isolate the vexing matter and dedicate resources to figure it out before the next session. You may do some additional research on the other side. Perhaps there is a cultural clue you’re missing. Maybe you need your “fixer” to address something in-between formal sessions. The first step of course is to have an idea of what you’re trying to figure out, which is why this question is so important.

## ***Team involvement***

### **13) Did you employ your negotiating team?**

If so, take the time to evaluate their performance so you can offer them constructive feedback. If not, you may consider how you could have used your team in the session to improve the outcomes. You should never waste an opportunity to employ your resources at hand if they can maximize your performance.

### **14) Was there anybody that you would have liked to have been on your team that was not present?**

Maybe you were trying to consider the specific language of an agreement and did not have a legal specialist at the session with you. Or perhaps you needed a subject matter expert to ensure that you did not concede too much. You should think about which role players could have helped you and make the effort to include them in the next negotiating session so as not to repeat missed opportunities or mistakes.

### **15) Who was on the other side of the table, and what roles did they play?**

Always consider who the other side brings to the negotiating session. This can offer a lot of information as to their interests, constraints, and restraints. For example, if there is a back-seater on the other team that does nothing but observe your negotiating counterpart, you will know right away that the other side will have some additional constraints and performative requirements at the table. Keeping track of who is there also allows you to understand how the other side is evolving over the course of the negotiations. If they start with twenty people in the early sessions and end up with two or three over time, that is a strong indicator of a lack of interest. The opposite—small numbers first that grow over time—would indicate growing interest. Keep track of these things, because every bit of information is helpful for shaping your follow-on strategies and game-plans.



*Signing of the London Peace Treaty between the Ottoman Empire and Balkan States, 1913*

## **SECTION VI**

# **ENDING THE GAME**



## Chapter 25

# Three questions to ask before closing a negotiated deal

When you approach the end of a negotiation, it can be a major relief. After all, negotiations are almost always contentious and labor-intensive. This is particularly true in intergovernmental negotiations where there are always myriad policy actors and interests at play on both sides of the table.

When a deal is close to being finalized, it is important to strike while the iron is hot before the other side begins having second-thoughts or seeking additional concessions. However, before launching headlong into an agreement, there are three questions you must ask yourself. If the answer to any of those questions is “no,” you need to go back and revisit the proposed deal. If the answer to all three is “yes,” then you know you’re safe to proceed.

\* \* \* \* \*

### **1) Does the deal meet our *indispensable interests*?**

For a negotiated deal to be successful, you must have met all your indispensable interests. If you haven’t, the deal is bad for your side, and you need to course correct before closing on it. The appropriate measure here is reengaging with the other side’s lead negotiator or employing your fixer.

Sometimes going back to the other side to re-open an item of negotiation can be difficult, especially if they

consider that matter closed. The best thing to do in that case is to approach your negotiating partner with an authentic explanation, a ready-to-offer concession in hand, and a guarantee that the deal can be closed once your indispensable interest is met. The combination of a quick win and the prospect of completing the negotiation is often too enticing for the other side to dismiss.

If that doesn't work, you may have to go back to the drawing board with your negotiating strategy, but by no means should you abandon your core interests in favor of speeding along a bad deal.

## **2) Is the negotiated deal *ratifiable*?**

Particularly in intergovernmental negotiations, a deal at the table will still have to be ratified by higher authorities, whether that is an executive official or a legislative body. When you make a deal at the table, you must ensure that it is able to gain higher-level approval. The last thing you want to do is to shake hands with your negotiating partner on a deal only to have it fail in the ratification phase.

The easiest way to make sure a deal is ratifiable is by meeting all of your indispensable interests. However, there are sometimes higher level "wants" that come into play later in the game that are not necessarily core to the negotiation. Many times, these are essentially "vanity" interests: things that can be spun as "wins" for political rather than practical gains.

These sort of vanity interests are important considerations in the ratification phase, and skilled negotiators take steps to accommodate them. They keep close contact with key officials responsible for ratifying the agreement. The goal of that communication is to avoid surprises at both the negotiator and ratifier levels; e.g., "Wait, you wanted that in the agreement," or "Hold on, why doesn't the agreement include this?"

Skilled negotiators will identify a ratifier's interests early and incorporate them in their negotiating strategies. They will also ensure that vanity interests do not affect the core exchange-of-goods in the deal. If you can build trust with

your negotiating partner, you should be able to avoid confusion when deliberating vanity interests vice practical interests.

### **3) Is the deal *implementable*?**

The true merit of a negotiated deal is how well it can be implemented. In some cases, there will be authorities empowered to adjudicate and monitor the implementation phase. When such organizations are absent, it is important to ensure that the negotiated agreement includes relevant checks and balances. An example here is the Korean War Armistice Agreement, which established a Military Armistice Commission and a Neutral Nations Supervisory Commission for the purposes of overseeing, inspecting, and reporting on the conditions of armistice.

A more difficult aspect of ensuring an agreement is implementable is to consider the durability of the agreement amidst changing political and economic conditions. For example, it is important to ask whether a change in administration could lead to untimely abrogation.

The agreement should minimize as much as possible the potential for unilateral, spur of the moment abandonment by evaluating interests across government agencies and the political spectrum. Nobody wants to air dirty laundry at the negotiating table, but it is important to be honest with the prospects of implementation and work with your negotiating partners to produce as durable an agreement as possible.

## Chapter 26

# Succeeding on the Follow-through in Negotiations

One of the most common mistakes negotiators make is failing on the follow-through. There is always a great temptation for negotiators to take a breather once they've secured the handshake at the table; after all, getting to an agreement can be a taxing ordeal. However, little that is accomplished in the negotiation matters until the deal is signed and implemented.

So, what comes after the handshake? The phases that follow negotiation are ratification, interpretation, and implementation, and there are six straightforward steps for managing them.

### **Step 1: Get it ratified**

Negotiators from all sides of the table should work with each other and their respective decision-makers to ensure that the deal gets formalized. Sometimes that's as simple as setting up a time and location for signing the agreement. Other times, one must contend with domestic veto players that seek to kill a deal for political or other reasons.

In circumstances with strong opposition, it is incumbent upon negotiators to use their available tools of information power to broadcast the merits of the deals. This is especially relevant when it comes to complex agreements that opponents are attempting to undermine through disinformation campaigns. It may also take face-to-face engagements with

potential veto players to gain their backing. Contrary to the cliché, there is no deal so good that it speaks for itself, especially to outsiders who haven't been through the negotiation process to understand the reasoning behind all the gains and concessions. This step can feel like a negotiation on top of a negotiation, but it's a necessary evil to ensure all your previous work does not come undone.

### **Step 2: Complete and disseminate an After-Action Review**

Unless the negotiator, ratifier, interpreter, and implementer for an agreement is the same person or group, there will be a disconnect between what the negotiators produced at the table and what is eventually implemented. One cannot expect a front-line implementer (or what are sometimes called "street-level bureaucrats") to glean all the intent and meaning behind every word and clause in an agreement. If you have any doubt about that, pick up a random treaty, have a friend or colleague read it with you, and see if you both interpret everything the same way; after you've done that, take turns predicting exactly why the negotiators picked the words they did. The odds are pretty high that you will disagree on more than a few items.

When there are differences in interpretation, what is implemented begins to look much different from what was originally negotiated, and that gap must be narrowed. The way to align the negotiator and the front-line implementer is to produce an after-action review (AAR) related to the agreement. The AAR should include at least three elements:

- 1) An explanation of why the negotiation happened in the first place (i.e., the record of your primary goals for the negotiation)
- 2) An assessment of the negotiating process, highlighting successes and failures while offering recommendations for the future

- 3) A clear breakdown of each of the terms of the agreement, including both the meaning and the intent of individual clauses

Such an exhaustive AAR can be a time-consuming process, but going from negotiation to implementation without taking this extra step is like building a wooden ship but deciding not to treat the timber in the hull—it may float, but not like you expected when you originally built it.

Put the effort in early so all the people behind you in the process can preserve your intended outcomes.

### **Step 3: Monitor and minimize unilateral reinterpretation**

In the interpretation phase, the parties to agreement will pick it apart, set their own agendas and priorities for implementation, and seek to maximize their gains while minimizing costs. It is incumbent upon you to monitor this process as much as possible to ensure that you can address any unilateral attempts to modify the terms of the agreement. Schedule follow-up meetings. Work on the agenda and prioritization together. Check in with the other side. Do what is necessary to ensure that the trade-offs envisioned in the deal do not fall victim to reinterpretation.

### **Step 4: Provide a roadmap for implementation**

The next step is to map out the way-ahead for implementation. There are several methods for doing this, but this primer recommends working from a mutually agreed upon roadmap. Some agreements will have these built into the language of the document, while others will keep them vague. Whether vague or explicit, it is important to produce a clear roadmap for implementation with your negotiating partners to ensure that the front-line implementers have achievable instructions for what needs to be implemented, when, and how.

### **Step 5: Educate unilateral implementers**

Once you've produced your roadmap, you must reach out to the front-line implementers and communicate the actions necessary to carry out the implementation framework. Schedule face-to-face meetings or video teleconferences, correspond via email, or write papers for dissemination. Make yourself accessible to any implementers who have questions about the agreement. The goal is to take the guesswork out as much as possible and to empower the implementers in their interactions with the other parties to the agreement.

### **Step 6: Renegotiate, as necessary**

Renegotiation can be done via interpretations of the existing language and negotiation of implementing arrangements for the overarching agreement. These actions are what make an agreement a living document capable of maintaining its relevancy across the years. Sometimes the agreement establishes committees or commissions to handle these renegotiations; in other cases, you will need to engage with counterparts in an ad hoc fashion. The key is to fall back on the original intent of the agreement and to focus on how the terms currently being implemented fail to achieve that intent (hence, the necessity for the all-important AAR). If you and the other parties decide that this intent is no longer valid, then you know it is time to negotiate a new agreement.

\* \* \* \* \*

If you can resist the temptation to take a breather once the negotiation is done and continue with the follow-through, you'll find a much higher level of success in the outcomes of your deal. That may mean many more miles to go before you can finally rest, but in the end, it will be well-worth it to see that all you achieved at the negotiating table finally pays off.

## Chapter 27

# Parting Thoughts

This primer began by acknowledging that negotiation is hard. It will always be that way, but the previous twenty-six chapters should have yielded the information needed to make you a more comfortable and confident negotiator. Much of this primer was technical in nature, so I would like to conclude this book with some *personal* advice as someone who has spent the better part of his career studying and conducting negotiations.

***First, realize that negotiating is not something to fear.*** It can feel confrontational at times, but the whole point of negotiation is to find a way to cooperate—to work together in satisfying your individual and common interests. Dialogue and engagement are so much better than conflict and crisis; therefore, even the worst day of negotiation is better than the best day of fighting.

***Second, seize every opportunity to negotiate.*** The more you're exposed to it and the more you practice the fundamentals, the easier and more fun it becomes. When you get the chance, offer to join a negotiating team or to lead a negotiation. Run through the steps detailed in this primer. Find out what works for you and what doesn't. You will get better along the way if you practice and observe both yourself and others in negotiations.



***Third, the best way to build confidence as a negotiator is to prepare.*** If you're reading this primer, it means you're on the right track because you're already honing your skills and preparing for the next time you go to the negotiating table. That is great. But preparation comes in all forms and extends right up until you enter a negotiation. Whenever you can, start early in building a negotiating strategy, coordinate often with all interested parties, and rehearse your game plan thoroughly. The more prepared you are, the calmer and more clear-headed you will be at the negotiating table.

***Fourth, realize that you will make mistakes, but every great negotiator does.*** All you can do is your best in ensuring that the mistakes are as small as possible and to own those mistakes so you can learn from them.

***Fifth, take your ego out of negotiations.*** When Dr. Ralph Bunche was offered the Nobel Peace Prize for successfully negotiating peace in the 1940s Palestine conflict, he declined it at first, saying that he didn't do what he did to win prizes. He only relented on the condition that he be allowed to accept it on behalf of the United Nations. That is an attitude all negotiators should aspire to, not just for moral reasons, but for practical ones as well. Satisfying your own ego should never be an indispensable interest in a negotiation, so don't let it become one.

***Finally, build upon this primer.*** I endeavored to offer the foundational knowledge necessary to be successful as a negotiator, but only you can determine which techniques work best for you and the specific situations you're facing. Keep learning, keep practicing, and always keep in mind the ultimate goal: using effective negotiation to achieve one's interests while fostering collaboration over conflict.

# **APPENDICES**

## Appendix A

# Recommended Reading

There is no shortage of useful literature on negotiations; after all, it has been a feature of human interaction since time immemorial. The real challenge is curating this wealth of knowledge into a useful menu for practitioners. That means keeping it concise and relevant.

The books listed in this appendix are either complementary or supplementary to the concepts detailed in this primer. Since the primer deliberately eschews theoretical discussion and employment of comprehensive case studies, the following fifteen books and articles help fill those gaps, illustrating this primer's key takeaways in more detail.

### ***How Communists Negotiate (1970)***

By Admiral C. Turner Joy

This is not an academic study, but a practitioner's memoir from the United Nation Command's lead negotiator in Korean War Armistice talks. Joy's description of bad faith negotiating behaviors are not unique to "Communists"; rather, they represent just a few of the common bad faith behaviors employed in negotiations across the globe. Joy's account was part of what inspired this primer's chapter on the "Bad Faith Negotiator's Playbook."

**“Diplomacy and Domestic Politics: The Logic of Two-Level Games” (1988)**

By Robert Putnam

Putnam’s two-level model of negotiation is the cornerstone for a significant amount of academic research on negotiations. Putnam’s article is a foundational study on the role of domestic politics in intergovernmental negotiations and introduces concepts that are integral to this primer’s description of the six phases of intergovernmental negotiation.

***The Practical Negotiator (1982)***

By I. William Zartman and Maureen Berman

*The Practical Negotiator* leverages interviews and observations of practitioners to glean important tactics and lessons for others who will engage in negotiations. While it is already four decades old, it still offers utility in understanding the skills and approaches that serve practitioners well throughout the negotiating process.

**“Pre-negotiation: Phases and Functions” (1989)**

By I. William Zartman

Zartman’s article is a seminal piece on the function and role of pre-negotiations. It was essential in informing this primer’s description of the early phases of intergovernmental negotiation, and it offers foundational knowledge on the process of getting to the negotiating table.

***3-D Negotiation: Powerful Tools to Change the Game in Your Most Important Deals (2006)***

By James Sebenius and David Lax

Sebenius and Lax offer a useful study on negotiation in breaking down the different dimensions of the process. They describe negotiation as consisting of (1) the set-up; (2) deal design; and (3) tactics. Their book is a useful

companion piece to this primer's chapter on building an effective negotiating strategy.

***Deterrence by Diplomacy (2006)***

By Anne Sartori

*Deterrence by Diplomacy* is not specifically about negotiation, but it offers essential insights into how dialogue and engagement may be used in claiming value with would-be adversaries. This book offers useful insight for developing and implementing negotiating strategies.

***Great Negotiations: Agreements that changed the world (2010)***

By Frederik Stanton

This book is valuable in reviewing how some of the world's most important intergovernmental negotiations played out. Stanton's historical recounting of these negotiations offers useful case studies, seeing how real-world negotiators employed the lessons prescribed in this primer in real world scenarios.

***Bargaining with the Devil: When to Negotiate, When to Fight (2010)***

By Robert Mnookin

*Bargaining with the Devil* is all about negotiating with adversaries and captures some of the key themes from this primer. This includes the importance of understanding interests and maintaining a consistent and principled approach no matter who sits across from you at the negotiating table.

***UN Manual for Mediators (2010)***

By Connie Peck

This manual is meant to guide mediators in peace negotiations, but it nevertheless offers sage wisdom compiled from UN mediators and negotiators. This advice ranges

from how to conduct negotiations to how to craft implementable agreements.

***The Art of Negotiation: How to Improvise Agreement in a Chaotic World (2013)***

By Michael Wheeler

Michael Wheeler's most important contribution to the field of negotiation is the notion of negotiating agility—the ability to adapt to ever-changing circumstances in the negotiation process to maximize outcomes. This is a concept that *The Art of Negotiation* explains in detail and is reflected in this primer, such as in chapter 13, “Demystifying the ‘tough’ negotiator.”

***“Searching for a Dream Plan: Two-Level Game Analysis of the Futenma Relocation Issue Under the Hatoyama Cabinet” (2014)***

By Tomohito Shinoda

This article is specific to an issue within the U.S.-Japan alliance, but it offers a useful case study in understanding the role of veto players and domestic politics in intergovernmental negotiations. For those unfamiliar with the use of “two-level games” in intergovernmental negotiations, Shinoda offers a clear application of the model that is both understandable and practical.

***The Supply Side of Security: A Market Theory of Military Alliances (2016)***

By Tongfi Kim

*The Supply Side of Security* is a must-read for Alliance managers. Tongfi Kim's “market theory of alliances” is critical because it highlights how government officials bargain over rights and obligations under alliance frameworks. The concepts are applicable to other intergovernmental negotiations in understanding the types of interests governments will pursue when they form new agreements.

***Never Split the Difference (2016)***

By Christopher Voss and Tahl Raz

Chris Voss is a former FBI hostage negotiator-turned business consultant who discusses universally applicable negotiating techniques. His book offers skills, approaches, and tips that will help you manage your interpersonal interactions during negotiations.

***Negotiating the Impossible: How to Break Deadlocks and Resolve Ugly Conflicts (without Money or Muscle) (2016)***

By Deephak Malhotra

Malhotra's *Negotiating the Impossible* focuses on seemingly intractable negotiations, offering insights and recommendations that can facilitate resolution. This book discusses how negotiators can look beyond "money and muscle" in finding solutions to deadlocks and conflicts, delivering useful lessons to those who may be dealing from a position of strength or weakness alike.

***"Two-level game analysis of Japan in the TPP negotiations" (2020)***

By Tomohito Shinoda

This is another useful case study by Shinoda that focuses on the role of the two levels (international and domestic) in multilateral trade negotiations. It offers helpful context and insight for those who will be engaged in complex, multi-layered negotiations.

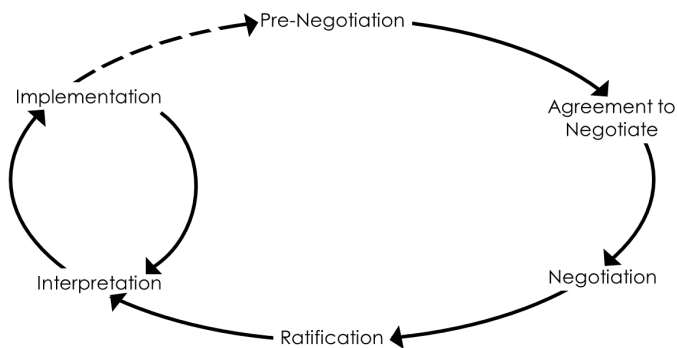
## **Appendix B**

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## The Six Phases of Negotiation



### **Phase 1: Pre-negotiation**

The phase in which both sides “feel each other out” to determine whether an agreement is possible and desirable.

### **Phase 2: Agreement to Negotiate**

The phase where negotiators determine the purpose, timeline, and scope of the negotiation.

### **Phase 3: Negotiate**

The process of producing an “ad ref” agreement for higher level decision.

### **Phase 4: Ratification**

The formal decision and agreement on a negotiated agreement.

### **Phase 5: Interpretation**

The phase in which each side determines how it intends to carry out the terms of the agreement.

### **Phase 6: Implementation**

The phase where the parties to the agreement negotiate how to implement its terms.

## **The Protocols of Negotiation**

*Note:* This reference list is presented primarily as if you are the host for the negotiation. If you are the guest, then you should use this list to see if the other side has given due consideration to negotiating protocols.

### ***Meeting Place***

- Have you identified a neutral meeting location or settled upon alternating negotiating locations?

### ***Interpretation***

- Have you settled on a single language for negotiation?
- If not, have you identified your interpreters?
- Will you use simultaneous or consecutive interpretation?

### ***Room Arrangements***

- Is the negotiating room equally arranged (number of seats, equal space, etc.)?
- Are your guests appropriately positioned so that they do not have their backs to the door?
- Is the room temperature comfortable?
- Are there any cultural considerations you need to factor in with the room arrangement?
- Have you determined how many seats you need for the back benches?
- Do you have all the equipment necessary for the negotiation (projector, computer, microphones, etc.) set up?

### ***Unilateral meeting rooms***

- If the negotiation is set to last for more than a few hours, have you set aside a unilateral meeting room for the other side?

### ***Time for the meeting***

- Have you negotiated an appropriate start and finish time for the negotiation?
- Is that time clear with the other side?

### ***Communications***

- Will the other side be afforded means of communication, whether it is cellular signal or landlines?

### ***Physical security***

- Have you taken the steps necessary to ensure that all parties to the negotiation feel secure during the negotiating session?

### ***Information Security***

- Has either side leaked information on the negotiation to the press? If so, have you adequately addressed this in the negotiation?
- Have you agreed upon press involvement during the negotiation?
- Have you been subject to bugs, wiretaps, or other secret recording devices? If so, have you adequately addressed this in the negotiation?

### ***Food/Refreshments***

- Have you ensured that the other side has adequate access to basic meals and drinks?

### ***Amenities***

- Does the other side have equal access to toilets, smoking areas, etc.?

### ***Distance***

- Are both sides traveling equal distance over the course of negotiations?

## **Breaks**

- Are you ensuring that there are an adequate number of breaks during the negotiation?

## **Ground rules**

- *Recording*: Will recording devices be allowed in the negotiation?
- *Minutes*: Who is taking minutes for the meeting, and will these be coordinated as formal records of the negotiation?
- *Formality*: Have you settled on the level of formality for the sessions? If not, err on the side of formal.
- *Decorum*: Have you treated the other side with respect and they, you?
- *Speakers*: Who will be allowed to speak during the course of the negotiation—just the principals, only those seated at the table, or anyone in the room?
- *Personal Electronic Devices*: Will PEDs be allowed in the negotiating room?

## **Socializing**

- Will you include social engagements as part of the negotiation process?
- Is the hosting of social engagement reciprocated?

## **Cost-Sharing**

- Are both sides paying their fair share into the negotiation process?

\* \* \* \* \*

## **Assigning Roles for your Negotiating Team**

### **1) Action Officer**

- The person who handles the between-session coordination and logistics

### **2) Skeptic**

- Someone tasked to scrutinize every proposal and assertion from the other side

### **3) Optimist**

- A person who will look at the other side's approaches and propositions primarily for the merits

### **4) Subject Matter Expert**

- Team member(s) who use expert knowledge to inform negotiating strategies and weigh the benefits of proposals from the other side

### **5) Legal Expert**

- Team member(s) who review the negotiating strategy and proposed agreements to ensure that they are sound under international and domestic laws and regulations

### **6) Presenter**

- The person tasked with briefing your side's proposals and positions

### **7) "Fixer"**

- Someone who is involved in the negotiation but is disavowable enough to work in-between sessions to smooth over disputes and float informal proposals with the other side

### **8) Interpreter**

- More than a language specialist, this person should also provide feedback on cultural cues during sidebar meetings or in between sessions

**9) Interagency Coordinator**

- The role-player responsible for coordinating interests and positions across all interested organizations on your side

**10) Lead Negotiator**

- The person responsible for all the personnel and outcomes of a negotiation

**11) Decision-Maker**

- The final authority who gets to say yes or no to a proposed deal

\* \* \* \* \*

## **The Steps for Building an Effective Negotiating Strategy**

- Step 1:** Assess your team
- Step 2:** Gather your interests
- Step 3:** Determine your side's constraints and restraints
- Step 4:** Assess the other side's interests, constraints, and restraints
- Step 5:** Determine how you may achieve your interests
- Step 6:** Evaluate the tools and instruments you have at your disposal
- Step 7:** Craft your game plan
- Step 8:** Wargame the negotiation
- Step 9\*:** Make adjustments to your game plan
- Step 10\*:** Build your game-day lineup

***\*Repeat steps nine and ten before every negotiating session.***

\* \* \* \* \*

## How to lead an effective negotiating session

### *(Before the Session)*

- Step 1:** Determine the objectives of the session in advance
- Step 2:** Ensure you've included all the right participants

### *(At the Session)*

- Step 3:** Ask everyone to introduce themselves
- Step 4:** Recap where you are at in the negotiating process
- Step 5:** Explain your intent for the session
- Step 6:** Keep discussion on point
- Step 7:** Take your own notes
- Step 8:** Use sidebars and breaks
- Step 9:** Review key positions and agreements that resulted from the session
- Step 10:** Set the stage for follow-on action

\* \* \* \* \*



### **Assessing your negotiating session**

- 1) Are there any due-outs?
- 2) What were your objectives for the negotiating session?
- 3) Did you achieve your objectives?
- 4) Did you preserve your indispensable interests?
- 5) What concessions did you offer?
- 6) What concessions did the other side offer?
- 7) Did you make any agreements?
- 8) Did the other side engage in any bad faith negotiating behaviors?
- 9) Did you tilt?
- 10) Did the other side's negotiator tilt?
- 11) What information did the other side reveal about their interests, constraints, or restraints that you did not already know?
- 12) Was there information you wish you had during the negotiation but didn't?
- 13) Did you employ your negotiating team?
- 14) Was there anybody you would have liked to have been on your team that wasn't present, and why?
- 15) Who was on the other side of the table, and what roles did they play?

**Three questions to ask before closing on a negotiated deal**

- 1) Does the deal meet our *indispensable interests*?
- 2) Is the negotiated deal *ratifiable*?
- 3) Is the deal *implementable*?

If the answer to any of those questions is “no,” go back to the negotiating table until you can answer “yes” to all three.

\* \* \* \* \*

### **Steps for succeeding on the follow-through in negotiations**

**Step 1:** Get it ratified

**Step 2:** Complete and disseminate an After-Action Review

**Step 3:** Monitor and minimize unilateral reinterpretation

**Step 4:** Provide a roadmap for implementation

**Step 5:** Educate unilateral implementers on the terms of the agreement

**Step 6:** Renegotiate as necessary

## ***About the Author***

Dr. Michael MacArthur Bosack has spent much of his life working on, studying, or engaging in intergovernmental negotiation. As the founder of the Parley Policy Initiative, he focuses on mentoring the next generation of negotiators to help ameliorate conflict in the world.

Previously, Michael served in the U.S. Air Force as a Foreign Area Officer. His last posting was as the Deputy Chief of Government Relations at Headquarters, U.S. Forces, Japan. There, he was part of the team that drafted and implemented the 2015 Guidelines for U.S.-Japan Defense Cooperation. Michael acted as the lead negotiator for the United States government in implementation of mutual asset protection authorities. He also served as the Headquarters' multilateral coordinator, working with United Nations Command and South Korean partners. During his military career, he deployed twice to Afghanistan and supported Trinidad and Tobago's development of its Search and Rescue fleet.

After graduating from the Air Force Academy in 2007 with a B.S. in History and Foreign Area Studies, Michael was awarded the East-West Center's Graduate Degree Fellowship. There, he completed his M.A. in Asian Studies at the University of Hawai'i and earned a graduate certificate in Leadership Studies. Later, he was selected as a Mansfield Fellow and worked in the Japanese Ministry of Foreign Affairs, Ministry of Defense, and National Diet.

Michael completed his doctoral studies at the International University of Japan's School of International Relations. His Ph.D. research examined alliance theory and intergovernmental negotiations. Michael's other research areas include North Korean foreign policy and security, crisis management, postwar policy, and leadership studies.



*The Yokosuka Council on Asia-Pacific Studies (YCAPS) is a non-profit organization dedicated to promoting the study of strategic, diplomatic, and legal issues affecting the Asia-Pacific Region within the U.S. military and communities hosting U.S. military forces. We enable professional growth and foster grassroots connections with world-class expertise. YCAPS organizes seminars, provides educational experiences, enables social networking, and assists those with an interest in the Asia-Pacific region at all stages of their professional careers.” To learn more about YCAPS and join its activities, visit [www.YCAPS.org](http://www.YCAPS.org).*



*The Parley Policy Initiative is a nonpartisan project focused on sharing ideas and knowledge about negotiation, diplomacy, and peacemaking. To learn more about the Parley Policy Initiative, visit [www.parleypolicy.com](http://www.parleypolicy.com).*

If you were tasked to conduct a negotiation, would you know how to do it? If not, you are not alone. Few people receive formal training before finding themselves at a negotiating table, and all can benefit from a primer that explains the process, practices, and tactics for ensuring success in a negotiation.

This primer for diplomats, alliance managers, and other practitioners offers the tools needed to succeed whether it is one's first negotiation or hundredth.

